



# Specific Procurement Notice

## Invitation for Bids for Plant Design, Supply and Installation

**Employer:** Kenya Electricity Transmission Company Limited (KETRACO)

**Project:** Kenya Transmission Network Improvement Project

**Contract title:** Procurement for: Design, Supply, and Installation Services for Extension of Existing 132/33 kV Narok and Bomet Substations

**Country:** Kenya

**Procurement Method:** Open Competitive Bidding (International) (OCBI)

**IFB OCBI No:** KETRACO/PT/001/2024-Lot 2B

**Issued on:** April 2024

1. The Government of Kenya has applied for financing from the African Development Bank (AfDB) hereinafter called the Bank toward the cost of the Kenya Transmission Network Improvement Project and intends to apply part of the proceeds toward payments under the Contract for Design, Supply, and Installation Services for 132/33 kV Narok and Bomet Substations. This contract will be jointly financed by Korean Exim Bank (EDCF). Bidding process will be governed by the Bank's Procurement Framework. For this contract, the Borrower shall process the payments using the Direct Payment disbursement method, as defined in the Bank's Disbursement Guidelines and procedures for Investment Project Financing.
2. The Kenya Electricity Transmission Company Limited now invites sealed Bids from eligible Bidders for Design, Supply, and Installation Services for 132/33 kV Narok and Bomet Substations.
3. Bidding will be conducted through the Open Competitive Bidding (International), OCBI procedures as specified in the Bank's [Procurement Framework](#) [Procurement Policy for Bank Funded Operations dated October 2015 and

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*effective January 1, 2016*], IFB and is open to all eligible Bidders as defined in the Procurement Framework.

4. Interested eligible Bidders may obtain further information from *[Kenya Electricity Transmission Company Limited (KETRACO), Senior Manager, Supply Chain, [ktrnip@ketraco.co.ke](mailto:ktrnip@ketraco.co.ke)*
5. The bidding document in *English* may be obtained free of charge from the website below:

<https://www.ketraco.co.ke/procurement/tenders/open-tenders>

6. Bids must be delivered to the address below

*Attention: Senior Manager, Supply Chain  
Kenya Electricity Transmission Company Limited (KETRACO)  
2nd Floor, KAWI Complex, Block B  
Popo Road, off Red Cross Road, South C  
Nairobi, Kenya*

on or before *10:00am EAT on 21<sup>ST</sup> May 2024*. Electronic bidding will *not* be permitted. Late Bids will be rejected. Bids will be publicly opened in the presence of the Bidders' designated representatives and anyone who chooses to attend at the address below on *11:00am EAT on 21<sup>ST</sup> May 2024*.

7. All Bids must be accompanied by a *Bid Security* of *450,000.00 (Four hundred and fifty thousand) US Dollars*.
8. Attention is drawn to the Procurement Framework requiring the Borrower to disclose information on the successful bidder's beneficial ownership, as part of the Contract Award Notice, using the Beneficial Ownership Disclosure Form as included in the bidding document.
9. The address(es) referred to above is:

*Senior Manager, Supply Chain  
Kenya Electricity Transmission Company Limited (KETRACO)  
2nd Floor, KAWI Complex, Block B  
Popo Road, off Red Cross Road, South C  
P.O Box 34942 – 00100 Nairobi, Kenya  
Telephone: +254719018000*

*Email: ktrnip@ketraco.co.ke*

*City: Nairobi*

*Country: Kenya*

*Telephone: +254 719 018000*

# Bidding Document For Procurement of Plant Design, Supply & Installation

## Procurement of

*Extension of Existing 132/33 kV Narok and Bomet  
Substations*

**Reference OCBI-IFB No:** *KETRACO/PT/001/2024-Lot 2B*

**Project:** *Kenya Transmission Network Improvement  
Project*

**Employer:** *Kenya Electricity Transmission Co. Ltd.  
(KETRACO)*

**Country:** *Kenya*

**IFB Issued on:** *APRIL 2024*

# Bidding Document

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## **PART 1 – Bidding Procedures**





# Section I - Instructions to Bidders

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# Section I - Instructions to Bidders

## A- General

### 1. Scope of Bid

- 1.1 In connection with the Specific Procurement Notice - Invitation for Bids (IFB), specified in the Bid Data Sheet (BDS), the Employer, as specified **in the BDS**, issues this bidding document for the Design, Supply and Installation of Plant as specified in Section VII, Employer's Requirements. The name, identification and number of "Whole of the Plant and Installation" hereafter called 'Plant', lots, each lot containing one or more 'Plant' (s) or packages, each package containing one or more lots of this IFB are specified **in the BDS**.
- 1.2 Throughout this bidding document:
- (a) the term "in writing" means communicated in written form (e.g. by mail, e-mail, fax, including if specified **in the BDS**, distributed or received through the electronic-procurement system used by the Employer) with proof of receipt;
  - (b) if the context so requires, "singular" means "plural" and vice versa;
  - (c) "**Day**" means calendar day, unless otherwise specified as "**Business Day**." A Business Day is any day that is an official working day of the Borrower. It excludes the Borrower's official public holidays;
  - (d) "**ES**" means environmental and social (including Sexual Exploitation and Abuse (SEA), and Sexual Harassment (SH));
  - (e) "**Sexual Exploitation and Abuse**" "(SEA)" means the following:
  - (f) **Sexual Exploitation** is defined as any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.
  - (g) **Sexual Abuse** is defined as the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions;
  - (h) "**Sexual Harassment**" "(SH)" is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by the Contractor's Personnel with other Contractor's or Employer's Personnel;
  - (i) "**Contractor's Personnel**" is as defined in GCC Sub-Clause 1; and

- (j) **"Employer's Personnel"** is as defined in GCC Sub-Clause 1.

A non-exhaustive list of (i) behaviors which constitute SEA and (ii) behaviors which constitute SH is attached to the Code of Conduct form in Section IV.

## 2. Source of Funds

- 2.1 The Borrower or Recipient (hereinafter called "Borrower") indicated **in the BDS** has applied for or received financing (hereinafter called "funds") from the Specific Financing Institution named in the BDS (hereinafter called "the Bank") in an amount specified **in BDS**, toward the project named **in BDS**. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this bidding document is issued.
- 2.2 Payment by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the Loan (or other financing) Agreement. The Loan (or other financing) Agreement prohibits a withdrawal from the loan account for the purpose of any payment to persons or entities, or for any import of goods, equipment, plant, or materials, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. No party other than the Borrower shall derive any rights from the Loan (or other financing) Agreement or have any claim to the proceeds of the Loan (or other financing).

## 3. Fraud and Corruption

- 3.1 The Bank requires compliance with the Bank's Integrity Framework comprising the African Development Bank Group's Sanctions Procedures, the Bank's Whistleblowing and Complaints Policy, the Bank's Procurement Policy under the Procurement Framework and any other applicable Policies and Procedures including their updates in regard to corrupt and fraudulent practices, as set forth in Section VI.
- 3.2 In further pursuance of this policy, bidders shall permit and shall cause their agents (where declared or not), subcontractors, subconsultants, service providers, suppliers, and their personnel, to permit the Bank to inspect all accounts, records and other documents relating to any prequalification process, bid submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Bank.

## 4. Eligible Bidders

- 4.1 A Bidder may be a firm that is a private entity, a state-owned enterprise or institution subject to ITB 4.6, or any combination of such entities in the form of a joint venture,

consortium, or association hereinafter called JV, under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, consortium, or association (JV): a) Unless otherwise **specified in the BDS**, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms; b) The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Bidding process and, in the event the JV is awarded the Contract, during contract execution; c) The maximum number of members proposed in a JV shall not exceed the number **specified in the BDS**, or the number derived from the percentage specified under ITB 4.1 (d), whichever is smaller unless both are equal, in which case anyone shall apply; and d) Participation by value of the contract as share of each of the JV partner (member) shall not be less than the percentage **specified in the BDS**. In case of any inconsistency between ITB 4.1 (c) and ITB 4.1 (d) that both cannot be applied simultaneously, the latter shall prevail.

4.2 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this Bidding process, if the Bidder:

- (a) directly or indirectly controls, is controlled by or is under common control with another Bidder; or
- (b) receives or has received any direct or indirect subsidy from another Bidder; or
- (c) has the same legal representative as another Bidder; or
- (d) has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the Bid of another Bidder, or influence the decisions of the Employer regarding this Bidding process; or
- (e) or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the Plant and Installation Services that are the subject of the Bid; or
- (f) or any of its affiliates has been hired (or is proposed to be hired) by the Employer or Borrower as Project Manager for the Contract implementation; or
- (g) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or

- (h) has a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the preparation of the bidding document or specifications of the Contract, and/or the Bid evaluation process of such Contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the Bidding process and execution of the Contract.
- 4.3 A firm that is a Bidder (either individually or as a JV member) shall not participate as a Bidder or as JV member in more than one Bid except for permitted alternative Bids. Such participation shall result in the disqualification of all Bids in which the firm is involved. However, this does not limit the participation of a Bidder as subcontractor in another Bid or of a firm as a subcontractor in more than one Bid.
- 4.4 A Bidder and all parties constituting the Bidder including subcontractors, suppliers and affiliates shall have the nationality of an eligible country of the Bank in accordance with the Bank's Procurement Policy for Bank Group Funded Operations described under the Bank's Procurement Framework, and as listed in Section V, Eligible Countries. Subject to the restrictions pursuant to ITB 4.8. A Bidder shall be deemed to have the nationality of a country if the Bidder is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or subconsultants for any part of the Contract including related Services.
- 4.5 A Bidder that has been sanctioned by the Bank, pursuant to the Bank's Integrity Framework in accordance with its prevailing sanctions policies and procedures as set forth in the Bank's Integrity Framework as described in Section VI paragraph 2.2 (d), shall be ineligible to be prequalified for, bid for, or be awarded a Bank-financed contract or benefit from a Bank-financed contract, financially or otherwise, during such period of time as the Bank shall have determined. The list of debarred firms and individuals is available at the electronic address specified in the BDS.
- 4.6 Bidders that are state-owned enterprises or institutions in the Employer's Country may be eligible to compete and be awarded a Contract(s) only if they can establish, in a manner acceptable to the Bank, that they (i) are legally and financially autonomous (ii) operate under commercial law, and (iii) are not under supervision of the Employer.

- 4.7 A Bidder shall not be under suspension from Bidding by the Employer as the result of the operation of a Bid-Securing Declaration.
- 4.8 Firms and individuals may be ineligible if so indicated in Section V and: (a) as a matter of law or official regulations, the Borrower's country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods or the contracting of works or services required; or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country. Where the procurement is implemented across jurisdictional boundaries (and more than one country is a Borrower, and is involved in the procurement), then exclusion of a firm or individual on the basis of ITB 4.8 (a) above by any country may be applied to that procurement across other countries involved, if the Bank and the Borrowers involved in the procurement agree.
- 4.9 A Bidder shall provide such documentary evidence of eligibility satisfactory to the Employer, as the Employer shall reasonably request.
- 4.10 A firm that is under a sanction of debarment by the Borrower from being awarded a contract is eligible to participate in this procurement, unless the Bank, at the Borrower's request, is satisfied that the debarment; (a) relates to fraud or corruption, and (b) followed a judicial or administrative proceeding that afforded the firm adequate due process.

## **5. Eligible Plant and Equipment, Installation and Other Services**

- 5.1 For the purpose of this bidding document, the words "facilities", "Plant and Equipment", Services such as "Installation Services", "Design Services", etc. shall be construed in accordance with the respective definitions and/or descriptions given to them in the General Conditions of Contract, Specifications and other parts of the Bidding Documents. All plant and equipment to be supplied and installation and other services carried out under the Contract and financed by the Bank shall have their origin in an eligible country of the Bank in accordance with the Bank's Procurement Policy for Bank Group Funded Operations described under the Bank's Procurement Framework, and as listed in Section V, Eligible Countries subject to the restrictions specified therein and all expenditures made under the contract shall be limited to such plant, equipment, and services.
- 5.2 For purposes of ITB 5.1 above, "origin" means the place where the plant, or component parts thereof are mined, grown, produced or manufactured, and from

which the services are provided. Plant components are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is substantially different in its basic characteristics or in purpose or utility from its components.

- 5.3 The nationality of the firm that produces, assembles, distributes, or sells the materials and equipment shall not determine their origin.

## **B- Contents of Bidding Document**

### **6. Sections of Bidding Document**

- 6.1 The bidding document consists of Parts 1, 2, and 3, which include all the sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 8.

#### **PART 1. Bidding Procedures**

- Section I - Instructions to Bidders (ITB)
- Section II - Bid Data Sheet (BDS)
- Section III - Evaluation and Qualification Criteria
- Section IV - Bidding Forms
- Section V - Eligible Countries
- Section VI - Fraud and Corruption

#### **PART 2. Employer's Requirements**

- Section VII -Employer's Requirements

#### **PART 3. Conditions of Contract and Contract Forms**

- Section VIII - General Conditions of Contract (GCC)
- Section IX -Particular Conditions of Contract (PCC)
- Section X -Contract Forms

- 6.2 The Specific Procurement Notice-Invitation for Bids (IFB) issued by the Employer is not part of the bidding document.
- 6.3 Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Bid meeting (if any), or Addenda to the bidding document in accordance



with ITB 8. In case of any contradiction, documents obtained directly from the Employer shall prevail.

- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the bidding document and to furnish with its Bid all information or documentation as is required by the bidding document.

## 7. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting

- 7.1 A Bidder requiring any clarification of the bidding document shall contact the Employer in writing at the Employer's address indicated **in the BDS** or raise his enquiries during the pre-Bid meeting if provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of Bids within a period specified **in the BDS**. The Employer shall forward copies of its response to all Bidders who have acquired the bidding document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so specified **in the BDS**, the Employer shall also promptly publish its response at the web page identified **in the BDS**. Should the clarification result in changes to the essential elements of the bidding document, the Employer shall amend the bidding document following the procedure under ITB 8 and ITB 23.2.
- 7.2 The Bidder is advised to visit and examine the site where the plant is to be installed and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Bid and entering into a Contract for the provision of Plant and Installation Services. The costs of visiting the site shall be at the Bidder's own expense.
- 7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.4 If so specified **in the BDS**, the Bidder's designated representative is invited to attend a pre-Bid meeting and/or a site visit. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.5 The Bidder is requested to submit any questions in writing, to reach the Employer not later than one week before the meeting.

- 7.6 Minutes of the pre-Bid meeting, including the text of the questions raised without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the bidding document in accordance with ITB 6.3. If so specified **in the BDS**, the Employer shall also promptly publish the Minutes of the pre-Bid meeting at the web page identified **in the BDS**. Any modification to the bidding document that may become necessary as a result of the pre-Bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITB 8 and not through the minutes of the pre-Bid meeting. Nonattendance of the pre-Bid meeting will not be a cause for disqualification of a Bidder.

## 8. Amendment of Bidding Document

- 8.1 At any time prior to the deadline for submission of Bids, the Employer may amend the bidding document by issuing addenda.
- 8.2 Any addendum issued shall be part of the bidding document and shall be communicated in writing to all who have obtained the bidding document from the Employer in accordance with ITB 6.3. The Employer shall also promptly publish the addendum on the Employer's web page in accordance with ITB 7.1.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 23.2.

# C- Preparation of Bids

## 9. Cost of Bidding

- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding process.

## 10. Language of Bid

- 10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Employer, shall be written in the language specified **in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified **in the BDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern.

## 11. Documents Comprising the Bid

11.1 The Bid shall comprise the following:

- (a) **Letter of Bid** prepared in accordance with ITB12.1;
- (b) **Price Schedules** completed in accordance with ITB 12 and ITB 17;
- (c) **Bid Security or Bid Securing Declaration**, in accordance with ITB 20;
- (d) **Technical Bid of Base Bid**;
- (e) **Commercial Terms and Conditions**;
- (f) **Alternative Technical Bid**, if permissible, in accordance with ITB 13;
- (g) **Authorization**: written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 21.3;
- (h) **Eligibility of Plant and Installation Services**: documentary evidence established in accordance with ITB 14.1 that the Plant and Installation Services offered by the Bidder in its Bid or in any alternative Bid, if permitted, are eligible;
- (i) **Bidder's Eligibility and Qualifications**: documentary evidence in accordance with ITB 15.1 establishing the Bidder's eligibility and qualifications to perform the Contract if its Bid is accepted;
- (j) **Conformity**: documentary evidence in accordance to ITB 16, ITB 30 and ITB 31, and in support of above sub-paragraphs (d) and (e) of ITB 11.1, as necessary, to establish that the Plant and Installation Services, and Terms and Conditions of the bid offered by the Bidder conform to the requirements and provisions of the bidding document;
- (k) **Subcontractors**: list of subcontractors in accordance with ITB 16.2; and
- (l) **any** other document required in the BDS.

11.2 In addition to the requirements under ITB 11.1, Bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed Agreement.

11.3 The Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.

## 12. Letter of Bid and Price Schedules

- 12.1 The Letter of Bid and Price Schedules shall be prepared, using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed as instructed in each form without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 21.3. All blank spaces shall be filled in with the information requested.

## 13. Alternative Bids

- 13.1 Unless otherwise specified **in the BDS**, alternative Bids shall not be considered. If Alternative Bids are permitted, the BDS shall specify which of the following ITB (s) namely, ITB 13.2, ITB 13.3 or ITB 13.4 shall be considered.
- 13.2 When alternatives to the Time Schedule are explicitly invited, a statement to that effect will be included **in the BDS**, and the method of evaluating different time schedules will be described in Section III, Evaluation and Qualification Criteria.
- 13.3 Except as provided under ITB 13.4 below, and if permitted under BDS, Bidders wishing to offer technical alternatives to the Employer's requirements as described in the bidding document must also provide: (i) a price at which they are prepared to offer a Plant meeting the Employer's requirements; and (ii) all information necessary for a complete evaluation of the alternatives by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed installation methodology and other relevant details. Only the technical alternatives, if any, of the Bidder with the Lowest Evaluated Bid conforming to the basic technical requirements shall be considered by the Employer.
- 13.4 When Bidders are invited **in the BDS** to submit alternative technical solutions for specified parts of the facilities, such parts will be identified **in the BDS**, and described in Section VII, Employer's Requirements. The method for their evaluation will be stipulated in Section III, Evaluation and Qualification Criteria.

## 14. Documents Establishing the Eligibility of the Plant and Equipment, their Installation and Other Services

- 14.1 To establish the eligibility of the Plant and Equipment, their Installation and other Services performed under the contract, in accordance with ITB 5, Bidders shall complete the Letter of Bid, and country of origin declarations in the Price Schedule Forms, included in Section IV, Bidding Forms.

## **15. Documents Establishing the Eligibility and Qualifications of the Bidder including proposed subcontractors and manufacturers**

- 15.1 To establish its eligibility and qualifications to perform the Contract in accordance with Section III, Evaluation and Qualification Criteria, the Bidder shall complete the Letter of Bid and provide all documentation and information with respect to the Bidder, its subcontractors, specialized subcontractors and/or manufacturers proposed in the bid including those as requested in the corresponding forms included in Section IV, Bidding Forms.

## **16. Documents Establishing the Conformity of the Plant and Installation Services**

- 16.1 The Bidder shall furnish the information stipulated in Section IV, Bidding Forms in sufficient detail to demonstrate substantial responsiveness of the Bidders' proposal to the work requirements and the completion time. The Bidder shall furnish details of the technical specifications proposed in the Technical part of the Bid including all relevant technical information requested by the Employer, functional guarantees, standards, codes, etc. as applicable, and details of any deviations, reservations, omissions or exceptions in the Technical Bid form included in Section IV. The Bidder shall demonstrate substantial responsiveness with required technical specifications of the Plant and Installation and no change in substance will be permitted after bid opening regardless of any replacement of a subcontractor or manufacturer determined unacceptable as provided under ITB 39.
- 16.2 For major items of Plant and Installation Services as listed by the Employer in Section III, Evaluation and Qualification Criteria, which the Bidder intends to purchase or subcontract, the Bidder shall give details of the name and nationality of the proposed Subcontractors, including manufacturers, for each of those items at the option of the Bidder, one or more than one firm for each item. In addition, the Bidder shall include in its Bid information and supporting documentation establishing conformity and compliance with the technical requirements specified by the Employer for these items including the qualification information of the subcontractor, specialized subcontractors and manufacturers establishing that they meet the minimum qualification criteria for respective items. Quoted rates and prices will be deemed to apply to whichever Subcontractor is appointed, and no adjustment of the rates and prices will be permitted.
- 16.3 The Bidder shall be responsible for ensuring that any Subcontractor, specialized subcontractor and manufacturer proposed complies with the requirements of ITB 4, and that any plant, or services to be provided by the Subcontractor, specialized subcontractor and manufacturer comply with the requirements of ITB 5 and ITB 16.1.

## 17. Bid Prices and Discounts

- 17.1 Unless otherwise specified **in the BDS**, Bidders shall quote for the entire Plant and Installation Services on a "single responsibility" basis. The total Bid price shall include all the Contractor's obligations mentioned in or to be reasonably inferred from the bidding document in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the Plant. This includes all requirements under the Contractor's responsibilities for testing, pre-commissioning and commissioning of the plant and, where so required by the bidding document, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as specified in the bidding document, all in accordance with the requirements of the General Conditions. Items against which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed to be covered by the prices for other items. An item not listed in the Price Schedule shall be assumed not to be included in the Bid, and provided that the Bid is determined substantially responsive notwithstanding this omission, the average price or the highest price of the item as **specified in the BDS** quoted by substantially responsive Bidders will be added to the Bid price and the equivalent total cost of the Bid so determined will be used for price comparison.
- 17.2 Bidders are required to quote the price for the commercial, contractual and technical obligations outlined in the bidding document.
- 17.3 Bidders shall give a breakdown of the prices in the manner and detail called for in the Price Schedules included in Section IV, Bidding Forms.
- 17.4 Depending on the scope of the Contract, the Price Schedules may comprise up to the six (6) schedules listed below. Separate numbered Schedules included in Section IV, Bidding Forms, from those numbered 1 to 4 below, shall be used for each of the elements of the Plant and Installation Services. The total amount from each Schedule corresponding to an element of the Plant and Installation Services shall be summarized in the schedule titled Grand Summary, (Schedule 5), giving the total Bid price(s) to be entered in the Letter of Bid. Bidders shall note that the plant and equipment included in Schedule Nos. 1 and 2 below exclude materials used for civil, building and other construction works. All such materials shall be included and priced under Schedule No. 4, Installation Services. The Schedules comprise:

**Schedule No. 1:** Plant (including Mandatory Spare Parts) Supplied from Abroad

**Schedule No. 2:** Plant (including Mandatory Spare Parts) Supplied from within the Employer's Country

**Schedule No. 3:** Design Services

**Schedule No. 4:** Installation Services

**Schedule No. 5:** Grand Summary (Schedule Nos. 1 to 4)

**Schedule No. 6:** Recommended Spare Parts

17.5. In the Schedules, Bidders shall give the required details and a breakdown of their prices as follows:

(a) Plant to be supplied from abroad (Schedule No. 1):

The price of the Plant shall be quoted on CIP-named place of destination basis as specified **in the BDS**.

(b) Plant manufactured within the Employer's Country (Schedule No. 2):

(i) The price of the plant shall be quoted on an EXW Incoterm basis (such as "ex-works," "ex-factory," "ex-warehouse" or "off-the-shelf," as applicable);

(ii) Sales tax and all other taxes payable in the Employer's Country on the plant if the contract is awarded to the Bidder;

(c) Design Services (Schedule No. 3) and shall include all taxes, levies, charges, etc. payable, if any, on such services as of twenty-eight (28) days prior to the deadline for submission of Bids;

(d) Installation Services shall be quoted separately (Schedule No. 4) and subject to provision under ITB 17.5 (d), (i) shall include rates or prices for local transportation to named place of final destination as specified **in the BDS**, insurance and other services incidental to delivery of the plant, all labor, contractor's equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, including operations and maintenance services, the provision of operations and maintenance manuals, training, etc., where identified in the bidding document, as necessary for the proper execution of the installation and other services, including all taxes, duties, levies and charges payable in the Employer's Country as of twenty-eight (28) days prior to the deadline for submission of Bids; and (ii) subject to provisions under ITB 17.5 (d) (i), and except when the place of destination and final destination is the same, the prices quoted under Schedule 1 will be quoted on the basis of CIP place of final destination and such prices shall include the

cost of local transportation and Insurance, etc. up to the final destination place and therefore in such a case, Schedule 4 will not include costs of local transportation, Insurance, etc. related to items in Schedule 1 already included in prices under Schedule 1.

- (e) Recommended spare parts shall be quoted separately (Schedule 6) as specified in either subparagraph (a) or (b) above in accordance with the origin of the spare parts.

17.6 The terms EXW, CIP, and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce, as specified **in the BDS**.

17.7 The prices shall be either fixed or adjustable as specified **in the BDS**.

17.8 In the case of **Fixed Price**, prices quoted by the Bidder shall be fixed during the Bidder's performance of the contract and not subject to variation on any account. A Bid submitted with an adjustable price quotation will be treated as non-responsive and rejected.

17.9 In the case of **Adjustable Price**, prices quoted by the Bidder shall be subject to adjustment during performance of the contract to reflect changes in the cost elements such as labor, material, transport and contractor's equipment in accordance with the procedures specified in the corresponding Appendix to the Contract Agreement. A Bid submitted with a fixed price will not be rejected, but the price adjustment will be treated as zero unless otherwise stated in the BDS in which case the Bid with a fixed price shall be rejected. Bidders are required to indicate the source of labor and material indices in the corresponding Form in Section IV, Bidding Forms.

17.10 Unless otherwise specified in the BDS, Bid are being invited for 'Plant' as a single contract (or as one lot). If so indicated in ITB 1.1, and the Employer requires several "Plants" and all such Plants are grouped into lots and/or packages. In such case, Bids are being invited for individual lots (contracts) or for any combination of lots (packages) as specified in the BDS. Bidders wishing to offer any price reduction (discount) for the award of more than one Contract shall specify in their Letter of Bid the price reductions applicable to each contract, lot, and package as the case may be. Bidders shall fully explain the methodology and calculations for applying the discounts, showing how the reductions were derived and what are the net amounts of each contract after application of the discounts including how discounts will be applied to individual items to determine the net prices of the items included in the



Contract. Discounts should be submitted with due regard to the consequences of unclear or ambiguous discounts as per ITB 17.12. Discounts for combination of lots or packages can be considered only when they are opened at the same time.

17.11 Bidders wishing to offer any unconditional discount (unrelated to combination of contracts or without any conditions) shall specify in their Letter of Bid the offered discounts and the manner in which price discounts will apply along the lines of ITB 17.10 and ITB 17.12.

17.12 Discounts offered shall be clear and without any ambiguity to avoid rejection of bid as no clarification shall be requested or permitted on this account after bid submission. The Employer's decision on a bid's discount will be based on the contents of the bid itself, without recourse to any extrinsic evidence. If in the Employer's opinion, which shall be final, a discount offered in the bid: i) is unclear, ambiguous or vaguely presented to the extent that it cannot be either interpreted or applied with reasonable accuracy, the Bid shall be rejected; ii) relates to any item of cost where the Employer has indicated its estimated cost in the bidding document, the bid will be evaluated without the discount applicable to such an item; and iii) has a minor discrepancy or unclarity which could be interpreted reasonably, the Employer in this case may decide to apply the discount as it deems reasonable and appropriate resulting in the lowest evaluated cost to the Employer. If the Bidder does not accept the Employer's decision based on any of the above, the Bid shall be rejected.

## 18. Currencies of Bid and Payment

18.1 The currency(ies) of the Bid and the currency(ies) of payments shall be the same. The Bidder shall quote in the currency of the Employer's country the portion of the Bid price that corresponds to expenditures incurred in the currency of the Employer's Country, unless otherwise specified **in the BDS**.

18.2 The Bidder may express the Bid price in any currency. If the Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than three foreign currencies in addition to the currency of the Employer's Country.

## 19. Period of Validity of Bids

19.1 Bids shall remain valid for the Bid Validity period specified **in the BDS**. The Bid Validity period starts from the Bid submission deadline (as prescribed by the Employer in accordance with ITB 23.1). A Bid valid for a shorter period shall be rejected by the Employer as nonresponsive.

- 19.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB 20, the Bidder granting the request shall also extend the Bid Security for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid, except as provided in ITB 19.3.
- 19.3 If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial Bid validity period, the Contract price shall be determined as follows:
- (a) in the case of **fixed price** contracts, the Contract price shall be the Bid price adjusted by the factor or factors specified **in the BDS** to reflect any increase in the cost of inputs over the period of extension, which for the purpose of this adjustment, shall be the period elapsed between the date arrived immediately after expiry of fifty-six (56) days beyond the initial Bid validity period and the date of notification of award;
  - (b) in the case of **adjustable price** contracts, no adjustment shall be made; or
  - (c) in any case, Bid evaluation shall be based on the Bid price without taking into consideration the applicable correction from those indicated above.

## 20. Bid Security

- 20.1 The Bidder shall furnish as part of its Bid, either a Bid-Securing Declaration or a Bid Security amount as specified **in the BDS**, in original form and, in the case of a Bid Security amount, in the amount and currency specified **in the BDS**.
- 20.2 A Bid-Securing Declaration shall use the form included in Section IV Bidding Forms.
- 20.3 If a Bid Security amount is specified pursuant to ITB 20.1, the Bid security shall be a demand guarantee in any of the following forms at the Bidder's option:
- (a) an unconditional guarantee issued by a bank or non-bank financial institution (such as an insurance, bonding or surety company);
  - (b) an irrevocable letter of credit;
  - (c) a cashier's or certified check; or
  - (d) another security indicated **in the BDS**,

from a reputable source from an eligible country. If an unconditional guarantee is issued by a non-bank financial institution located outside the Employer's Country the issuing non-bank financial institution shall have a correspondent financial institution located in the Employer's Country to make it enforceable unless the Employer has agreed in writing, prior to Bid submission, that a correspondent financial institution is not required. In the case of a bank guarantee, the Bid Security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, or in another substantially similar format approved by the Employer prior to Bid submission. The Bid Security shall be valid for twenty-eight (28) days beyond the original validity period of the Bid, or beyond any period of extension if requested under ITB 19.2.

- 20.4 If a Bid Security in amount or a Bid-Securing Declaration is specified pursuant to ITB 20.1, any Bid not accompanied by a substantially responsive Bid Security in amount or Bid-Securing Declaration shall be rejected by the Employer as nonresponsive.
- 20.5 If a Bid Security is specified pursuant to ITB 20.1, the Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's signing the Contract and furnishing of the Performance Security pursuant to ITB 48.
- 20.6 The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required Performance Security.
- 20.7 The Bid Security amount may be forfeited:
- (a) if a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder on the Letter of Bid, or any extension thereto provided by the Bidder; or
  - (b) if the successful Bidder fails to:
    - (i) sign the Contract in accordance with ITB 47; or
    - (ii) furnish a Performance Security in accordance with ITB 48.
- 20.8 The Bid Security or the Bid-Securing Declaration of a JV shall be in the name of the JV that submits the Bid. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, the Bid Security or the Bid Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITB 4.1 and ITB 11.2.
- 20.9 If a Bid Securing Declaration is required **in the BDS**, pursuant to ITB 20.1, and:

- (a) if a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder on the Letter of Bid or any extension thereto provided by the Bidder; or
- (b) if the successful Bidder fails to:
  - (i) sign the Contract in accordance with ITB 47; or
  - (ii) furnish a Performance Security in accordance with ITB 48;

the Borrower may execute the Bid Securing Declaration, as provided for **in the BDS**, declare the Bidder ineligible to be awarded a contract by the Employer for a period of time as stated **in the BDS**.

## 21. Format and Signing of Bid

- 21.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it "Original." Alternative Bids, if permitted in accordance with ITB 13, shall be clearly marked "Alternative". In addition, the Bidder shall submit copies of the Bid, in the number specified **in the BDS** and clearly mark them "Copy." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 21.2 Bidders shall mark as "CONFIDENTIAL" information in their Bids which is confidential to their business. This may include proprietary information, trade secrets or commercial or financially sensitive information.
- 21.3 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified **in the BDS** and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Bid where entries or amendments have been made shall be signed or initialed by the person signing the Bid.
- 21.4 In the case that the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 21.5 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

## D- Submission and Opening of Bids

### 22. Submission, Sealing and Marking of Bids

22.1 The Bidder shall deliver the Bid in a single, sealed envelope (one (1) envelope process). Within the single envelope the Bidder shall place the following separate, sealed envelopes:

- (a) in an envelope marked "ORIGINAL", all documents comprising the Bid, as described in ITB 11; and
- (b) in an envelope marked "COPIES", all required copies of the Bid; and
- (c) if alternative Bids are permitted in accordance with ITB 13, and if relevant:
  - (i) in an envelope marked "ORIGINAL–ALTERNATIVE BID" the alternative Bid; and
  - (ii) in the envelope marked "COPIES – ALTERNATIVE BID" all required copies of the alternative Bid.

22.2 The inner and outer envelopes shall:

- (a) bear the name and address of the Bidder;
- (b) be addressed to the Employer in accordance with ITB 23.1;
- (c) bear the specific identification of this Bidding process indicated in accordance with ITB 1.1; and
- (d) bear a warning not to open before the time and date for Bid opening.

22.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.

### 23. Deadline for Submission of Bids

23.1 Bids must be received by the Employer at the address and no later than the date and time indicated **in the BDS**. When so specified **in the BDS**, Bidders shall have the option of submitting their Bids electronically. Bidders submitting Bids electronically shall follow the electronic Bid submission procedures specified **in the BDS**.

23.2 The Employer may, at its discretion, extend the deadline for the submission of Bids by amending the bidding document in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

## 24. Late Bids

24.1 The Employer shall not consider any Bid that arrives after the deadline for submission of Bids, in accordance with ITB 23. Any Bid received by the Employer after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.

## 25. Withdrawal, Substitution, and Modification of Bids

25.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 21.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be:

- (a) prepared and submitted in accordance with ITB 21 and ITB 22 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked "Withdrawal," "Substitution," "Modification"; and
- (b) received by the Employer prior to the deadline prescribed for submission of Bids, in accordance with ITB 23.

25.2 Bids requested to be withdrawn in accordance with ITB 25.1 shall be returned unopened to the Bidders.

25.3 No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bids and the expiration of the period of Bid validity specified by the Bidder on the Letter of Bid or any extension thereof.

## 26. Bid Opening

26.1 Except as in the cases specified in ITB 24 and ITB 25.2, the Employer shall publicly open and read out in accordance with ITB 26.5 all Bids received by the deadline at the date, time and place specified **in the BDS** in the presence of Bidders' designated representatives and anyone who choose to attend. Any specific electronic Bid opening procedures required if electronic Bidding is permitted in accordance with ITB 23.1, shall be as specified **in the BDS**.

26.2 First, the written notice of withdrawal in the envelopes marked "Withdrawal" shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless

- the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Bid opening.
- 26.3 Next, envelopes marked "Substitution" shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Bid opening.
- 26.4 Next, envelopes marked "Modification" shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening.
- 26.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Bidder and the total Bid Price, Bid Price(s) per lot (contract), if applicable, including any discounts and alternative Bids, and indicating whether there is a modification; the presence or absence of a Bid Security or Bid-Securing Declaration, if required; and any other details as the Employer may consider appropriate.
- 26.6 Only Bids, alternative Bids and discounts that are opened and read out at Bid opening shall be considered further. The Letter of Bid and the Price Schedules are to be initialed by representatives of the Employer attending Bid opening in the manner specified **in the BDS**.
- 26.7 The Employer shall neither discuss the merits of any Bid nor reject any Bid (except for late Bids, in accordance with ITB 24.1).
- 26.8 The Employer shall prepare a record of the Bid opening that shall include, as a minimum:
- (a) the name of the Bidder and whether there is a withdrawal, substitution, or modification;
  - (b) the Bid Price, per lot if applicable, including any discounts;
  - (c) any alternative Bids; and
  - (d) the presence or absence of a Bid Security or a Bid-Securing Declaration.
- 26.9 The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

## **E- Evaluation and Comparison of Bids**

### **27. Confidentiality**

- 27.1 Information relating to the evaluation of Bids and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with the Bidding process until information on Intention to Award the Contract is transmitted to all Bidders in accordance with ITB 43.1.
- 27.2 Any effort by a Bidder to influence the Employer in the evaluation of the bids or Contract award decisions may result in the rejection of its Bid.
- 27.3 Notwithstanding ITB 27.2, from the time of Bid opening to the time of Contract Award, if any Bidder wishes to contact the Employer on any matter related to the Bidding process, it should do so in writing.

### **28. Preliminary Examination & Clarification of Bids**

- 28.1 Prior to the detailed evaluation, pursuant to ITB 35, the Employer will conduct preliminary examination of all bids that have been received by the deadline for bid submission and opened at the public bid opening as the first step towards determination of their substantial responsiveness to the bidding document. The Employer's determination of a bid's responsiveness shall be based on the contents of the bid itself, as defined in ITB 11 without recourse to extrinsic evidence. The Employer will verify and examine bids to determine whether they are complete, properly signed to bind the bidder, meet eligibility requirements of the bidders, plant, materials, equipment, and services, bidders have no conflict of interest and have provided the bid validity, bid security or bid securing declaration, as required and other essential documents to complete the evaluation, and whether the bids are generally in order. Subject to ITB 28.2 and ITB 28.3, Bids failing to meet the above requirements shall be rejected and not retained for further review.
- 28.2 To assist in the examination, evaluation, and comparison of the Bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids, in accordance with ITB 32.



28.3 If a Bidder does not provide clarifications of its Bid by the date and time set in the Employer's request for clarification, its Bid may be rejected.

## 29. Deviations, Reservations, and Omissions

29.1 During the evaluation of Bids, the following definitions apply:

- (a) "Deviation" is a departure from the requirements specified in the bidding document;
- (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the bidding document; and
- (c) "Omission" is the failure to submit part or all of the information or documentation required in the bidding document.

## 30. Determination of Responsiveness

30.1 Following the rejection of Bids if any, pursuant to ITB 28, as the next step, the remaining Bids shall be further reviewed to determine their substantial responsiveness. The Employer's determination of a Bid's responsiveness is to be based on the contents of the Bid itself, as defined in ITB11.

30.2 A substantially responsive Bid is one that meets the requirements of the bidding document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

- (a) if accepted, would:
  - (i) affect in any substantial way the scope, quality, or performance of the Plant and Installation Services specified in the Contract; or
  - (ii) limit in any substantial way, inconsistent with the bidding document, the Employer's rights or the Bidder's obligations under the proposed Contract; or
- (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.

30.3 Before carrying out detailed technical evaluation as per ITB 35.2, the Employer shall examine the technical aspects of the Bid in particular, to confirm that all requirements of Section VII, Employer's Requirements have been met without any material deviation, reservation, or omission. Any material deviation, reservation or omission from the scope of the Employer's requirements including Design, Plant, Equipment, Installation and other services, will be the cause for rejection regardless

whether the same has been identified in an item or service to be provided by the Bidder or by any other manufacturer or subcontractor from whom the Bidder intends to purchase or subcontract. Bidders shall ensure that all major items and services offered in the bid, whether provided by the Bidder himself or through other authorized manufactures and subcontractors substantially meet the technical specifications and requirements failing which the Bid shall be rejected. If more than one manufacturer or subcontractor have been proposed for any item, or service, unless at least one of them has proposed substantially compliant technical specifications, the Bid shall be rejected.

- 30.4 The Employer shall similarly examine the commercial aspects of the Bids for any deviations, other than technical specifications, to determine if they conform to the terms and conditions of the draft contract and other documents included in the bidding document without any material deviation, reservation or omission.
- 30.5 If a Bid is not substantially responsive to the requirements of the bidding document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission. All other Bids determined substantially responsive will be retained for further evaluation.

### 31. Nonmaterial Nonconformities

- 31.1 Provided that a Bid is substantially responsive, the Employer may waive any nonconformity in the Bid that does not constitute a material deviation, reservation or omission.
- 31.2 Provided that a Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.
- 31.3 Provided that a Bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component and costs associated, if any, with non-material deviations, reservations and omissions to the requirements of the bidding documents in the manner specified in the BDS.

### 32. Correction of Arithmetical Errors

32.1 Provided that the Bid is substantially responsive, the Employer shall correct arithmetical errors on the following basis:

- (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and the quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
- (b) where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly;
- (c) where there are errors between the total of the amounts of Schedule Nos. 1 to 4 and the amount given in Schedule No. 5 (Grand Summary), the former shall prevail and the latter will be corrected accordingly; and
- (d) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

32.2 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 32.1, shall result in the rejection of the Bid.

### 33. Conversion to Single Currency

33.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as specified **in the BDS**.

### 34. Margin of Preference

34.1 Unless otherwise specified **in the BDS** no margin of domestic or regional preference shall apply. If a margin of preference applies, the application methodology shall be as specified in Section III, Evaluation and Qualification Criteria, and in accordance with the provisions stipulated in the Bank's Procurement Framework.

### 35. Evaluation of Bids

35.1 The Employer shall use the criteria and methodologies listed in this ITB and Section III, Evaluation and Qualification criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the Employer shall determine the successful Bid or Bids in accordance with ITB 40.

**35.2 Technical Evaluation.** The Employer will carry out a detailed technical evaluation of the Bids not previously rejected to determine whether the technical aspects are in compliance with the bidding document. The Bid that does not meet minimum acceptable standards of completeness, consistency and detail, and the specified minimum (or maximum, as the case may be) requirements for specified functional guarantees, will be rejected for non-responsiveness. In order to reach its determination, the Employer will examine and compare the technical aspects of the Bids on the basis of the information supplied by the Bidders, taking into account the following:

- (a) overall completeness and compliance with the Employer's Requirements; conformity of the Plant and Installation Services offered with specified performance criteria, including conformity with the specified minimum (or maximum, as the case may be) requirement corresponding to each functional guarantee, as indicated in the Specification and in Section III, Evaluation and Qualification Criteria; suitability of the Plant and Installation Services offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the Bid;
- (b) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services; and
- (c) other relevant factors, if any, listed in Section III, Evaluation and Qualification Criteria.

**35.3** Where alternative technical solutions have been allowed in accordance with ITB 13, and offered by the Bidder, the Employer will make a similar evaluation of the alternatives. Where alternatives have not been allowed but have been offered, they shall be ignored.

**35.4 Economic Evaluation.** To evaluate a Bid, the Employer shall consider the following factors with respect to the Base Bid and Alternative Bid (s) (if the latter is permitted in the BDS of ITB 13.1), in accordance with evaluation and award criteria as applicable for 'Plant', lots or packages (combination of lots) and as specified under Section III-Evaluation and Qualification Criteria:

- (a) the Bid price, excluding provisional sums and the provision, if any, for contingencies in the Price Schedules;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB 32.1;

- (c) price adjustment due to discounts offered in accordance with ITB 17.11;
  - (d) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 31.3;
  - (e) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 33;
  - (f) the evaluation factors specified **in the BDS** and in Section III, Evaluation and Qualification Criteria; and
  - (g) price adjustment due to application of Margin of Preference, if applicable, as per BDS of ITB 34.1, and Section III, Evaluation and Qualification Criteria.
- 35.5 If price adjustment is allowed in accordance with ITB 17.7, the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in Bid evaluation.
- 35.6 If this bidding document allows Bidders to quote separate prices for different lots (contracts), and the award to a single Bidder of multiple lots (contracts), the methodology to determine the lowest evaluated cost of the lot (contract) combinations, including any discounts offered in the Letter of Bid, is specified in Section III, Evaluation and Qualification Criteria.

### 36. Comparison of Bids

- 36.1 The Employer shall compare the evaluated costs of all substantially responsive Bids established in accordance with ITB 35.4 to determine the Bid that has the lowest evaluated cost.

### 37. Abnormally Low Bids

- 37.1 An Abnormally Low Bid is one where the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the Contract for the offered Bid Price.
- 37.2 In the event of identification of a potentially Abnormally Low Bid, the Employer shall seek written clarifications from the Bidder, including detailed price analyses of its Bid price in correlation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the bidding document.

- 37.3 After evaluation of the price analysis, in the event that the Employer determines that the Bidder has failed to demonstrate its capability to deliver the contract for the offered tender price, the Employer shall reject the Bid.

### **38. Unbalanced or Front Loaded Bids**

- 38.1 If the Bid that is evaluated as the lowest evaluated cost is, in the Employer's opinion, seriously unbalanced or front loaded the Employer may require the Bidder to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the Bid prices with the scope of works, proposed methodology, schedule and any other requirements of the bidding document.
- 38.2 After the evaluation of the information and detailed price analyses presented by the Bidder, the Employer may:
- (a) accept the Bid; or
  - (b) if appropriate, require that the total amount of the Performance Security be increased, at the expense of the Bidder, to a level not exceeding twenty percent (20%) of the Contract Price; or
  - (c) reject the Bid.

### **39. Eligibility and Qualification of the Bidder**

- 39.1 The Employer shall determine to its satisfaction whether the Bidder or Bidders that is/are selected as having submitted the lowest evaluated cost and substantially responsive Bid (s) including all proposed subcontractors, specialized subcontractors or manufacturers as the case may be are eligible and meet the qualifying criteria specified in Section III, Evaluation and Qualification Criteria. To this end, the Employer will determine for Lots and Packages, and/or their combinations, as the case may be, for which the Bidder submitted a bid, that it meets the respective minimum combined qualification criteria.
- 39.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 15.1. The determination shall not take into consideration the qualifications of other firms such as the Bidder's subsidiaries, parent entities, affiliates, subcontractors (other than Specialized Subcontractors if permitted in the bidding document) or any other firm(s) different from the Bidder.
- 39.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the Bid, in which

event the Employer shall proceed to the Bidder or Bidders who offered a substantially responsive Bid or Bids with the next lowest evaluated cost to make a similar determination of such Bidder's qualifications to perform satisfactorily.

39.4 The capabilities of all manufacturers, specialized subcontractors and subcontractors proposed in its Bid to be used by the successful Bidder(s) for identified major items of supply or services will also be evaluated for acceptability in accordance with Section III, Evaluation and Qualification Criteria. Their participation should be confirmed with a letter of intent between the parties, as needed. Should a manufacturer or subcontractor proposed for any item or service be determined to be unacceptable, the Bid will not be rejected, provided the Bidder himself or another subcontractor or manufacturer proposed in the bid is determined qualified and submitted conforming specifications for such item, but the Bidder may be required to substitute an acceptable manufacturer or subcontractor without any change to the Bid price or specifications. Prior to signing the Contract, the corresponding Appendix to the Contract Agreement shall be completed, listing the approved manufacturers or subcontractors for each item concerned.

#### **40. Successful Bid or Bids**

40.1 Having compared the evaluated costs of Bids, the Employer shall determine the successful Bid or combination of Bids as the case may be, in accordance with the additional Bid Evaluation Criteria as further described in Section III. Such Bid or Bids would be those which has/have been determined to:

- (a) be substantially responsive to the bidding document;
- (b) offer the lowest evaluated cost to the Employer for all Plants and Installation Services included in the scope of the Employer's Requirements under Section VII to be procured based on either a single Contract or all multiple Contracts combined, as the case may be, in accordance with the ITB 17.10 inviting bid prices and discounts, and provisions made in the Bidding Document for evaluation of bids and award of contract (s); and
- (c) be offered by a Bidder or Bidders that substantially meet the qualification criteria applicable for the Contract or combination of Contracts for which they are selected.

#### **41. Employer's right to Accept Any Bid and to Reject Any or All Bids**

41.1 The Employer reserves the right to accept or reject any Bid, and to annul the Bidding process and reject all Bids at any time prior to Contract Award, without thereby incurring any liability to Bidders. In case of annulment, all Bids submitted and specifically, Bid securities shall be promptly returned to the Bidders.

#### 42. Standstill Period

- 42.1 The Contract shall not be awarded earlier than the expiry of the Standstill Period. The Standstill Period shall be ten (10) Business Days unless extended in accordance with ITB 46. The Standstill Period commences the day after the date the Employer has transmitted to each Bidder the Notification of Intention to Award the Contract. Where only one Bid is submitted, or if this contract is in response to an emergency situation recognized by the Bank, the Standstill Period shall not apply.

#### 43. Notification of Intention to Award

- 43.1 The Employer shall send to each Bidder the Notification of Intention to Award the Contract to the successful Bidder. The Notification of Intention to Award shall contain, at a minimum, the following information:
- (a) the name and address of the Bidder submitting the successful Bid;
  - (b) the Contract price of the successful Bid;
  - (c) the names of all Bidders who submitted Bids, and their Bid prices as readout, and as evaluated;
  - (d) a statement of the reason(s) the Bid (of the unsuccessful Bidder to whom the notification is addressed) was unsuccessful, unless the price information in (c) above already reveals the reason;
  - (e) the expiry date of the Standstill Period; and
  - (f) instructions on how to request a debriefing and/or submit a complaint during the standstill period.

### F- Award of Contract

#### 44. Award Criteria

- 44.1 Subject to ITB 41, the Employer shall award the Contract or Contracts to the successful Bidder or Bidders whose Bid or Bids has/have been determined successful in accordance with ITB 40.

#### 45. Notification of Award

- 45.1 Prior to the expiration of the Bid Validity Period, and upon expiry of the Standstill Period, specified in ITB 42.1 or any extension thereof, and upon satisfactorily addressing any complaint that has been filed within the Standstill Period, the Employer shall notify the successful Bidder, in writing, that its Bid has been accepted. The notification of award (hereinafter and in the Contract Forms called the "Letter of Acceptance") shall specify the sum that the Employer will pay the Contractor in



consideration of the execution of the contract (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price").

45.2 Within ten (10) Business Days after the date of transmission of the Letter of Acceptance, the Employer shall publish the Contract Award Notice which shall contain, at a minimum, the following information:

- (a) name and address of the Employer;
- (b) name and reference number of the contract being awarded, and the selection method used;
- (c) names of all Bidders that submitted Bids, and their Bid prices as read out at Bid opening, and as evaluated;
- (d) names of all Bidders whose Bids were rejected either as nonresponsive or as not meeting qualification criteria, or were not evaluated, with the reasons therefore;
- (e) the name of the successful Bidder, the final total contract price, the contract duration and a summary of its scope; and
- (f) successful Bidder's Beneficial Ownership Disclosure Form, if specified in BDS ITB 47.1.

45.3 The Contract Award Notice shall be published on the Employer's website with free access if available, or in at least one newspaper of national circulation in the Employer's Country, or in the official gazette. The Employer shall also publish the contract award notice in UNDB online.

45.4 Until a formal contract is prepared and executed, the Letter of Acceptance shall constitute a binding Contract

#### **46. Debriefing by the Employer**

46.1 On receipt of the Employer's Notification of Intention to Award referred to in ITB 43.1, an unsuccessful Bidder has three (3) Business Days to make a written request to the Employer for a debriefing. The Employer shall provide a debriefing to all unsuccessful Bidders whose request is received within this deadline.

46.2 Where a request for debriefing is received within the deadline, the Employer shall provide a debriefing within five (5) Business Days, unless the Employer decides, for justifiable reasons, to provide the debriefing outside this timeframe. In that case, the standstill period shall automatically be extended until five (5) Business Days after such debriefing is provided. If more than one debriefing is so delayed, the standstill period shall not end earlier than five (5) Business Days after the last debriefing takes

place. The Employer shall promptly inform, by the quickest means available, all Bidders of the extended standstill period.

- 46.3 Where a request for debriefing is received by the Employer later than the three (3)-Business Day deadline, the Employer should provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of Public Notice of Award of contract. Requests for debriefing received outside the three (3)-day deadline shall not lead to extension of the standstill period.
- 46.4 Debriefings of unsuccessful Bidders may be done in writing or verbally. The Bidder shall bear their own costs of attending such a debriefing meeting.

#### 47. Signing of Contract

- 47.1 The Employer shall send to the successful Bidder the Letter of Acceptance including the Contract Agreement, and, if specified in the BDS, a request to submit the Beneficial Ownership Disclosure Form providing additional information on its beneficial ownership. The Beneficial Ownership Disclosure Form, if so requested, shall be submitted within eight (8) Business Days of receiving this request.
- 47.2 The successful Bidder shall sign, date and return to the Employer, the Contract Agreement within twenty-eight (28) days of its receipt.
- 47.3 Notwithstanding ITB 47.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Employer, to the country of the Employer, or to the use of the Plant and Installation Services to be supplied, where such export restrictions arise from trade regulations from a country supplying those Plant and Installation Services, the Bidder shall not be bound by its Bid, always provided, however, that the Bidder can demonstrate to the satisfaction of the Employer and of the Bank that signing of the Contract Agreement has not been prevented by any lack of diligence on the part of the Bidder in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the Plant and Installation Services under the terms of the Contract.

#### 48. Performance Security

- 48.1 Within twenty-eight (28) days of the receipt of the Letter of Acceptance from the Employer, the successful Bidder shall furnish the Performance Security in accordance with the General Conditions GCC 13.3, subject to ITB 38, using for that purpose the Performance Security Form included in Section X, Contract Forms, or another form acceptable to the Employer. If the Performance Security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be

acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Employer's Country, unless the Employer has agreed in writing that a correspondent financial institution is not required.

48.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Employer may award the Contract to the Bidder or Bidders offering the next Lowest Evaluated Cost to the Employer as per the bid evaluation and award criteria.

#### **49. Procurement Related Complaint**

49.1 The procedures for making a Procurement-related Complaint are as specified in the BDS.



## Section II - Bid Data Sheet

The following specific data for the Facilities to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in ITB.

A. General	
ITB 1.1	<p>The reference number of the Invitation for Bids (IFB) is: <b><i>KETRACO/PT/001/2024-Lot 2B.</i></b></p> <p>The Employer is: <b><i>Kenya Electricity Transmission Company Limited (KETRACO)</i></b></p> <p>The name of the IFB is: <b><i>Design, Supply, and Installation Services for Extension of Existing 132/33 kV Narok and Bomet Substations</i></b></p> <p>Name of the Plant and Installation: <b><i>Extension of Existing 132/33 kV Narok and Bomet Substations</i></b></p> <p>The number and identification of lots (contracts) comprising this IFB is: <b><i>Lot 2B: Extension of Existing 132/33 kV Narok and Bomet Substations</i></b></p>
ITB 2.1	<p>The Borrower is: <b><i>The Government of Kenya with Kenya Electricity Transmission Company Ltd as the Implementing Agency.</i></b></p> <p>The amount of the financing is: <b><i>USD 57,000,000.00 (fifty seven million) and Euro 54,300,000.00 (fifty four million and three hundred thousand)</i></b></p> <p>The Specific Bank financing institution is: <b><i>African Development Bank (AfDB) and Korean Exim bank (EDCF)</i></b></p> <p>The name of the Project is: <b><i>Kenya Transmission Network Improvement Project</i></b></p>
ITB 4.1 (a)	i) The firms in a Joint Venture, Consortium or Association (JV) <b><i>shall be</i></b> jointly and severally liable.
ITB 4.1 (c)	Maximum number of members in the Joint Venture, Consortium or Association (JV) shall be: <b><i>3 (three).</i></b>

ITB 4.1 (d)	Minimum share of a member of Joint Venture, Consortium or Association (JV) in the contract shall not be less than 25% (twenty five percent) of the total value of the contract. In case of any contradiction between ITB 4.1 (c) and ITB 4.1 (d) the latter provision shall prevail.
ITB 4.5	A list of debarred firms and individuals is available on the Bank's external website: <a href="https://www.afdb.org/en/projects-operations/debarment-and-sanctions-procedures">https://www.afdb.org/en/projects-operations/debarment-and-sanctions-procedures</a>
<b>B. Bidding Document</b>	
ITB 7.1	<p>For <b>Clarification of Bid purposes</b> only, the Employer's address is:</p> <p>Attention: <i>Senior Manager, Supply Chain</i></p> <p>Address: <i>Kenya Electricity Transmission Company Limited (KETRACO), KAWI Complex, Block B, Popo Road, off Red Cross Road, South C,</i></p> <p>Floor/Room number: <i>2nd Floor</i></p> <p>City: <i>Nairobi</i></p> <p>ZIP Code: <i>00100</i></p> <p>Country: <i>Kenya</i></p> <p>Telephone: <i>+254 719 018000</i></p> <p>Electronic mail address: <a href="mailto:ktrnip@ketraco.co.ke">ktrnip@ketraco.co.ke</a></p> <p>Requests for clarification should be received by the Employer no later than: <i>14 (fourteen) days.</i></p> <p>Web page: <a href="http://www.ketraco.co.ke/procurement/tenders/open-tenders">http://www.ketraco.co.ke/procurement/tenders/open-tenders</a></p>
ITB 7.4	<p>A Pre-Bid meeting <b>shall</b> take place at the following date, time and place:</p> <p>Date: 23<sup>rd</sup> April 2024</p> <p>Time: <i>10:00 am EAT (East African Time)</i></p> <p>Place: <i>Kenya Electricity Transmission Company Limited</i>  <i>KAWI Complex, Block B</i>  <i>Popo Road, off Red Cross Road, South C,</i></p>

	<p><i>Nairobi, Kenya</i></p> <p>A site visit conducted by the Employer <i>shall be</i> organized.</p>
ITB 7.6	Web page: <a href="http://www.ketraco.co.ke/procurement/tenders/open-tenders">www.ketraco.co.ke/procurement/tenders/open-tenders</a>
<b>C. Preparation of Bids</b>	
ITB 10.1	<p>The language of the Bid is: <i>English</i>.</p> <p>All correspondence exchange shall be in <i>English</i> language.</p> <p>Language for translation of supporting documents and printed literature is <i>English</i>.</p>
ITB 11.1 (I)	<p>The Bidder shall submit the following additional documents in its Bid: <i>Duly filled Price Schedules, The Project Schedule and all Technical Schedules with detailed information of offered materials and equipment, in which all required information, shall be filled completely as specified in the Tender documents.</i></p> <p><i>Documents that prove experience and eligibility for registration with NCA class 1 category. The winning bidder must provide evidence of successful registration within three (3) months after issuance of notification of award.</i></p> <p><i>Comprehensive outage plan method statement demonstrating how to minimize the shut down time for implementation of the requisite activities for completion of works including but not limited to demolitions, displacements and/or new erections / installations, testing et c in view of the busbar reconfiguration from the current single bus arrangement to a double bus. Bidders have to demonstrate in their method statement that they are technically able to implement the project with minimal outage and in the most efficient way while allowing for power flow through the substation to the distribution feeders as works progress.</i></p> <p><i>Method statement clearly demonstrating completion of the requisite line termination gantries and applicable busbar(s) ahead of time in readiness for the transmission line Contractor to terminate the line.</i></p> <p>Code of Conduct for Contractor's Personnel (ES)</p> <p>The Bidder shall submit its Code of Conduct that will apply to the Contractor's Personnel (as defined in GCC Sub- Clause 1) employed for</p>

the execution of Installation Services (defined in GCC Sub- Clause 1) at the Site (or other places in the country where the Site is located), to ensure compliance with the Contractor's Environmental and Social (ES) obligations under the Contract. The Bidder shall use for this purpose the Code of Conduct form provided in Section IV. No substantial modifications shall be made to this form, except that the Bidder may introduce additional requirements, including as necessary to take into account specific Contract issues/risks.

**Management Strategies and Implementation Plans (MSIP) to manage the (ES) risks**

The Bidder shall submit Management Strategies and Implementation Plans (MSIPs) to manage the following key Environmental and Social (ES) risks:

- *Construction Environmental and Social Management Plan (C-ESMP)*
- *Management Strategies and Implementation Plans (MSIP), including:*
  - *Employee Code of Conduct*
  - *Safety and Health Plan*
  - *Gender Based Violence (GBV), Sexual Exploitation, and Abuse (SEA), Sexual Harassment (SH) prevention and response action plan*
  - *Chance Find Procedure*
  - *Management and Safety of Hazardous Materials*
  - *Resource Efficiency and Pollution Prevention and Management*
  - *Road Safety and Traffic Management Plan*
  - *Waste Management Plan*
  - *Labor Influx and Labour Management Plan*
  - *Emergency Preparedness and Response Plan,*
  - *Stakeholder Engagement and Community Relations Plan*
  - *Community Health and Safety and Security Plan*
  - *Occupational Health and Safety Plan*
  - *Child Protection Strategy*
  - *HIV/AIDs Prevention Strategy*
  - *Grievance Management Plan and Procedures*
  - *Security Plan*



	<i>The prepared Plans at minimum will be consistent with the project prepared and disclosed ESIA, National laws and regulations, and the AfDB Integrated Systems (ISS)</i>
ITB 13.1	Alternative Bids <b><i>shall not be considered.</i></b>
ITB 13.2	Alternatives to the Time Schedule <b><i>shall not be</i></b> permitted.
ITB 13.3	Technical Alternative as per ITB 13.3 <b><i>shall not be</i></b> permitted.
ITB 13.4	Alternative technical solutions <b><i>shall not be</i></b> permitted.
ITB 17.1	Bidders shall quote for the following components or services on a single responsibility basis: <b>All work scope as detailed in the bid documents to ensure functional facilities.</b>
ITB 17.1	The adjustment shall be based on the <b><i>highest</i></b> of the item as quoted in other substantially responsive Bids.
ITB 17.5 (a) and (d) (i)	Place of destination: <b><i>132/33 kV Narok and Bomet Substations</i></b>
ITB 17.6	The Incoterms edition is: <b><i>2020.</i></b>
ITB 17.7 & ITB 17.9	The prices quoted by the Bidder <b><i>shall not</i></b> be subject to adjustment during the performance of the Contract.
ITB 17.10	Bids are invited, and Bidders shall bid for the 'Plant'.
ITB 18.1	The Bidder <b><i>is</i></b> required to quote in the currency of the Employer's Country the portion of the Bid price that corresponds to expenditures incurred in that currency.
ITB 19.1	The Bid validity period shall be <b><i>182</i></b> days.
ITB 19.3 (a)	The Bid price shall be adjusted by the following factor(s): <b><i>The local currency portion of the Contract price shall be adjusted by a factor reflecting local inflation during the period of extension, and the foreign currency portion of the Contract price shall be adjusted by a factor reflecting the international inflation (in the country of the foreign currency) during the period of extension which for the purpose of this adjustment, shall be the period elapsed between the date arrived</i></b>

	<i>immediately after the expiry of fifty-six (56) days beyond the initial Bid validity period and the date of notification of award.</i>
ITB 20.1	<p>A Bid Security amount <i>shall be</i> required.</p> <p>A Bid-Securing Declaration <i>shall not be</i> required.</p> <p>The amount and currency of the Bid Security shall be <i>450,000.00 (Four hundred and fifty thousand) US Dollars.</i></p>
ITB 20.3 (d)	<i>None</i>
ITB 21.1	<p>In addition to the original of the Bid, the number of copies is:</p> <ul style="list-style-type: none"> <li>• <i>Three (3) hardcopies</i></li> <li>• <i>One (1) soft copy on USB flash disk containing the complete Bid documents.</i></li> <li>• <i>The hard copy will take precedence in case of conflicting data between the hard and soft copies.</i></li> <li>• <i>The electronic copy shall be structured strictly as the hardcopies and as per ITB clause 11.1. Each Part (Part 1, 2 and 3) shall be presented in a separate folder. Each Section shall be provided as a single PDF file (converted - searchable, not scanned copies of the files) named as per ITB clause 11.1.</i></li> <li>• <i>Filled-in Price Schedules shall be provided mandatory as editable MS Excel files.</i></li> <li>• <i>Technical Data Sheets shall be provided mandatory as editable MS WORD files.</i></li> <li>• <i>Drawings must be provided mandatory in both PDF and original editable CAD (DWG) format.</i></li> </ul>
ITB 21.3	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: <i>Duly executed Power of Attorney</i>
<b>D. Submission and Opening of Bids</b>	
ITB 23.1	<p>For <u>Bid submission purposes</u> only, the Employer's address is:</p> <p>Attention: <i>Senior Manager, Supply Chain</i></p> <p>Address: <i>Kenya Electricity Transmission Company Limited (KETRACO), KAWI Complex, Block B, Popo Road, off Red Cross Road, South C,</i></p>

	<p>Floor/Room number: <i>2nd Floor</i></p> <p>City: <i>Nairobi</i></p> <p>ZIP Code: <i>00100</i></p> <p>Country: <i>Kenya</i></p> <p><b>The deadline for Bid submission is:</b></p> <p>Date: 21<sup>st</sup> May 2024</p> <p>Time: <i>10:00 am EAT (East African Time)</i></p> <p>Bidders <b><i>shall not</i></b> have the option of submitting their Bids electronically.</p>
ITB 26.1	<p>The Bid opening shall take place at:</p> <p>Address: <i>Kenya Electricity Transmission Company Limited (KETRACO), KAWI Complex, Block B, Popo Road, off Red Cross Road, South C,</i></p> <p>Floor/Room number: <i>2nd Floor</i></p> <p>City: <i>Nairobi</i></p> <p>Country: <b><i>Kenya</i></b></p> <p>Date: 21<sup>st</sup> May 2024</p> <p>Time: <i>11:00 am EAT (East African Time)</i></p>
ITB 26.6	<p>The Letter of Bid and Price Schedules shall be initialed by <b><i>three (3)</i></b> representatives of the Employer conducting Bid opening.</p>
<b>E. Evaluation, and Comparison of Bids</b>	
ITB 31.3	<p>The adjustment with respect to a missing or non-conforming item or component, and costs associated, if any, with non-material deviations, reservations or omissions to the requirements of the bidding document shall be based on the <b><i>highest</i></b> price of the item or component and associated cost, if any, derived from other substantially responsive Bids unless any other specific evaluation criteria has been provided elsewhere in the bidding document for such adjustments in which case the latter shall be applied. If the price or cost of any of the above cannot be derived from the price of other substantially responsive Bids, the Employer shall use its best estimate based on its own judgment, past experience or market search, as considered appropriate and as agreed with the Bank.</p>

ITB 33.1	<p>The currency that shall be used for Bid evaluation and comparison purposes to convert (at the selling exchange rate) all Bid prices expressed in various currencies into a single currency is: <b><i>Kenya Shillings</i></b></p> <p>The source of exchange rate shall be: <b><i>Central Bank of Kenya</i></b></p> <p>The date for the exchange rate shall be: <b><i>23<sup>rd</sup> April 2024</i></b></p>
ITB 34.1	<p>A margin of domestic preference <b><i>shall not</i></b> apply.</p> <p>A margin of regional preference <b><i>shall not</i></b> apply.</p>
ITB 35.4 (f)	<p>The adjustments shall be determined using the following criteria, from amongst those set out in Section III, Evaluation and Qualification Criteria:</p> <ul style="list-style-type: none"> <li>(a) Deviation in Time for Completion: <b><i>No</i></b></li> <li>(b) Life cycle costs: the projected operating and maintenance costs during the life of the goods or equipment <b><i>No</i></b></li> <li>(c) Functional Guarantees of the Facilities <b><i>Yes</i></b></li> <li>(d) Work, services, facilities, etc., to be provided by the Employer <b><i>No</i></b></li> </ul>
<b>F- Award of Contract</b>	
ITB 47.1	<p>The successful Bidder <b><i>shall</i></b> submit the Beneficial Ownership Disclosure Form.</p>
ITB 49.1	<p>The procedures for making a Procurement-related Complaint are detailed in the <a href="#">Part B</a> of the Operations Procurement Manual under the Procurement Framework of the African Development Bank. If a Bidder wishes to make a Procurement-related Complaint, the Bidder shall submit its complaint following these procedures to the employer, in writing (by the quickest means available, such as by email in accordance with the following:</p> <p><b>For the attention:</b> <i>Mr. Peter Njehia</i></p> <p><b>Title/position:</b> <i>Senior Manager, Supply Chain</i></p> <p><b>Employer:</b> <i>Kenya Electricity Transmission Company Limited</i></p> <p><b>Email address:</b> <a href="mailto:pnjehia@ketraco.co.ke">pnjehia@ketraco.co.ke</a></p>

	<p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <ol style="list-style-type: none"><li>1. the terms of the Bidding Documents;</li><li>2. the purchaser's decision to exclude a bidder from the procurement process prior to the award of contract; and</li><li>3. the Employer's decision to award the contract.</li></ol> <p>The Bank's Procurement Framework stipulates that bidders may send copies of their communications with the Borrowers to the Bank or write to the Bank directly when, Borrowers do not respond promptly, any questions on any issues regarding the implementation of Bank funded projects, or when the communication is a complaint against the Borrower. In this regard, if a bidder wishes to protest against a decision made by a Borrower or the Bank with regards to the procurement process or wishes to inform the Bank that the Bank's procurement rules and/or provisions of the bidding documents have not been complied with, an email can be sent to the following address:</p> <p>Email: <a href="mailto:procurementcomplaints@afdb.org">procurementcomplaints@afdb.org</a></p>
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## **Section III - Evaluation and Qualification Criteria**

This Section contains all the criteria that the Employer shall use to evaluate Bids and qualify Bidders. No other factors, methods or criteria shall be used other than those specified in this bidding document.

The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

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The Employer shall use the criteria and methodologies listed in this Section to evaluate Bids. By applying the criteria and methodologies, the Employer shall determine the Successful Bid or Bids as defined under ITB 40.

## **1. Margin of Preference**

### **1.1 Domestic Preference:**

As a general rule, in the case of single responsibility (other than Turnkey) contracts for large industrial plants and facilities, the margin of domestic preference shall be applied as described below. It will not be applied to the whole contract for Plant and Installation services but only to the locally manufactured equipment. As described under ITB 17.5, equipment offered from abroad shall be quoted CIP and equipment manufactured and offered locally shall be quoted EXW under Schedules 1 and 2 respectively. All other items and components under the Contract such as design, construction, materials, local transportation, and insurance to the place of destination, assembly, installation, and supervision, as applicable, shall be quoted separately as per ITB 17.5. For the purpose of bid evaluation and comparison of bids, only the CIP price of each bid of the equipment offered from outside the Borrower's country as quoted under Schedule 1 shall be increased by 15% (fifteen percent). No preference shall be applied for any other items under the Contract including associated or non-consulting services or works included in the package. The bid determined to be the lowest evaluated in accordance with the bid evaluation criteria including domestic preference, if applicable, and applied as above, shall be selected for award.

### **1.2 Preference for Regional Contractors**

If the BDS so specifies, the Employer will grant a regional preference to contractors in RMCs that have joined the Borrower's country in a regional cooperation agreement designed to foster economic integration, by a customs union, or a free trade area in accordance with the following procedure. All responsive bids will be classified in one of the following two groups:

**Group A:** Bids offered by bidders, which have established, to the satisfaction of the Borrower and the Bank, to be eligible for regional preference; and

**Group B:** Bids offered by other bidders.

All evaluated Bids in each group shall, as a first evaluation step, be compared to determine the Bid with lowest evaluated cost, and the Bid with the lowest evaluated cost in each group shall be further compared with each other. If as a result of this comparison, a Bid from Group A is the lowest, it shall be selected for the award, if the Bidder is determined qualified. If a Bid from Group B is the lowest, as a second evaluation step, all bids from Group B shall then be further compared with the lowest

evaluated cost from Group A. For the purpose of this further comparison only, an amount equal to 7.5% (seven and half percent) of the respective Bid price of Group B corrected for arithmetical errors, including unconditional discounts but excluding provisional sums, if any, shall be added to the evaluated cost offered in each Bid from Group B. If the Bid from Group A is the lowest, it shall be selected for award. If not, the Bid offering the lowest evaluated cost from Group B based on the first evaluation step shall be selected, if the Bidder is determined qualified.

## **2. Evaluation**

### **2.1 Technical Evaluation**

In addition to the criteria listed in ITB 35.2, 35.3 and BDS, the following criteria shall apply:

- i) Assessment of adequacy of Technical Proposal with Requirements (Reference ITB 16 and ITB 30.3): The Employer shall determine whether the Bids are substantially responsive to the Technical Requirements.

Evaluation of the Bidder's Technical Proposal shall include an assessment of the Bidder's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding method statement, scheduling, plant, material and equipment sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section VII, Employer's Requirements.

- ii) Assessment of adequacy of Commercial Terms and Conditions of the Bid (Reference ITB 30.4): The Employer will determine whether the Bids are substantially responsive to the Commercial and Contractual Terms and Conditions.

### **2.2 Economic Evaluation**

The following factors and methods will apply in addition to Margin of Preference stated under paragraph 1.0 of Section III, if applicable:

#### **(a) Time Schedule**

Time to complete the Plant and Installation Services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities is: *twelve (12) months*. No credit will be given for earlier completion. Bids offering a completion date beyond the maximum designated period shall be rejected. *The project total time schedule for the entire Plant and Installation Services and Testing and Commissioning Services*

*is Thirteen (13) months (12 +1 =13 months). The one (1) month shall be the maximum period allowed for testing and commissioning.*

**(b) Life Cycle Costs**

*Not Applicable*

**(c) Functional Guarantees of the Facilities**

The evaluation will be based on the losses indicated by the Contractor in the Guaranteed Technical Schedules.

The total capitalized cost of the losses will be added to the cost of transformers for comparing bids.

The cost of guaranteed power transformer no-load and load losses will be added to the transformer price, and the evaluated transformer cost will be calculated as per the following formula:

$$C_{Tev} = C_T + (L_n \times C_{Ln}) + (L_L \times C_{LL})$$

Where:

- $C_{Tev}$  = The evaluated cost of the transformer;
- $C_T$  = The cost of the transformer as indicated in the Schedule of Rates and Prices;
- $L_n$  = The no-load losses in kW, as indicated in the Schedule of Guaranteed Technical Characteristics;
- $L_L$  = The load losses in kW, at continuous maximum rating, as indicated in the Schedule of Guaranteed Technical Characteristics;
- $C_{Ln}$  = The cost per kW of no-load losses, that is 900,000 KES/kW;
- $C_{LL}$  = The cost per kW of load losses, that is, 500,000 KES/kW.

**Specific additional criteria**

The evaluation method, shall be as follows:

- (i) Evaluating transformer rating.

	Description	Required	For the purposes of evaluation an adjustment as calculated below will be added to the tender price.
1.	132/33kV Power Transformer - Rated power at site conditions (ONAN/ONAF)	23 MVA	Transformers with a rated power less than 2.5% of the required power rating will be rejected.  KSh 40,000/KVA for one percent (1%) or pro-rata for less than one percent drop in the above figure.
3.	132/33kV Power Transformer losses	a) Maximum no load losses: 12 KW b) Maximum load losses at 75°C and rated frequency: - ONAF rated power (23MVA) and principal tapping- to be proved by test and calculation: 100 (Max) at 23MVA Base	Transformers with losses 2.5% above the required losses will be rejected  After commissioning of transformers, in case of the tested load loss and no-load loss values differ from the guaranteed ones, the below penalties will be applied as liquidated damages:  - No Load: USD 9,000 / kW  - Load Loss: USD 4,000 / kW

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Any adjustments in price that result from the above procedures shall be added, for purposes of comparative evaluation only, to arrive at an “Evaluated Bid Price.” Bid prices quoted by bidders shall remain unaltered.

In reference to ITB 35.4 the Employer for evaluation purposes only, will add to the bid price the cost of quantifiable deviations and omissions from the Technical Specifications as identified in the bidding document. The adjustment shall be made by loading to the bidder the average price of the other substantially responsive bidders.

Loaded Bid Price Value of omission =  $(P1+P2+P3+.....+Pn)/n$

Where n= number of substantially responsive bidders.

(d) Work, services, facilities, etc., to be provided by the Employer

*Not Applicable*

(e) Sustainable procurement

*Not Applicable*

(f) Alternative technical solutions for specified parts

*Not Applicable*

(g) Specific additional criteria

*Not Applicable*

2.3 Single and Multiple Contracts (ITB 35.6)

*Not Applicable*

Other criteria

*Not Applicable*

### 3.1 Qualification

Factor	1. Eligibility					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture (existing or intended)			
			All members combined	Each Partner	At least one Partner	
1.1 Nationality	Nationality in accordance with ITB 4.4.	Must meet requirement	must meet requirement	Must meet requirement	N / A	Form ELI –1.1 and 1.2, with attachments
1.1.2 Eligibility of Materials, Equipment, Plant and Services	Country of Origin in accordance with ITB 5	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Letter of Bid & Form ELI-1.3
1.2 Conflict of Interest	No- conflicts of interests as described in ITB 4.2	Must meet requirement	must meet requirement	Must meet requirement	N / A	Letter of Bid
1.3 Bank Ineligibility	Not having been declared ineligible by the Bank as described in 4.5.	Must meet requirement	must meet requirement	Must meet requirement	N / A	Letter of Bid

<b>1.4 State Owned Enterprise or Institution of the Borrower country</b>	Compliance with conditions of ITB 4.6	Must meet requirement	Must meet requirement	Must meet requirement	N / A	Form ELI –1.1 and 1.2, with attachments
<b>1.5 Ineligibility based on a United Nations resolution or Borrower's country law</b>	Not having been excluded as a result of the Borrower's country laws or official regulations, or by an act of compliance with UN Security Council resolution, in accordance with ITB 4.8 and Section V.	Must meet requirement	must meet requirement	Must meet requirement	N / A	Letter of Bid

Factor	2. Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture (existing or intended)			
			All members combined	Each member	At least one member	
2.1 History of non-performing contracts	Non-performance <sup>1</sup> of a contract did not occur as a result of contractor default since 1 <sup>st</sup> January 2014.	Must meet requirement by itself or as member to past or existing JV	N / A	Must meet requirement <sup>2</sup>	N / A	Form CON - 2

<sup>1</sup> Nonperformance, as decided by the Employer, shall include all contracts where (a) nonperformance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Nonperformance shall not include contracts where Employers decision was overruled by the dispute resolution mechanism. Nonperformance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted.

<sup>2</sup> This requirement also applies to contracts executed by the Bidder as JV member.



Factor	2. Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture (existing or intended)			
	All members combined		Each member	At least one member		
2.2 Suspension	Suspension Based on Execution of Bid Securing Declaration by the Employer or withdrawal of the Bid within Bid validity period or other failures pursuant to ITB 4.7 and ITB 20.9 or any such conditions	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Letter of Bid
2.3 Pending Litigation	Bid’s financial position and prospective long-term profitability still sound according to criteria established in 3.1 below and assuming that all pending litigation will be resolved against the Bidder	Must meet requirement	N / A	Must meet requirement	N / A	Form CON – 2

Factor	2. Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture (existing or intended)			
			All members combined	Each member	At least one member	
2.4 Litigation History	No consistent history of court/arbitral award decisions against the Bidder <sup>3</sup> since 1 <sup>st</sup> January 2014.	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Form CON – 2

<sup>3</sup> The Bidder shall provide accurate information on the related Letter of Bid about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of awards against the Bidder or any member of a joint venture may result in failure of the Bid.

Factor	2. Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture (existing or intended)			
			All members combined	Each member	At least one member	
2.5 Declaration: Environmental and Social (ES) past performance	Declare any contract that has been suspended or terminated and/or performance security called by an employer for reasons of breach of environmental, or social (including Sexual Exploitation, and Abuse) contractual obligations in the past five years. <sup>4</sup>	Must make the declaration. Where there are Specialized Subcontract or/s, the Specialized Subcontract or/s must also make the declaration.	N/A	Each must make the declaration. Where there are Specialized Subcontractor/s, the Specialized Subcontractor/s must also make the declaration.	N/A	Form CON-3 ES Performance Declaration

<sup>4</sup> The Employer may use this information to seek further information or clarifications in carrying out its due diligence.

Factor	3. Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture (existing or intended)			
	All members combined		Each member			
3.1 Financial Capabilities	Submission of audited balance sheets or if not required by the law of the Bidder’s Country, other financial statements acceptable to the Employer, for the last 5 (five) years to demonstrate the current soundness of the Bidders financial position and its prospective long term profitability.	Must meet requirement	N / A	Must meet requirement	N / A	Form FIN – 3.1 with attachments
3.2 Average Annual Turnover	Minimum average annual turnover in Power Transmission sector of 15 (Fifteen) Million US Dollars, calculated as total certified payments	Must meet requirement	Must meet requirement	Must meet Twenty-five percent (25 %) of the requirement	Must meet sixty percent (60 %) of the requirement	Form FIN –3.2

Factor	3. Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture (existing or intended)			
	All members combined		Each member			
	received for contracts in progress or completed, within the last <i>5 (five) years</i>					
3.3 Financial Resources	<p>The Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:</p> <p>(i) the following cash-flow requirement:</p> <p><i>Six (6) months of the project cash flow projected at: <b>Three</b></i></p>	Must meet requirement	Must meet requirement	Must meet <i>twenty-five</i> percent (25 %) of the requirement	Must meet <i>seventy-five</i> percent (75 %) of the requirement	Form FIN –3.3

Factor	3. Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture (existing or intended)			
	All members combined		Each member	At least one member		
	<i>Million Eight Hundred Thousand US Dollars (USD 3,800,000)</i>  and  (ii) the overall cash flow requirements for this contract and its current commitments.					

Factor	4. Experience					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture (existing or intended)			
			All members combined	Each member	At least one member	
4.1 General Experience	Experience in <i>Power Transmission sector</i> under contracts in the role of <i>contractor</i> , subcontractor, or management contractor for at least the last <i>ten (10) years</i> starting 1 <sup>st</sup> January <i>2014</i> .	Must meet requirement	N / A	Must meet requirement	N / A	Form EXP-4.1

<b>4.2(a) Specific Experience</b>	<p>(a) Participation as contractor, joint venture member<sup>5</sup>, management contractor, or subcontractor, in at least <i>two (2)</i> contracts within the last <i>eight (8)</i> years, each with a value of at least <i>twelve million five hundred thousand US Dollars (USD 12,500,000)</i>, that have been successfully and substantially<sup>6</sup>completed and that are similar to the proposed Plant and Installation Services. The similarity of the contracts shall be based on the following: <i>Design, supply, construction, testing and commissioning of</i></p> <ul style="list-style-type: none"> <li>• <i>132/33kV and above substations.</i></li> </ul> <p><i>These works must have been carried outside its country. The works must have been completed prior to bid submission. These criteria must be evidenced by a completion certificate issued to the bidder</i></p>	<p>Must meet requirement</p>	<p>Must meet requirements<sup>7</sup></p>	<p>N / A</p>	<p>Must meet the following requirements for the key activities listed below</p> <p><i>Design, supply, construction, testing and commissioning of 132/33kV and above substations.</i></p>	<p>Form EXP 4.2(a)</p>
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<sup>5</sup> For contracts under which the Bidder participated as a joint venture member or sub-contractor, only the Bidder's share, by value, shall be considered to meet this requirement

<sup>6</sup> Substantial completion shall be based on 80% or more plant and installation completed under the contract.



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<sup>7</sup> In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated.

<b>4.2(b) Specific Experience</b>	<p>(b) For the above or other contracts executed during the period stipulated in 4.2(a) above, a minimum experience in the following key activities:</p> <ul style="list-style-type: none"> <li>•<i>Four (4) successfully accomplished and operated air insulated substations of 132/33kV with double busbar configuration</i></li> <li>•<i>Procurement, installation, and commissioning of 2 x 23 MVA 132/33kV transformers or above</i></li> <li>•<i>Conversion/Upgrade of 132kV switchyard from single busbar to double busbar arrangement</i></li> </ul> <p><i>for all the above substations and transmission lines; they must have been completed prior to bid submission. These criteria must be evidenced by a completion certificate issued to the bidder.</i></p>	<p>Must meet requirements</p>	<p>Must meet requirements<sup>8</sup></p>	<p>N / A</p>	<p>Must meet the following requirements for key activities listed below: <i>At least four (4) successfully accomplished and operated air insulated substations of 132/33kV with double busbar configuration.</i></p>	<p>Form EXP-4.2(b)</p>
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<sup>8</sup> In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated.

<b>4.2 (c) Experience in Managing ES Risks &amp; Impact</b>	<p>For the contracts in 4.2 (a) above and/or any other contracts [substantially completed and under implementation] as prime contractor, joint venture member, or Subcontractor between 1st January 2014 and Bid submission deadline, experience in managing ES risks and impacts in the following aspects:</p> <ul style="list-style-type: none"> <li>• <i>Soil erosion</i></li> <li>• <i>Biodiversity loss mitigation</i></li> <li>• <i>Environmental protection</i></li> <li>• <i>Contagious diseases management</i></li> <li>• <i>Safety management in live substation</i></li> <li>• <i>Accident and injury prevention in transmission line and substation works</i></li> </ul>	<p>Must meet requirements</p>	<p>Must meet requirements</p>	<p>N/A</p>	<p>N/A</p>	<p>Form EXP – 4.2 (c)</p>
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### 3.2 Contractor's Representative and other Key Personnel

The Bidder must demonstrate that it will have a suitably qualified Contractor's Representative and other suitably qualified (and in adequate numbers) key personnel, as required for each lot and as described in the Specification.

The Bidder shall provide details of the Contractor's Representative and other key personnel and such other key personnel that the Bidder considers appropriate to perform the Contract, together with their academic qualifications and work experience. The Bidder shall complete the relevant Forms in Section IV, Bidding Forms.

### 3.3 Equipment

The Bidder must demonstrate that it will have access to the key Contractor's equipment listed hereafter:

<i>No.</i>	<i>Equipment Type and Characteristics</i>	<i>Minimum Number Required</i>	<i>Owned</i>	<i>Leased/ Rented</i>
1	2 or 4-wheel drive utility vehicle	4	ii	
2	Lorry up to 10 tonnes	2		ii
3	Lorry over 10 tonnes	2		ii
4	Excavator/tractor/JCB	4		ii
5	Foundation gang tools and plant	4	ii	
6	Crane up to 15 tonnes	2		ii
7	Mobile Concrete batching plant	1 set for each substation		ii
8	Tensioner and puller machines for the relevant conductor size and tools	1 set for each substation		ii
9	High Potential Test Set (Hipot)	2		ii
10	Concrete Vibrator	4	ii	
11	Torque Wrenches	4	ii	
12	Trifor 5 tonnes	4	ii	
13	Hydraulic breaker	1 for each substation		ii
14	Bobcat	1 set for each substation		ii

<b>No.</b>	<b>Equipment Type and Characteristics</b>	<b>Minimum Number Required</b>	<b>Owned</b>	<b>Leased/ Rented</b>
15	Overhead line assembly vehicle	2 sets		ü
16	Asphalt paver, finisher, vibrating roller, cutter, etc.	1 set for each substation		ü
17	Welding device (3-phase, above 45kW)	2 set for each substation	ü	
18	Cutting torch set	2 set for each substation	ü	
19	Hilti drill (electrical and air-compressor type), Angle grinder	2 set for each substation	ü	
20	Motorized lifting winch and basket 5 ton	1 set for each substation	ü	
21	Motorized winch, flywheel, cable grab, cable socks, cable cutter, wire rope, etc.	1 set for each substation	ü	
22	Chain block	1 for each substation	ü	
23	Stirrup bending and cutting device	1 for each substation	ü	
24	Hydraulic and manual jack	1 for each substation	ü	
25	Scaffold	1 Lot	ü	
26	Submersible sewage pump	1 for each substation	ü	
27	Diesel generator	1 for each substation		ü
28	Tan delta test set	1		ü
29	Transformer complete test set	1		ü
30	Transformer oil circulation and flushing machine	1 for each substation		ü
31	Oil insulation test device	1		ü
32	Surge arrester test set	1		ü
33	Energy meter tester	1 for each substation		ü

<b>No.</b>	<b>Equipment Type and Characteristics</b>	<b>Minimum Number Required</b>	<b>Owned</b>	<b>Leased/ Rented</b>
34	Digital high voltage phasing meter	1 for each voltage level		ii
35	Phase angle measurement device	2		ii
36	Fiber optic cable fusion device and toolbox	1 for each substation	ii	
37	OTDR device	2		ii
38	EDM surveying camera	1 for each substation	ii	
39	Satellite phone	2 pair		ii

The Bidder shall provide further details of proposed items of equipment using the relevant Form in Section IV.

### 3.4 Subcontractors

Subcontractors/manufacturers for the following major items of supply or services ('Specialized Subcontractors') must meet the following minimum criteria, herein listed for that item:

<b>Item No.</b>	<b>Description of Item</b>	<b>Minimum Criteria to be met by Manufacturers</b>
1	132kV switchyard equipment	<ol style="list-style-type: none"> <li>1) 15 years manufacturing experience of 132kV or above of switchyard equipment</li> <li>2) 132kV Switchyard equipment being in successful operation for at least 10 years exclude substation service voltage transformers (SSVT) to 5 years. The operational experience shall be supported by end-user certificates from at least five (5) utilities/clients with comprehensive contact details.</li> <li>3) Supply of 132kV switchyard equipment to at least five (5) project sites of which shall be outside the manufacturers home country.</li> </ol>

2	<i>33kV switchyard equipment</i>	<ol style="list-style-type: none"> <li>1) 15 years manufacturing experience of 33kV or above of switchyard equipment</li> <li>2) 33kV Switchyard equipment being in successful operation for at least 10 years. The operational experience shall be supported by end-user certificates from at least five (5) utilities/clients with comprehensive contact details.</li> <li>3) Supply of 33kV switchyard equipment to at least five (5) project sites of which shall be outside the manufacturers home country.</li> </ol>
3	<i>Power Transformers for 132/33 kV substations</i>	<ol style="list-style-type: none"> <li>1) 15 years of manufacturing experience of power transformers rated 132/33kV, 23MVA and above.</li> <li>2) Power Transformers being in successful operation for at least 10 years. The operational experience shall be supported by end-user certificates from at least five (5) utilities/clients with comprehensive contact details.</li> <li>3) Supply of 132/33 kV Power Transformers to at least five (5) project sites of which shall be outside the manufacturers home country.</li> </ol>
4	<i>Control and protection system (CRP)</i>	<ol style="list-style-type: none"> <li>1) 15 years of manufacturing experience of Substation and transmission line CRP</li> <li>2) CRP being in successful operation for at least 10 years. The operational experience shall be supported by end-user certificates from at least five (5) utilities/clients with comprehensive contact details.</li> <li>3) Supply of CRP to at least five (5) project sites of which shall be outside the manufacturer's home country.</li> <li>4) Experience with the latest technology improvements and state of the art.</li> </ol>
5	<i>Substation and Automation systems, and communication systems (SASCS)</i>	<ol style="list-style-type: none"> <li>1) 15 years of manufacturing experience of Substation and transmission line SASCS</li> <li>2) SASCS being in successful operation for at least 10 years. The operational experience shall be supported by end-user certificates from at least five (5) utilities/clients with comprehensive contact details.</li> <li>3) Supply of SASCS to at least five (5) project sites of which shall be outside the manufacturer's home country.</li> <li>4) Experience with the latest technology improvements and state of the art.</li> </ol>
6	<i>Diesel Generator, Low Voltage Systems (DGLVS)</i>	<ol style="list-style-type: none"> <li>1) 15 years of manufacturing experience of Substation and transmission line DGLVS</li> <li>2) DGLVS being in successful operation for at least 10 years. The operational experience shall be supported by end-user certificates from at least five (5) utilities/clients with comprehensive contact details.</li> </ol>

		<p>3) Supply of DGLVS to at least five (5) project sites of which shall be outside the manufacturer's home country.</p> <p>4) For DG set as an electromechanical rotary machine, after sales services and local supports are necessary.</p>
7	Auxiliary transformer	<p>i. 15 years of manufacturing experience of Substation Auxiliary transformers for 132 kV substations</p> <p>ii. Auxiliary transformer in 132 kV substations being in successful operation for at least 10 years. The operational experience shall be supported by end-user certificates from at least five (5) utilities/clients with comprehensive contact details.</p> <p>iii. Supply of Auxiliary transformer in 132 kV substations to at least five (5) project sites of which shall be outside the manufacturers home country.</p>
8	Towers, gantries and structures	<p>i. 15 years manufacturing experience of 132 kV and above towers, gantries and structures with in-house design manufacturing &amp; Galvanizing Facilities along with conducting acceptance Tests on gantries Materials.</p> <p>ii. The manufactured gantries should be in successful operation for at least 10 years.</p> <p>iii. Supply of 132 kV and above Gantries and structures to at least five (5) project sites of which at least one (1) shall be outside the manufacturer's home Country.</p> <p>iv. Manufacturer should have in house facilities for Conducting Acceptance Test on products.</p>
9	Conductors	<p>i. 15 years manufacturing experience of 132 kV and above Conductors with in-house design manufacturing &amp; Conductors Facilities along with acceptance Tests on Conductors Materials.</p> <p>ii. The manufactured Conductors should be in successful operation for at least 10 years.</p> <p>iii. Supply of 132 kV and above Conductors to at least five (5) project sites of which at least one (1) shall be outside the manufacture home Country.</p> <p>iv. Manufacturer should have in house facilities for Conducting Acceptance Test on products.</p>
10	Insulator and fittings	<p>i. 15 years manufacturing experience of 132 kV and above Insulators and fittings.</p> <p>ii. The manufactured products should be in successful operation for a period of minimum 10 years.</p> <p>iii. Supply of 132 kV and above Insulators and fittings to at least five (5) projects sites of which at least one (1) shall be outside the manufactures home country.</p> <p>v. Manufacturer should have in house testing Facilities for Insulator Acceptance Tests.</p>



<b><i>S/no</i></b>	<b><i>Description of Item</i></b>	<b><i>Minimum Criteria to be met by Subcontractors</i></b>
1.	<i>Civil Works Subcontractor</i>	<p><i>The civil works subcontractor (if any) shall meet the underlisted minimum requirements:</i></p> <ol style="list-style-type: none"> <li><i>1. The sub-contractor shall be a Local contractor registered with the National Construction Authority (NCA) in Class three (NCA 3) category and above with proven experience in civil works contracts. Evidence of this must be provided at the bidding stage.</i></li> <li><i>2. Proven experience in similar works contract. The sub-contractor must have carried out similar works in at least two (2) completed substation projects of 132kV and above in the last five (5) years.</i></li> <li><i>3. Experience must be supported with completion certificates and/or end-user testimonials/references/letters with comprehensive contact details of the end-user.</i></li> </ol> <p><i>NB: All proposed sub-contractors will be subject to Employer's approval.</i></p>
2.	<i>Electromechanical Works Subcontractor</i>	<p><i>The electromechanical works subcontractor (if any) shall meet the underlisted minimum requirements:</i></p> <ol style="list-style-type: none"> <li><i>1. The sub-contractor shall be a Local contractor registered with the National Construction Authority (NCA) in Class three (NCA 3) category and above with proven experience in electromechanical works. Evidence of this must be provided at the bidding stage.</i></li> <li><i>2. Proven experience in respective works contracts. The sub-contractor must have carried out similar works in at least two (2) completed substation projects of 132kV and above in the last five (5) years. Evidence to support this must be provided during bidding.</i></li> <li><i>3. Experience must be supported with completion certificates and/or end-user testimonials/references/letters with comprehensive contact details of the end-user.</i></li> </ol> <p><i>NB: All proposed sub-contractors will be subject to Employer's approval.</i></p>

Failure to comply with this requirement will result in the rejection of the subcontractor.

In the case of a Bidder who offers to supply and install major items of supply under the contract that the Bidder did not manufacture or otherwise produce, the Bidder

shall provide the manufacturer's authorization, using the form provided in Section IV, showing that the Bidder has been duly authorized by the manufacturer or producer of the related plant and equipment or component to supply and install that item in the Employer's Country. The Bidder is responsible for ensuring that the manufacturer or producer complies with the requirements of ITB 4 and 5 and meets the minimum criteria listed above for that item.

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## Letter of Bid

*INSTRUCTIONS TO BIDDERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE DOCUMENT*

*The Bidder must prepare this Letter of Bid on stationery with its letterhead clearly showing the Bidder's complete name and business address.*

*Note: All italicized text is to help Bidders in preparing this form.*

**Date of this Bid submission:** *[insert date (as day, month and year) of Bid submission]*

**OCBI No.:** *[insert number of bidding process as per procurement plan]*

**Invitation for Bid No.:** *[insert same IFB No. as advertised]*

**Alternative No.:** *[insert identification No if this is a Bid for an alternative]*

**To:** *[insert complete name of Employer]*

- (a) **No reservations:** We have examined and have no reservations to the bidding document, including Addenda issued in accordance with ITB 8;
- (b) **Eligibility of Bidders:** We, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries and meet the eligibility requirements and have no conflict of interest in accordance with ITB 4;
- (c) **Eligibility of Plant and Equipment, Installation and Other Services:** We meet the eligibility requirements for Plant and Equipment, Installation and Other Services in accordance with ITB 5;
- (d) **Bid-Securing Declaration:** We have not been suspended nor declared ineligible by the Employer based on execution of a Bid Securing Declaration in the Employer's Country in accordance with ITB 4.7;
- (e) **Conformity:** We offer to provide design, supply and installation services in conformity with the bidding document of the following: *[insert a brief description of the Plant, Design, Supply and Installation Services];*

- (f) **Bid Price:** The total price of our Bid, excluding any discounts offered in item (g) below is: *[Insert one of the options below as appropriate in accordance with ITB 17.10]*

*[Option 1, in case of one lot (contract) i.e. 'Plant' as a Single Contract:] Total price is: [insert the total price of the Bid in words and figures, indicating the various amounts and the respective currencies];*

Or

*[Option 2, in case of multiple lots i.e. 'Plant'(s) are divided into lots (contracts)]*

Or

*[Option 3, in case of Packages when 'Plant'(s) are divided into Packages each package comprising of one or more lots (contracts)]*

For both Options 2 and 3: (a) Total price of each lot *[insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies, identifying corresponding Package number, if applicable];* and (b) Total price of all lots (sum of all lots) *[insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies];*

- (g) **Discounts:** The discounts offered and the methodology for their application are:
- (i) The discounts offered are: *[Specify in detail each discount offered.]*
  - (ii) The exact method of calculations to determine the net price of each item, and in case of multiple lots or multiple packages, net price of each item, each lot and each package, as applicable, after application of discounts is shown below: *[Specify in detail the method that shall be used to apply the discounts and ensure clarity, unambiguity, etc. in accordance with ITB 17.12];*
- (h) **Bid Validity Period:** Our Bid shall be valid for the period specified in BDS 19.1 (or as amended if applicable) from the date fixed for the Bid submission deadline specified in BDS 23.1 (as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (i) **Performance Security:** If our Bid is accepted, we commit to obtain a Performance Security in accordance with the bidding document;

- (j) **One Bid Per Bidder:** We are not submitting any other Bid(s) as an individual Bidder, and we are not participating in any other Bid(s) as a Joint Venture member, and meet the requirements of ITB 4.3, other than alternative Bids submitted in accordance with ITB 13;
- (k) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Bank or a debarment imposed by the Bank in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the Bank and other development banks. Further, we are not ineligible under the Employer's Country laws or official regulations or pursuant to a decision of the United Nations Security Council;
- (l) **State-owned enterprise or institution:** *[select the appropriate option and delete the other] [We are not a state-owned enterprise or institution] / [We are a state-owned enterprise or institution but meet the requirements of ITB 4.6];*
- (m) **Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Bidding process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*

Name of Recipient	Address	Reason	Amount

*(If none has been paid or is to be paid, indicate "none.")*

- (n) **Binding Contract:** We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (o) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Bid, or any other Bid that you may receive; and

- (p) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.

**Name of the Bidder:** \*[insert complete name of person signing the Bid]

**Name of the person duly authorized to sign the Bid on behalf of the Bidder:** \*\*[insert complete name of person duly authorized to sign the Bid]

**Title of the person signing the Bid:** [insert complete title of the person signing the Bid]

**Signature of the person named above:** [insert signature of person whose name and capacity are shown above]

**Date signed** [insert date of signing] **day of** [insert month], [insert year]



# Schedule of Rates and Prices (Price Schedules)

## Schedule No. 1. Plant and Mandatory Spare Parts Supplied from Abroad

Item	Description	Code <sup>1</sup>		Qty.  (1)	Unit Price <sup>2</sup>		Total Price  (1) x (3)
						CIP <sup>3</sup> (3)	
TOTAL (to Schedule No. 5. Grand Summary)							
				Name of Bidder _____ Signature of Bidder _____			

<sup>1</sup> Bidders shall enter a code representing the country of origin of all imported plant and equipment.

<sup>2</sup> Specify currency. Create and use as many columns for Unit Price and Total Price as there are currencies.

<sup>3</sup> Specify final destination if destination and final destination is the same. In that case refer to ITB 17.5 (d) with respect to local transportation, insurance, etc.

## Country of Origin Declaration Form

Item	Description	Code	Country

## Schedule No. 2. Plant and Mandatory Spare Parts Supplied from Within the Employer's Country

Item	Description	Qty.	EXW Unit Price <sup>1</sup>	Sales and other taxes payable per line item if Contract is awarded (in accordance with ITB 17.5 (b) (ii))	EXW Total Price
		<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(1) x (2)</i>
TOTAL (to Schedule No. 5. Grand Summary)					
			<p>Name of Bidder _____</p> <p>Signature of Bidder _____</p>		

<sup>1</sup> Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1

## Schedule No. 3. Design Services

Item	Description	Qty.  <i>(1)</i>	Unit Price <sup>2</sup>		Total Price  <i>(1) x (2)</i>
			Local Currency Portion  <i>(2)</i>	Foreign Currency Portion  <i>(optional)</i>	
TOTAL (to Schedule No. 5. Grand Summary)					

Name of Bidder \_\_\_\_\_

Signature of Bidder \_\_\_\_\_

<sup>2</sup> Unit and Total price for design services shall include all taxes, levies, charges, etc. payable, if any, on such services as of twenty-eight (28) days prior to the deadline for submission of Bids in accordance with ITB 17.5 (c).

## Schedule No. 4. Installation and Other Services

Item	Description	Qty.	Unit Price		Total Price <sup>3</sup>	
			Foreign Currency Portion	Local Currency Portion	Foreign	Local
		<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(1) x (2)</i>	<i>(1) x (3)</i>
TOTAL (to Schedule No. 5. Grand Summary)						
<div style="border: 1px solid black; width: 100%; height: 100%; position: relative;"> <div style="position: absolute; bottom: 10px; right: 10px; width: 80%; height: 40px; border: 1px solid black;"></div> </div>			<div style="border: 1px solid black; width: 100%; height: 100%; position: relative;"> <div style="position: absolute; bottom: 10px; right: 10px; width: 80%; height: 40px; border: 1px solid black;"></div> </div>			

<sup>3</sup> Specify currency in accordance with ITB 18. Also, when destination and final destination is the same and Schedule 1 requires CIP final destination prices, then Schedule 4 will not include costs of local transportation, Insurance, etc. related to items in Schedule 1 already included in prices under Schedule 1

## Schedule No. 5. Grand Summary

Item	Description	Total Price <sup>4</sup>	
		Foreign	Local
	Total Schedule No. 1. Plant, and Mandatory Spare Parts Supplied from Abroad		
	Total Schedule No. 2. Plant, and Mandatory Spare Parts Supplied from Within the Employer's Country		
	Total Schedule No. 3. Design Services		
	Total Schedule No. 4. Installation and Other Services		
TOTAL (to Letter of Bid)			
<div style="text-align: right; margin-bottom: 20px;"> Name of Bidder _____ </div> <div style="text-align: right;"> Signature of Bidder _____ </div>			

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<sup>4</sup> Specify currency in accordance with ITB 18. Create and use as many columns for Foreign Currency requirement as there are foreign currencies

## Schedule No. 6. Recommended Spare Parts

[illegible]

Name of Bidder \_\_\_\_\_

Signature of Bidder \_\_\_\_\_

## Price Adjustment

Where the Contract Period (excluding the Defects Liability Period) exceeds eighteen (18) months, it is normal procedure that prices payable to the Contractor shall be subject to adjustment during the performance of the Contract to reflect changes occurring in the cost of labor and material components. In such cases the bidding document shall include in this form a formula of the following general type, pursuant to PCC Sub-Clause 11.2.

Where Contracts are of a shorter duration than eighteen (18) months or in cases where there is to be no Price Adjustment, the following provision shall not be included. Instead, it shall be indicated under this form that the prices are to remain firm and fixed for the duration of the Contract.

### *Sample Price Adjustment Formula*

If in accordance with GCC 11.2, prices shall be adjustable, the following method shall be used to calculate the price adjustment:

Prices payable to the Contractor, in accordance with the Contract, shall be subject to adjustment during performance of the Contract to reflect changes in the cost of labor and material components, in accordance with the following formula:

$$P_1 = P_0 \cdot \left( a + b \frac{L_1}{L_0} + c \frac{M_1}{M_0} \right) - P_0$$

in which:

$P_1$  = adjustment amount payable to the Contractor

$P_0$  = Contract price (base price)

$a$  = percentage of fixed element in Contract price ( $a$  = %)

$b$  = percentage of labor component in Contract price ( $b$  = %)



$c$  = percentage of material and equipment component in Contract price ( $c$ = %)

$L_0, L_1$  = labor indices applicable to the appropriate industry in the country of origin on the base date and the date for adjustment, respectively

$M_0, M_1$  = material and equipment indices in the country of origin on the base date and the date for adjustment, respectively

N.B.  $a+b+c= 100\%$ .

### Conditions Applicable To Price Adjustment

The Bidder shall indicate the source of labor, source of exchange rate and materials indices and the base date indices in its bid.

<u>Item</u>	<u>Source of Indices Used</u>	<u>Base Date Indices</u>
-------------	-------------------------------	--------------------------

The base date shall be the date thirty (30) days prior to the Bid closing date.

The date of adjustment shall be the mid-point of the period of manufacture or installation of component or Plant.

The following conditions shall apply:

- (a) No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Employer under the terms of the Contract. No price increase will be allowed for periods of delay for which the Contractor is responsible. The Employer will, however, be entitled to any price decrease occurring during such periods of delay.
- (b) If the currency in which the Contract price,  $P_0$ , is expressed is different from the currency of the country of origin of the labor and/or materials indices, a correction factor will be applied to avoid incorrect adjustments of the Contract price. The correction factor shall be:  $Z_0 / Z_1$ , where,

$Z_0$  = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price  $P_0$  on the Base date, and

$Z_1$  = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price  $P_0$  on the Date of Adjustment.

- (c) No price adjustment shall be payable on the portion of the Contract price paid to the Contractor as an advance payment.

## Technical Bid

- Technical Bid-Base Bid
- Site Organization
- Method Statement
- Mobilization Schedule
- Construction Schedule
- ES Management Strategies and Implementation Plans
- Code of Conduct (ES)
- Plant
- Contractor's Equipment
- Personnel
- Proposed Subcontractors for Major Items of Plant and Installation Services
- Others

## Technical Bid-Base Bid

*[Note for information of Bidder: Bidder shall demonstrate compliance with the Employer's requirements and Technical Specifications as described in Section VII of the Bidding Documents. Any departures or deviations from the required Technical Specifications shall be highlighted and if there are none, full compliance shall be confirmed.*

*In support of the above confirmation of compliance, the Bidder shall provide complete information and documentation of technical standards, codes, designs and specifications, of the Plant and Installation Services offered along with performance characteristics, Model number or any other details including identification number of the manufacturer wherever applicable and in accordance with all requirements mentioned in ITB 16. Bidding document may stipulate a Table, Form, or Template to present Technical designs, specification, characteristics, functional or other guaranteed parameters, the Bidder shall invariably use the same without any changes and ensure that all requested details and supporting documents are provided. Lack or omission or non-confirmation of substantial details, information, and documentation for major or essential technical requirements/features may result in rejection of the Bid.*

*If the details of specifications for the offered Plant and equipment in the written text of the Bid differ from the details provided in the supporting literature, drawings or other parts of the document, all such discrepancies shall be explained to the satisfaction of the Employer failing which the Employer, may reject the Bid, or if deemed appropriate, may consider the information in the written text of the Bid to be valid ignoring details in other parts of the Bid. Failure of the Bidder to confirm this will result in rejection of the Bid.*

*In establishing conformity with the Employer's Specifications and requirements as specified in the Bidding Document along with all supporting documents mentioned in ITB 16, the documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Plant, Equipment and Installation Services, demonstrating their substantial responsiveness to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Section VII, Schedule of Requirements.*

*Any deviations in the technical standards, codes, designs or specifications or other requirements from those stated in the Bidding Documents shall be explained indicating their impact on the performance requirements, characteristics or*

*parameters of the Plant and Installation Services required. To this end, for any such deviations to be acceptable, Bid shall establish substantial responsiveness to the required technical specifications by explaining and documenting for the offered Plant and Installation Services equivalency with or improvement to the required technical standards, codes, designs and Specifications.*

*All required information on Functional Guarantees and those required for determination of life-cycle-cost or cost of operation or maintenance, for the purpose of evaluation and/or award of contract as requested by the Bidding document should be furnished complete in all respect and without any inconsistencies or ambiguities failing which the Bid may not be considered for evaluation and rejected without seeking clarifications especially if such details are major or may lead to change in the substance or price of the bid.*

*Any Major deviation from the Employer's requirements shall be the cause for rejection of the Bid. Any deviation which in the Bidder's opinion is considered minor, the Bidder shall provide evidence to this effect including evidence of any monetary implications caused by such deviation. The Employer's evaluation shall be independent of Bidder's opinion on such matters and shall be final]*

## Site Organization

## Method Statement

## Mobilization Schedule



## Construction Schedule

*The construction schedule shall include the following key milestones:*

- *No-objection to the Contractor's ES-MSIPs, which collectively form part of the C-ESMP, in accordance with the Particular Conditions – Special provisions Sub-Clause 4.1.*
- *Timeline for completion of the line termination gantries and the related busbar(s) to facilitate termination of the transmission line within the first 8-months from contract effectiveness.*

## **ES Management Strategies and Implementation Plans (ES-MSIP)**

The Bidder shall submit comprehensive and concise Environmental and Social Management Strategies and Implementation Plans (ES-MSIP) as required by ITB 11.1 (I) of the Bid Data Sheet. These strategies and plans shall describe in detail the actions, materials, equipment, management processes etc. that will be implemented by the Contractor, and its subcontractors.

In developing these strategies and plans, the Bidder shall have regard to the ES provisions of the contract including those as may be more fully described in the Employer's Requirements in Section VII.

## Code of Conduct for Contractor's Personnel (ES) Form

Note to the Bidder:

**The minimum content of the Code of Conduct form as set out by the Employer shall not be substantially modified.** However, the Bidder may add requirements as appropriate, including to take into account Contract-specific issues/risks.

The Bidder shall initial and submit the Code of Conduct form as part of its bid.

### CODE OF CONDUCT FOR CONTRACTOR'S AND SUBCONTRACTOR'S PERSONNEL

We are the Contractor, *[enter name of Contractor]*. We have signed a contract with *[enter name of Employer]* for *[enter description of the Facilities]*. The Plant for the Facilities will be installed at *[enter the Site]*. Our contract requires us to implement measures to address environmental and social risks, related to the Installation Services i.e. services ancillary to the supply of the Plant for the Facilities, such as inland transportation, site preparation works/ associated civil works, installation, testing, precommissioning, commissioning, operations and maintenance etc. as the case may require.

This Code of Conduct is part of our measures to deal with environmental and social risks related to the Installation Services.

All personnel that we utilize in the execution of the Contract, including staff, labor and other employees of us and of each Subcontractor, and any other personnel assisting us in the execution of the Contract, are referred to as Contractor's personnel.

This Code of Conduct identifies the behavior that we require from the Contractor's Personnel employed for the execution of Installation Services at the Site (or other places in the country where the Site is located).

Our workplace is an environment where unsafe, offensive, abusive or violent behavior will not be tolerated and where all persons should feel comfortable raising issues or concerns without fear of retaliation.

## REQUIRED CONDUCT

Contractor's Personnel employed for the execution of Installation Services at the Site (or other places in the country where the Site is located) shall:

1. carry out his/her duties competently and diligently;
2. comply with this Code of Conduct and all applicable laws, regulations and other requirements, including requirements to protect the health, safety and well-being of other Contractor's and Subcontractor's personnel and any other person;
3. maintain a safe working environment including by:
  - a. ensuring that workplaces, machinery, equipment and processes under each person's control are safe and without risk to health;
  - b. wearing required personal protective equipment;
  - c. using appropriate measures relating to chemical, physical and biological substances and agents; and
  - d. following applicable emergency operating procedures.
4. report work situations that he/she believes are not safe or healthy and remove himself/herself from a work situation which he/she reasonably believes presents an imminent and serious danger to his/her life or health;
5. treat other people with respect, and not discriminate against specific groups such as women, people with disabilities, migrant workers or children;
6. not engage in any form of sexual harassment including unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature with other Contractor's or Employer's Personnel;
7. not engage in Sexual Exploitation, which means any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another;
8. not engage in Sexual Abuse, which means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions;
9. not engage in any form of sexual activity with individuals under the age of 18, except in case of pre-existing marriage;

10. complete relevant training courses that will be provided related to the environmental and social aspects of the Contract, including on health and safety matters, and Sexual Exploitation and Abuse, and Sexual Harassment (SH);
11. report violations of this Code of Conduct; and
12. not retaliate against any person who reports violations of this Code of Conduct, whether to us or the Employer, or who makes use of the grievance mechanism for Contractor's Personnel or the project's Grievance Redress Mechanism.

## **RAISING CONCERNS**

If any person observes behavior that he/she believes may represent a violation of this Code of Conduct, or that otherwise concerns him/her, he/she should raise the issue promptly. This can be done in either of the following ways:

1. Contact [*enter name of the Contractor's Social Expert with relevant experience in handling sexual exploitation, sexual abuse and sexual harassment cases, or if such person is not required under the Contract, another individual designated by the Contractor to handle these matters*] in writing at this address [ ] or by telephone at [ ] or in person at [ ]; or
2. Call [ ] to reach the Contractor's hotline (*if any*) and leave a message.

The person's identity will be kept confidential, unless reporting of allegations is mandated by the country law. Anonymous complaints or allegations may also be submitted and will be given all due and appropriate consideration. We take seriously all reports of possible misconduct and will investigate and take appropriate action. We will provide warm referrals to service providers that may help support the person who experienced the alleged incident, as appropriate.

There will be no retaliation against any person who raises a concern in good faith about any behavior prohibited by this Code of Conduct. Such retaliation would be a violation of this Code of Conduct.

## CONSEQUENCES OF VIOLATING THE CODE OF CONDUCT

Any violation of this Code of Conduct by the Contractor's Personnel may result in serious consequences, up to and including termination and possible referral to legal authorities.

FOR CONTRACTOR'S PERSONNEL:

I have received a copy of this Code of Conduct written in a language that I comprehend. I understand that if I have any questions about this Code of Conduct, I can contact *[enter name of Contractor's contact person(s) with relevant experience]* requesting an explanation.

Name of Contractor's Personnel: [insert name]

Signature:

\_\_\_\_\_

Date: (day month year): \_\_\_\_\_

Countersignature of authorized representative of the Contractor:

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

**ATTACHMENT 1: Behaviors constituting SEA and behaviors constituting SH**

## ATTACHMENT 1 TO THE CODE OF CONDUCT FORM

### BEHAVIORS CONSTITUTING SEXUAL EXPLOITATION AND ABUSE (SEA) AND BEHAVIORS CONSTITUTING SEXUAL HARASSMENT (SH)

The following non-exhaustive list is intended to illustrate types of prohibited behaviors.

**(1) Examples of sexual exploitation and abuse** include, but are not limited to:

- A Contractor's Personnel tells a member of the community that he/she can get them jobs related to the work site (e.g. cooking and cleaning) in exchange for sex.
- A Contractor's Personnel that is connecting electricity input to households says that he can connect women headed households to the grid in exchange for sex.

- A Contractor's Personnel rapes, or otherwise sexually assaults a member of the community.
- A Contractor's Personnel denies a person access to the Site unless he/she performs a sexual favor.
- A Contractor's Personnel tells a person applying for employment under the Contract that he/she will only hire him/her if he/she has sex with him/her.

## **(2) Examples of sexual harassment in a work context**

- A Contractor's Personnel comment on the appearance of another Installation Services Personnel (either positive or negative) and sexual desirability.
- When a Contractor's Personnel complains about comments made by another Contractor's Personnel on his/her appearance, the other Contractor's Personnel comment that he/she is "asking for it" because of how he/she dresses.
- Unwelcome touching of a Contractor's Personnel or Employer's Personnel by another Contractor's Personnel.
- A Contractor's Personnel tells another Contractor's Personnel that he/she will get him/her a salary raise, or promotion if he/she sends him/her naked photographs of himself/herself.

## Plant



# Contractor's Equipment

## Form EQU

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key Contractor's equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Bidder.

Owner	Name of owner	
	Address of owner	
	Telephone	Contact name and title
	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project	

## Functional Guarantees

### Form FUNC

The Bidder shall copy in the left column of the table below, the identification of each functional guarantee required in the Specification and stated by the Employer in para. 1.2 (c) of Section III, Evaluation and Qualification Criteria, and in the right column, provide the corresponding value for each functional guarantee of the proposed plant and equipment.

Required Functional Guarantee	Value of Functional Guarantee of the Proposed Plant and Equipment
1.	
2.	
3.	
...	

# Personnel

## Form PER -1

### Contractor's Representative and other Key Personnel

### Schedule

Bidders should provide the names of suitably qualified personnel to meet the specified requirements stated in Section VII. The data on their experience should be supplied using the Form below for each candidate.

#### Contractor' Representative and Key Personnel

1.	Title of position: Contractor's Representative	
	Name of candidate:	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment: for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
2.	Title of position: [Environmental Specialist]	
	Name of candidate:	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment: for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>

3.	Title of position: [Health and Safety Specialist]	
	Name of candidate:	
	Duration of appointment:	[insert the whole period (start and end dates) for which this position will be engaged]
	Time commitment for this position:	[insert the number of days/week/months/ that has been scheduled for this position]
	Expected time schedule for this position:	[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]
4.	Title of position: [Social Specialist]	
	Name of candidate:	
	Duration of appointment:	[insert the whole period (start and end dates) for which this position will be engaged]
	Time commitment for this position:	[insert the number of days/week/months/ that has been scheduled for this position]
	Expected time schedule for this position:	[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]
5.	<b>Title of position: Sexual Exploitation, Abuse and Harassment Expert</b> <i>[Where a Project SEA risks are assessed to be substantial or high, key personnel shall include an expert/s with relevant experience in addressing sexual exploitation, sexual abuse and sexual harassment cases]</i>	
	Name of candidate	
	Duration of appointment:	[insert the whole period (start and end dates) for which this position will be engaged]
	Time commitment for this position:	[insert the number of days/week/months/ that has been scheduled for this position]
	Expected time schedule for this position:	[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]

6.	Title of position: [insert title]	
	Name of candidate	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment: for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
7.	Title of position: [insert title]	

## Form PER-2

### Resume of Proposed Personnel

Name of Bidder
----------------

Position		
Personnel information	Name	Date of birth
	Professional qualifications	
Present employment	Name of employer	
	Address of employer	
	Telephone	Contact (manager / personnel officer)
	Fax	E-mail
	Job title	Years with present employer

Summarize professional experience over the last 20 years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	To	Company / Project / Position / Relevant technical and management experience

## Proposed Subcontractors for Major Items of Plant and Installation Services

A list of major items of Plant and Installation Services is provided below.

The following Subcontractors and/or manufacturers are proposed for carrying out the item of the facilities indicated. Bidders are free to propose more than one for each item

Major Items of Plant and Installation Services	Proposed Subcontractors/Manufacturers	Nationality

## Others - Time Schedule

(to be used by Bidder when alternative Time for Completion is invited in ITB 13.2)



## Commercial Terms and Conditions

[Bidder shall specify any deviations to the provisions of the Bidding Document (other than Technical Specifications) in particular those specified in Part 3 of the Bidding document including General and Particular Conditions of Contract. If "None" it shall be confirmed accordingly]

## **Alternative Technical Bid --If permitted in accordance with ITB 13**

[Bidder to provide all relevant details/Forms as listed above for the Technical Base  
Bid]

## **Bidders Qualification without prequalification**

To establish its qualifications to perform the contract in accordance with Section III, Evaluation and Qualification Criteria the Bidder shall provide the information requested in the corresponding Information Sheets included hereunder.

Form ELI 1.1

**Bidder Information Sheet**

Date: \_\_\_\_\_

IFB No.: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Bidder's Legal Name
2. In case of JV, legal name of each party:
3. Bidder's actual or intended Country of Registration:
4. Bidder's Year of Registration:
5. Bidder's Legal Address in Country of Registration:
6. Bidder's Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:

7. Attached are copies of original documents of

- ☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB 4.4
- ☐ In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1
- ☐ In case of state-owned enterprise or institution, in accordance with ITB 4.6, documents establishing:
  - Legal and financial autonomy
  - Operation under commercial law
  - Establishing that the Bidder is not under the supervision of the Employer

8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. *[If required under BDS ITB 47.1, the successful Bidder shall provide additional information on beneficial ownership, using the Beneficial Ownership Disclosure Form.]*

## Form ELI 1.2

### Party to JV Information Sheet

Date: \_\_\_\_\_

IFB No.: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Bidder's Legal Name:
2. JV's Party legal name:
3. JV's Party Country of Registration:
4. JV's Party Year of Registration:
5. JV's Party Legal Address in Country of Registration:
6. JV's Party Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITB 4.4. <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Employer, in accordance with ITB 4.6.  8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. <i>[If required under BDS ITB 47.1, the successful Bidder shall provide additional information on beneficial ownership for each JV member using the Beneficial Ownership Disclosure Form.]</i>

## Form ELI -1.3

### Eligible Materials, Plant, Equipment, Installation and Other Services Form (to be completed by the Bidder)

Date: \_\_\_\_\_

OCBI No. and title: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

**Eligible Materials, Plant, Equipment, installation and Other Services:** In compliance with ITB 5, provide the following information for all Materials, Plant, Equipment, Installation and Other Services included under the Contract. Instead of listing each and every item, broad categories are listed below. Include all items in these categories unless any item to be supplied is not covered by any one of them in which case list them separately.

1 S. No.	2 Description of Broad Category of Materials/Plant, Equipment Installation and Other Services	3 Estimated Quantity - <i>[Indicate: "All quantity as required" or quantity by subcategory of items]</i>	Estimated Aggregate Value (US Dollar Equivalent)	5 Countries of Origin
1	All Construction, Installation and Testing Materials including raw materials, Cement, Steel, Timber, Lime, Sand, Aggregates, Plastics, Bitumen, Oils, Lubricants, etc. as per specification			

2	All types of Plants, Equipment including Laboratory and Testing Equipment, All types of Vehicles, Furniture, Fittings and Fixtures, Pipes, Tools, Steel and Other Structures, Utensils, Computers and Other IT Equipment, etc. as per specification			
3	All Types of Services including Construction, Installation, Assembly, Inspection, Supervision, Care of Sites, Labor (Skilled and Unskilled), Drilling, Mapping, Transportation and Insurance, etc. as per specification			
4				
5				



## Form CON – 2

### Historical Contract Non-Performance

Bidder's Legal Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member Legal Name: \_\_\_\_\_

IFB No.: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria

- ☐ Contract non-performance did not occur since 1<sup>st</sup> January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.
- ☐ Contract(s) not performed since 1<sup>st</sup> January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, requirement 2.1

Year	Non-performed portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and US\$ equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for nonperformance: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>

Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria

- ☐ No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.
- ☐ Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), USD Equivalent (exchange rate)
		Contract Identification: _____ Name of Employer: _____ Address of Employer: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	
		Contract Identification: Name of Employer: Address of Employer: Matter in dispute: Party who initiated the dispute: Status of dispute:	
Litigation History in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.			
<input type="checkbox"/> Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.			

Year of award	Outcome as percentage of Net Worth	Contract Identification	Total Contract Amount (currency), USD Equivalent (exchange rate)
<i>[insert year]</i>	<i>[insert percentage]</i>	<p>Contract Identification: [indicate complete contract name, number, and any other identification]</p> <p>Name of Employer: <i>[insert full name]</i></p> <p>Address of Employer: <i>[insert street/city/country]</i></p> <p>Matter in dispute: <i>[indicate main issues in dispute]</i></p> <p>Party who initiated the dispute: <i>[indicate "Employer" or "Contractor"]</i></p> <p>Reason(s) for Litigation and award decision <i>[indicate main reason(s)]</i></p>	<i>[insert amount]</i>

## Form CON – 3

### Environmental and Social Performance Declaration

*[The following table shall be filled in for the Bidder, each member of a Joint Venture and each Specialized Subcontractor]*

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member's or Specialized Subcontractor's Name: *[insert full name]*

IFB No. and title: *[insert IFB number and title]*

Page *[insert page number]* of *[insert total number]* pages

<b>Environmental and Social Performance Declaration</b> in accordance with Section III, Qualification Criteria, and Requirements			
<input type="checkbox"/> <b>No suspension or termination of contract:</b> An employer has not suspended or terminated a contract and/or called the performance security for a contract for reasons related to Environmental or Social (ES) performance since the date specified in Section III, Qualification Criteria, and Requirements, Sub-Factor 2.5.			
<input type="checkbox"/> <b>Declaration of suspension or termination of contract:</b> The following contract(s) has/have been suspended or terminated and/or Performance Security called by an employer(s) for reasons related to Environmental or Social (ES) performance since the date specified in Section III, Qualification Criteria, and Requirements, Sub-Factor 2.5. Details are described below:			
Year	Suspended or terminated portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and US\$ equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for suspension or termination: <i>[indicate main reason(s) e.g. gender-based violence; sexual exploitation or sexual abuse breaches]</i>	<i>[insert amount]</i>

<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for suspension or termination: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>
...	...	<i>[list all applicable contracts]</i>	...
<b>Performance Security called by an employer(s) for reasons related to ES performance</b>			
Year	Contract Identification		Total Contract Amount (current value, currency, exchange rate and US\$ equivalent)
<i>[insert year]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for calling of performance security: <i>[indicate main reason(s) e.g. for gender-based violence; sexual exploitation, or sexual abuse breaches]</i>		<i>[insert amount]</i>

## Form CCC

### Current Contract Commitments / Works in Progress

Bidders and each member to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

Name of contract	Employer, contact address/tel /fax	Value of outstanding work (current US\$ equivalent)	Estimated completion date	Average monthly invoicing over last six months (US\$/month)
1.				
2.				
3.				
4.				
5.				
etc.				

## Form FIN – 3.1

### Financial Situation

### Historical Financial Performance

Bidder's Legal Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member Legal Name: \_\_\_\_\_

IFB No.: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

To be completed by the Bidder and, in case of a JV, by each member

Financial information in US\$ equivalent	Historic information for previous ____ ( ) years (US\$ equivalent in 000s)						
	Year 1	Year 2	Year 3	Year ...	Year n	Avg.	Avg. Ratio
<b>Information from Balance Sheet</b>							
Total Assets (TA)							
Total Liabilities (TL)							
Net Worth (NW)							
Current Assets (CA)							
Current Liabilities (CL)							
<b>Information from Income Statement</b>							
Total Revenue (TR)							

Financial information in US\$ equivalent	Historic information for previous ____ ( ) years (US\$ equivalent in 000s)						
	Year 1	Year 2	Year 3	Year ...	Year n	Avg.	Avg. Ratio
Profits Before Taxes (PBT)							

Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions:

- (a) Must reflect the financial situation of the Bidder or member to a JV, and not sister or parent companies
- (b) Historic financial statements must be audited by a certified accountant
- (c) Historic financial statements must be complete, including all notes to the financial statements
- (d) Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted)



## Form FIN – 3.2

### Average Annual Turnover

Bidder's Legal Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member Legal Name: \_\_\_\_\_

IFB No.: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Annual turnover data		
Year	Amount and Currency	US\$ equivalent
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
*Average Annual Turnover	_____	_____

\*Average annual turnover calculated as total certified payments received for work in progress or completed, divided by the number of years specified in Section III, Evaluation Criteria, Sub-Factor 2.3.2.

## Form FIN 3.3

### Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total cash flow demands of the subject contract or contracts as indicated in Section III, Evaluation and Qualification Criteria

Source of financing	Amount (US\$ equivalent)
1.	
2.	
3.	
4.	

## Form EXP 4.1

### General Experience

Bidder's Legal Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member Legal Name: \_\_\_\_\_

IFB No.: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Starting Month / Year	Ending Month / Year	Years*	Contract Identification	Role of Bidder
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____

Starting Month / Year	Ending Month / Year	Years*	Contract Identification	Role of Bidder
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____

\*List calendar year for years with contracts with at least nine (9) months activity per year starting with the earliest year

## Form EXP –4.2(a)

### Specific Experience

Bidder's Legal Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member Legal Name: \_\_\_\_\_

IFB No.: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

<b>Similar Contract Number: ____ of ____ required.</b>	<b>Information</b>		
Contract Identification	_____		
Award date	_____		
Completion date	_____		
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
Total contract amount	_____		US\$ _____ –
If member in a JV or subcontractor, specify participation of total contract amount	_____ %	_____	US\$ _____
Employer's Name:	_____		
Address:	_____ _____ _____		
Telephone/fax number:	_____		
E-mail:	_____		

Form EXP –4.2(a) (cont.)

Specific Experience (cont.)

Bidder's Legal Name: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

JV Member Legal Name: \_\_\_\_\_

Similar Contract No. __ [insert specific number] of [total number of contracts] __ required	Information
Description of the similarity in accordance with Sub-Factor 4.2a) of Section III:	
Amount	_____
Physical size	_____
Complexity	_____
Methods/Technology	_____
Physical Production Rate	_____

## Form EXP –4.2(b)

### Specific Experience in Key Activities

Bidder's Legal Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member Legal Name: \_\_\_\_\_

IFB No.: \_\_\_\_\_

Subcontractor's Legal Name: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

	Information		
Contract Identification	_____		
Award date	_____		
Completion date	_____		
Role in Contract	Y Contractor	Y Management Contractor	Y Subcontractor
Total contract amount	_____		US\$ _____
If member in a JV or subcontractor, specify participation of total contract amount	_____ %	_____	US\$ _____
Employer's Name:	_____		
Address:	_____ _____ _____		
Telephone/fax number:	_____ _____		
E-mail:	_____		

Form EXP –4.2 (b)(cont.)

Specific Experience in Key Activities (cont.)

Bidder's Legal Name: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

JV Member Legal Name: \_\_\_\_\_

Subcontractor's Legal Name: \_\_\_\_\_

	Information
Description of the key activities in accordance with Sub-Factor 4.2b) of Section III:	



Form EXP –4.2(c)

**Specific Experience in Managing ES aspects**

Bidder's Legal Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member Legal Name: \_\_\_\_\_

RFB No.: \_\_\_\_\_

Subcontractor's Legal Name: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Key Requirement no 1 in accordance with 4.2 (c): \_\_\_\_\_

Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Subcontractor <input type="checkbox"/>
Total Contract Amount			US\$	
Details of relevant experience				

2. Key Requirement no 2 in accordance with 4.2 (c): \_\_\_\_\_

3. Key Requirement no 3 in accordance with 4.2 (c): \_\_\_\_\_

# Form of Bid Security

## Form of Bid Security – Bank Guarantee

*[The bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.]*

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[Employer to insert its name and address]*

**IFB No.:** *[Employer to insert reference number for the Invitation for Bids]*

**Alternative No.:** *[Insert identification No if this is a Bid for an alternative]*

**Date:** *[Insert date of issue]*

**BID GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that \_\_\_\_\_ *[insert name of the Bidder, which in the case of a joint venture shall be the name of the joint venture (whether legally constituted or prospective) or the names of all members thereof]* (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its Bid (hereinafter called "the Bid") for the execution of \_\_\_\_\_ under IFB No. \_\_\_\_\_

Furthermore, we understand that, according to the Beneficiary's conditions, Bids must be supported by a Bid guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (\_\_\_\_\_) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Bidder:

- (a) has withdrawn its Bid during the period of Bid validity set forth in the Bidder's Letter of Bid ("the Bid Validity Period"), or any extension thereto provided by the Bidder; or
- (b) having been notified of the acceptance of its Bid by the Beneficiary during the Bid Validity Period or any extension thereto provided by the Applicant, (i) has failed to execute the Contract Agreement, or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to Bidders ("ITB") of the Beneficiary's bidding document.

This guarantee will expire: (a) if the Applicant is the successful Bidder, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security issued to the Beneficiary in relation to such contract agreement; or (b) if the Applicant is not the successful Bidder, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Bidding process; or (ii) twenty-eight days after the end of the Bid Validity Period.

Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

---

*[Signature(s)]*

***Note: All italicized text is for use in preparing this form and shall be deleted from the final product.***

## Form of Bid Security- Bid Bond

BOND NO. \_\_\_\_\_

BY THIS BOND \_\_\_\_\_ as Principal (hereinafter called "the Principal"), and \_\_\_\_\_, **authorized to transact business in** \_\_\_\_\_, as Surety (hereinafter called "the Surety"), are held and firmly bound unto \_\_\_\_\_ as Obligee (hereinafter called "the Employer") in the sum of \_\_\_\_\_<sup>5</sup>(\_\_\_\_\_), for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a written Bid to the Employer dated the \_\_\_ day of \_\_\_\_\_, 20\_\_, for the construction of \_\_\_\_\_ (hereinafter called the "Bid").

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

- (a) withdraws its Bid during the period of Bid validity specified in the Form of Bid; or
- (b) having been notified of the acceptance of its Bid by the Employer during the period of Bid validity; (i) fails or refuses to execute the Contract Form, if required; or (ii) fails or refuses to furnish the Performance Security in accordance with the Instructions to Bidders;

then the Surety undertakes to immediately pay to the Employer up to the above amount upon receipt of the Employer's first written demand, without the Employer having to substantiate its demand, provided that in its demand the Employer shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 28 days after the date of expiration of the Bid Validity Period set forth in the Principal's Letter of Bid or any extension thereto provided by the Principal.

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<sup>5</sup> The amount of the Bond shall be denominated in the currency of the *Employer's Country* or the equivalent amount in a freely convertible currency.

IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Principal: \_\_\_\_\_

Surety: \_\_\_\_\_

Corporate Seal (where appropriate)

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

*(Printed name and title)*

*(Printed name and title)*

## Form of Bid-Securing Declaration

Date: \_\_\_\_\_

IFB No.: \_\_\_\_\_

Alternative No.: \_\_\_\_\_

To: \_\_\_\_\_

We, the undersigned, declare that:

We understand that, according to your conditions, Bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for Bidding or submitting proposals in any contract with the Employer for the period of time of *[insert number of months or years consistent with BDS 20.9]* \_\_\_\_\_, starting on *[Employer to insert date]* \_\_\_\_\_, if we are in breach of our obligation(s) under the Bid conditions, because we:

- (a) have withdrawn our Bid during the period of Bid validity specified in the Letter of Bid or any extension thereto provided by us; or
- (b) having been notified of the acceptance of our Bid by the Employer during the period of Bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB.

The start date of suspension shall be the first date we perform any of the actions mentioned in paragraphs (a) and (b) above. We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Signed: \_\_\_\_\_

In the capacity of \_\_\_\_\_

Name: \_\_\_\_\_

Duly authorized to sign the Bid for and on behalf of: \_\_\_\_\_

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Corporate Seal (where appropriate)

## Manufacturer's Authorization

Date: \_\_\_\_\_

IFB No.: \_\_\_\_\_

To: \_\_\_\_\_

WHEREAS

We \_\_\_\_\_, who are official manufacturers of \_\_\_\_\_, having factories at \_\_\_\_\_, do hereby authorize \_\_\_\_\_ to submit a Bid the purpose of which is to provide the following goods, manufactured by us \_\_\_\_\_, and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 27 of the General Conditions, with respect to the goods offered by the above firm.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Duly authorized to sign this Authorization on behalf of:

\_\_\_\_\_

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_



## Section V - Eligible Countries

### Eligibility for the Provision of Goods, Works and Non-Consulting Services in Bank-Financed Procurement

#### A. Provisions under Section 5 “Eligibility” of the Procurement Policy for Bank Group Funded Operations and Chapter A2 of the Operations Procurement Manual under Procurement Framework of the African Development Bank

The African Development Fund (ADF) permits firms and individuals from all countries to offer goods, works and services for ADF funded projects. However, the proceeds of any Financing undertaken in the operations of the African Development Bank (ADB) and the Nigeria Trust Fund (NTF) shall be used for procurement of goods and works, including the related services, provided by bidders from Eligible<sup>1</sup> Countries.<sup>2</sup> Any conditions for participation shall be limited to those that are essential to ensure the firm’s capability to fulfill the contract in question. In the case of ADB and NTF, bidders from non-Member Countries offering goods, works and related services (including transportation and insurance) are not eligible even if they offer these from Eligible Member Countries. Any waiver to this rule will be in accordance with the Articles 17(1) (d) of the Agreement Establishing the African Development Bank and 4.1 of the Agreement Establishing the Nigeria Trust Fund.

#### B. Rules and Procedures for Procurement of Goods and Works

##### Overview

1. The eligibility criteria for participation in the supply of goods, works and related services, to be procured through the ADB and NTF Financing, derive from the requirements of the Agreement Establishing the African Development Bank, Article 17.1.d, and the Agreement Establishing the Nigeria Trust Fund, Article 4.1. The foregoing requirements basically prescribe two types of eligibility criteria:

1. The eligibility of the bidder;
2. The eligibility of the goods, works and related services.

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<sup>1</sup> Refer to Bank Procurement Framework for additional information on Eligibility.

<sup>2</sup> “Eligible Countries” shall mean: (a) in the case of the African Development Bank and the Nigeria trust Fund, the Member Countries of the African Development Bank; and (b) in the case of the African Development Fund, any country.

## Eligibility of the Bidder

2. The eligibility of the bidder shall be based on nationality, in accordance with the following rules:
  - (a) Natural Persons: A natural person is eligible if he or she is a national of a Member Country of the Bank, or a State Participant of the Fund. Where a person has more than one nationality, such a person shall be eligible if the nationality indicated in his or her bid is that of a Member Country of the Bank, or a State Participant of the Fund.
  - (b) Corporations: A corporation is eligible if it satisfies the following criteria:
    1. it is incorporated in a country that is a Member of the Bank, or State Participant of the Fund;
    2. it is a national of a country that is a Member of the Bank, or State Participant of the Fund, as determined by the law of its place of incorporation;
    3. it has its principal place of business in a country that is a Member of the Bank, or State Participant of the Fund.
  - (c) Joint Ventures and Associations: An unincorporated joint venture, partnership, or association, shall be eligible if more than 50% of the value of its works and/or services is executed by its members satisfying the eligibility requirements for individuals or corporations.

## Eligibility of the Goods, Works and Related Services

3. In order to be eligible, the goods to be procured must have been mined, grown, or produced, in the form in which they are purchased, in an Eligible Member Country.
4. For works contracts, which may include civil works, plant construction, or turnkey contracts, the contractor must satisfy the nationality criteria of eligibility, either as a natural person, or corporation, or joint venture and association. Labour, equipment, and materials needed for carrying out the works contract, shall be supplied from Eligible Member Countries.
5. For contracts, which have been awarded on the basis of Cost, Insurance and Freight (CIF), or Carriage and Insurance Paid (CIP), bidders shall be free to arrange for ocean and other transportation, and the related insurance, from any Eligible Member Country. On the other hand, where goods are shipped on FOB basis, and the Bank has agreed to finance transportation and insurance separately, which are arranged by the purchaser, under a separate contract, the Bank shall be satisfied that the services are supplied from Eligible Member Countries.

## List of Eligible Countries

6. List of Eligible countries can be found in African Development Bank's website:  
<https://www.afdb.org/en/about-us/corporate-information/members/>

## Ineligible Countries in reference to ITB 4.8 and ITB 5.1

7. In reference to ITB 4.8 and ITB 5.1, for the information of the Bidders, at the present time firms, goods and services from the following countries are excluded from this Bidding process:

Under ITB 4.8(a) and ITB 5.1: *None*

Under ITB 4.8(b) and ITB 5.1: *None*



# Section VI - Fraud and Corruption

(this Section shall not be changed)

## 1. Purpose

1.1 The Bank's Integrity Framework and this annex apply with respect to procurement under Bank Investment Project Financing operations.

## 2. Requirements

2.1 The Bank requires that Borrowers (including beneficiaries of Bank financing); bidders (applicants), consultants, contractors and suppliers; any sub-contractors, sub-consultants, service providers or suppliers; any agents (whether declared or not); and any of their personnel, observe the highest standard of ethics during the procurement process, selection and contract execution of Bank-financed contracts, and refrain from Fraud and Corruption.

2.2 To this end, the Bank:

- a. Defines, for the purposes of this provision, the terms set forth below as follows:
  - i. "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - ii. "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
  - iii. "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - iv. "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - v. "obstructive practice" is:
    - (a) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice;

and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

- (b) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under paragraph 2.2 e. below.
- b. Rejects a proposal for award if the Bank determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- c. In addition to the legal remedies set out in the relevant Legal Agreement, may take other appropriate actions, including declaring misprocurement, if the Bank determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement process, selection and/or execution of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
- d. Pursuant to the Bank's Integrity Framework and in accordance with the Bank's prevailing sanctions policies and procedures, may sanction a firm or individual, either indefinitely or for a stated period of time, including by publicly declaring such firm or individual ineligible (i) to be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;<sup>1</sup> (ii) to be a nominated<sup>2</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) to receive the proceeds of any loan made by the Bank or otherwise to

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<sup>1</sup> For the avoidance of doubt, a sanctioned party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.

<sup>2</sup> A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.

participate further in the preparation or implementation of any Bank-financed project;


- e. Requires that a clause be included in bidding documents and in contracts financed by a Bank loan, requiring (i) bidders (applicants), consultants, contractors, and suppliers, and their sub-contractors, sub-consultants, service providers, suppliers, agents personnel, permit the Bank to inspect<sup>3</sup> all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the Bank.

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<sup>3</sup> Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Bank or persons appointed by the Bank to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.







## **PART 2 - Employer's Requirements**



# Section VII - Employer's Requirements

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**For the purpose of this bidding document, the following nomenclature has been adopted:**

Part 2 – Employer’s Requirements

2C. Forms and Procedures

2D. Drawings

2E. Schedule of Technical information

All these have been annexed to this document.

Scope of Supply of Plant and Installation Services by the Contractor

**Refer to Part 2 – Employer’s Requirements**

Specification

## **Refer to Part 2 – Employer’s Requirements**

## Environmental and Social (ES) requirements

### Key Policies on Environment, Social, Health and Safety Requirements

The contractor shall prepare a C-ESMP prior to construction and submit to the consultant and Client for review and clearance. The C-ESMP approved by consultant shall be submitted to the client for final approval and submission to the bank. The C-ESMP shall also be reviewed and updated every six months.

The bidder should satisfy and will be required to comply with conditions that are outlined in:

- i. The project's Environmental and Social Management Plan (ESMP) and Environmental and Social Monitoring Plan (ESMoP) as disclosed by the Client,
- ii. In the following rules and regulations as well as mentioned policies.
  - National Environment Policy, 2013
  - The National Occupational Safety and Health Policy, 2012
  - National policy for prevention and response to gender-based violence, 2014
  - The Constitution of Kenya, 2010
  - The Environment Management and Co-ordination Act 1999, and its Amendments and regulations
  - Occupational Safety and Health Act Act 2007
  - Sustainable Waste Management Act
  - Public Health Act (Cap 242)
  - County Government Act No. 17 of 2012
  - Water Act 2016
  - Energy Act of 2019
  - Penal Code Act Cap 63
  - The Wildlife Conservation and Management Act, 2013
  - The Forest Conservation and Management Act, 2016
  - Work Injury and Benefits Act 2007
  - The Traffic Act Cap 295
  - The Public Road and Roads of Access Act
  - The Agriculture Act, Cap 318
  - National Museums and Heritage Act 2006
  - The Land Act of 2012 and its Amendment
  - The Land and Environment Court Act 2011
  - Physical and Land Use Planning Act, 2019
  - Climate change Act No. 11 of 2016
  - National Gender and Equality Act, 2011

- Protection of Traditional Knowledge and Cultural Expressions Act, 2016
  - Security Laws (Amendment) Act 2014
  - The Civil Aviation Act Cap 394
  - HIV and AIDs Prevention and Control Act 2011
  - Sexual Offences Act 2016
  - Children’s Act, 2022
  - Labour Relation Act 2022
  - Employment Act Cap 226
  - Persons with Disabilities Act, 2003
  - Alcoholic Drinks Control Ac, 2010
  - The Traffic Act Cap 403
  - Sustainable Waste Management Act, 2021
- iii. In addition, the project triggers all the AfDB Operational Safeguards which the Bidder must comply with, including:
- Operation Safeguard 1: Environmental and Social Assessment
  - Operational Safeguard 3: Biodiversity and ecosystem services
  - Operational Safeguard 4: Pollution prevention and control, hazardous materials and resource efficiency
  - Operational Safeguard 5: Labor conditions, health, and safety

In addition to the above policies and laws, the following is a list of non-exhaustive Sub-Clauses that make reference to ES matters, and which shall also be considered.

GCC	Sub-Clause/Clause	Remarks
9.10	Training of Contractor’s and its Subcontractors’ Personnel	The contractor shall ensure that project workers receive OHS training at the start of their employment or engagement, and thereafter on a regular basis and when changes are made in the workplace, with records of the training kept on file. Training should cover the relevant aspects of OHS associated with daily work, including the ability to stop work without retaliation in situations of imminent danger and emergency arrangements. All training materials and sessions shall be conducted in a language and manner that is culturally sensitive and easily understandable by the diverse workforce.



GCC	Sub-Clause/Clause	Remarks
		<p>The contractor shall maintain training records that shall include a description of the training provided, training attendance records, and results of evaluations.</p> <p>The contractor shall provide sufficient training to his own personnel to ensure that they are all aware of the relevant aspects of these general conditions, any program ESMP, and are able to fulfill their expected roles and functions. Training activities will be documented for potential review by the client.</p> <p>The contractor shall provide training on SEA and SH, including its prevention, to any of its personnel who has a role to supervise other contractor's personnel.</p> <p>The Contractor shall provide other training but not limited to statutory trainings, general Environment, Social, Health, and Safety procedures, emergency response procedures, grievance redress mechanisms, chance find procedures, social and cultural aspects awareness, and gender mainstreaming and integration with a focus on avoiding abuse and violence aspects. The training should be tailored to employees with responsibilities associated with Plan implementation.</p>
20	Design and Engineering	<p>The Contractor shall align all design and construction activities with climate-resilient principles. This encompasses the consideration of present and future climate change impacts, the integration of adaptive design strategies, and the use of resilient materials and technologies. The infrastructure must be designed and built to endure extreme weather conditions, temperature fluctuations, and other climate-associated risks</p>

GCC	Sub-Clause/Clause	Remarks
		<p>The Contractor shall, throughout the design, execution, and completion of the Works and Services, take all reasonable precautions to preserve the condition of the environment, consider public and occupational safety and addressing any non-compliance to resolving of any defects therein.</p> <p>The Contractor will design, construct, operate, and decommission the structural elements of the project in accordance with national legal requirements taking into consideration safety risks to third parties and affected communities. Structural elements of a project will be designed and constructed by competent professionals and certified or approved by competent authorities or professionals.</p> <p>The contractor shall ensure that the design and construction of the transmission infrastructure adheres to principles of universal access. The contractor shall comply with all relevant laws and regulations regarding universal access and shall implement best practices to promote inclusivity.</p> <p>The contractor shall incorporate robust safeguards to mitigate risks associated with public exposure to operational accidents or natural hazards.</p>
22.2.4	Rates of wages and conditions of labor	<p>The contractor shall provide all employees with clear and understandable information and documentation on their employment terms, conditions, and rights, including national employment law. These information and documents will set out their rights under National labour and employment laws (which will include any applicable collective agreements), including their rights related to at least the following areas: working hours, wages and benefits, rest periods, overtime arrangements, leave entitlement for illness and maternity/paternity, and grievance mechanisms. This information and documentation will provide at the beginning of the working</p>

GCC	Sub-Clause/Clause	Remarks
		<p>relationship and when any material changes to the terms or conditions of employment occur.</p> <p>The contractor shall provide reasonable working conditions and terms of employment that, at a minimum, comply with national law.</p> <p>Project workers will be paid on a regular basis as required by national law and labour management procedures. Deductions from payment of wages will only be made as allowed by National law, and project workers will be informed of the conditions under which such deductions will be made.</p> <p>No deductions other than those prescribed in the national labour laws will be made hereunder or any other law or collective labor agreement will be made from a worker's remuneration, except for repayment of advances received from the employer and evidenced in writing.</p> <p>Project workers will be provided with adequate periods of rest per day and week, annual holiday as required by national law.</p> <p>All workers on site will be Contract workers will on a minimum be enrolled to WIBA by the Contractor. All other workers will continue to benefit from WIBA and the National Health Insurance Fund (NHIF)</p> <p>The contractor shall not employ forced labour- that is, any work or service not voluntarily performed that is exacted from an individual under threat of force or penalty. This covers any kind of involuntary or compulsory labour, such as indentured labour, bonded labour, or similar labour-contracting arrangements.</p>

GCC	Sub-Clause/Clause	Remarks
		<p>The contractor shall provide workers with safe and healthy work environment, taking into account risks inherent in the particular sector and specific classes of hazards in the borrower's or client's work areas – including physical, chemical, biological, and radiological hazards.</p> <p>The Contractor shall ensure a transparent and accessible employees grievance redress mechanism shall be established for all direct workers and contracted worker (and, where relevant, their organizations) to address any workplace concerns, queries, issues, complaints, or sense of injustices raised by project personnel promptly and fairly. The Contractor shall ensure the workers are informed of such a mechanism at the time of recruitment and the measures put in place to protect them against any reprisal for its use. Records of the investigation and resolution of the grievances shall be kept and availed as part of Monthly Environment and Safeguards report and for inspection whenever required.</p> <p>The Contractor shall provide equal opportunities for all workers, regardless of gender, ethnicity, religion, or any other characteristic as required by national laws. Discrimination, harassment, or any form of unfair treatment based on these characteristics shall be strictly prohibited. The contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirement, including race, gender, nationality, religion or belief, disability, age, sexual orientation, or ethnic, social and indigenous origin.</p> <p>The contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and does not exclude or discriminate against employees with respect to any</p>

GCC	Sub-Clause/Clause	Remarks
		<p>aspects of the employment relationship, such as recruitment and hiring, compensation (wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and disciplinary practices.</p> <p>The Contractor shall implement comprehensive prevention, reporting, and response mechanisms to address instances of sexual exploitation, abuse, gender-based violence, and sexual harassment. This includes the provision of confidential reporting channels, awareness training, and immediate, impartial investigations into reported incidents.</p> <p>The contractor shall ensure access to comprehensive and legally mandated insurance coverage including medical insurance. Contractor will provide basic healthcare services shall be provided for all project personnel and shall establish a system for addressing medical emergencies and ensuring timely access to medical facilities.</p>
22.2.6	Facilities for Staff and Labor	<p>The Contractor is obligated to ensure the provision of adequate and suitable accommodation for project personnel, giving due consideration to local standards and regulations.</p> <p>The contractor shall ensure that project workers shall be provided with facilities appropriate to the circumstances of their work, including access to canteens, hygiene facilities, and appropriate areas for rest.</p> <p>The contractor shall ensure facilities and services shall be designed to be accessible to persons with disabilities, ensuring equal opportunities for all project personnel.</p>

GCC	Sub-Clause/Clause	Remarks
		<p>The contractor shall undertake Environmental and Social Impact Assessments for accommodation and other facilities not covered in the project ESIA.</p> <p>Notwithstanding regular reporting requirements prescribed by the Bank or national requirements, the contractor shall notify the bank promptly, within 1 working day of any materially adverse event such as serious accidents and fatalities.</p>
22.8	Security of the Site	<p>The Contractors will ensure project assets and personnel are secured and safeguarded in a legitimate manner in line with the comprehensive security plan to be developed and implemented for the project site. The submitted security plan should address all relevant aspects of security, encompassing personnel, equipment, and infrastructure. The Contractor shall submit the security plan to client for thorough review and approval before the commencement of any construction activities. Compliance with this bidding condition is imperative to ensure the safety and security of the project site, personnel, and assets. This condition underscores the project's commitment to maintaining a secure environment and mitigating potential risks during the project's execution.</p> <p>The contractor shall provide adequate security measures in place to ensure the safety of project personnel, including provisions for well-lit areas, security personnel, and emergency response plans, as well as safety of the site.</p> <p>In the course of ensuring that project assets and personnel are secured and safeguarded in a legitimate manner, the contractor shall assess the risks and impacts upon workers and communities in and surrounding the project area of influence resulting</p>

GCC	Sub-Clause/Clause	Remarks
		<p>from the use of arrangements provided by security personnel, whether privately outsourced or client provided.</p> <p>When the contractor retains direct or contracted workers to provide security to safeguard its personnel and property, it will assess risks posed by these security arrangements to those within and outside the project site.</p>
22.9	Protection of the Environment	<p>The contractor will ensure the works comply with allowable levels of emissions, surface discharge, effluent and other pollutants associated with project implementation in line with national laws, policies and regulations.</p> <p>Operations shall be conducted in a manner that preserves the natural landscape, avoiding unnecessary destruction or scarring, as stipulated in the project's Environmental and Social Impact Assessment (ESIA) report and its Environmental and Social Management Plan (ESMP). The contractor shall use construction methods that minimize adverse effects on the environment, including vegetation, soils, groundwater, surface water, biodiversity, and natural drainage.</p> <p>The contractor shall avoid adverse and detrimental impacts on the environment, ensuring a safe and healthy environment for all persons including members of the public. When avoidance of impacts is not fully possible and only when justified, the contractor will identify and implement measures to address impacts in accordance with the mitigation hierarchy.</p> <p>The contractor will carry out a tree planting exercise at locations identified in consultation with client the</p>

GCC	Sub-Clause/Clause	Remarks
		<p>community, and relevant authorities. The contractor will plant trees worth KES 5,000,000 or a minimum of 30,000 trees. The cost covers the entire process, which includes selecting tree species with high survival rates, transporting seedlings, preparing the land, planting the seedlings at the start of the rainy seasons, and caring for the planted trees for 12 months.</p> <p>The contractor shall implement the planned methods and schedule for vegetation clearing in the C-ESMP, with specific approval from the Project Manager required before any clearing work begins. The approval will be based on an inventory of the trees number and type already prepared by the contractor and submitted to the Project Manager.</p> <p>The contractor shall take effective steps to prevent soil contamination during construction. The contractor must use best practices and technologies to comply with these limits, and regularly monitor and assess soil quality.</p> <p>The contractor is required to comply with national laws on permissible noise levels, with specific limits for daytime and nighttime operations.</p> <p>The contractor shall implement the 3R principle (Reduce, Reuse, Recycle) for solid waste management as per the national laws.</p> <p>The use of hazardous chemicals will be minimised during the project, ensuring they are handled according to safety and environmental guidelines.</p> <p>For the approval of borrow pits and access roads, the contractor shall submit the following to the Project Manager as part of the ESMP Framework: the proposed locations of borrow areas or excavation sites, any excavation or blasting permits obtained from regulatory bodies, proposed locations for</p>



GCC	Sub-Clause/Clause	Remarks
		<p>stockpiling backfill material or zones designated for demolition debris, a map indicating the access routes to the Project Areas, and a rehabilitation plan. Any new borrow pits/quarries will be subjected to the ESIA process as required by national law prior to any exploitation.</p> <p>The contractor shall adhere to ecological impact &amp; biodiversity protection through implementation of ESIA recommendations, and ensure personnel are trained in protecting fauna and flora. Clearing methods must prevent trapping animals, and interaction with wildlife or collection of flora is prohibited.</p> <p>The contractor shall ensure water resource management through prioritizing local communities' water demands and only abstract surface and underground water with community consultation and a permit from the Water Resource Authority.</p>
22.12	Cultural Heritage Findings	<p>The contractor shall avoid impacts on cultural heritage. When avoidance of impacts is not possible, the contractor will identify and implement measures to address impacts on cultural heritage in accordance with the mitigation hierarchy.</p> <p>The Contractor shall incorporate the cultural heritage findings from the ESIA seamlessly into the CESMP. This entails utilizing the baseline information provided by the ESIA to guide decision-making during construction, implementing measures to mitigate potential impacts on cultural heritage, and engaging with local communities and experts for collaborative input.</p> <p>The Contractor shall conduct meaningful engagement with local communities and relevant stakeholders wherever possible to gather</p>

GCC	Sub-Clause/Clause	Remarks
		<p>comprehensive information on cultural heritage sites and practices including social cultural practices.</p> <p>In the event of any unexpected discovery of cultural heritage artifacts or features during construction activities, the Contractor shall immediately report the same to the project environmental and social experts through the Project Manager.</p>

### ***Management and Safety of Hazardous Materials***

The Contractor shall avoid or minimize the potential for community exposure to hazardous materials and substances that may be released by the project. Where there is a potential for the public (including workers and their families) to be exposed to hazards, particularly those that may be life threatening, the Borrower will exercise special care to avoid or minimize their exposure by modifying, substituting, or eliminating the condition or material causing the potential hazards. Where hazardous materials are part of existing project infrastructure or components, the contractor will exercise due care during construction and implementation of the project, including decommissioning, to avoid exposure to the community.

The Contractor shall implement measures and actions to control the safety of deliveries of hazardous materials, and of storage, transportation and disposal of hazardous materials and wastes, and will implement measures to avoid or control community exposure to such hazardous material.

### ***Resource Efficiency and Pollution Prevention and Management***

- ***Resource efficiency***

The contractor shall evaluate and, if appropriate, implement financially feasible and cost-effective measures for improving efficiency in the project's consumption of resources such as energy, water, raw materials, and other resources.

- ***Raw materials:***

The contractor shall implement measures to enhance the efficiency of raw material use. This includes designing the project to minimize the use of raw materials, using sustainable or recycled materials, implementing effective waste management strategies, and monitoring and documenting raw material use.

The Contractor shall source all materials needed to construct the proposed project from the licensed suppliers, mines and /or quarries. In instances where materials are

to be obtained from a new burrow area; the Contractor shall comply with relevant legislations.

- ***Pollution prevention and management*** (See also GCC Sub-Clause 22.9 and the table above)

- ***Management of air pollution:***

The contractor shall apply pollution prevention and control measures consistent with national legislation and standards, applicable international conventions, and internationally recognized standards and good practice, particularly the EHS Guidelines.

The Contractor shall guarantee that emissions of pollutants into the air from construction activities adhere to the limits stipulated by local environmental regulations. Specific limits for pollutants, including but not limited to particulate matter (PM), nitrogen oxides (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), and volatile organic compounds (VOCs), shall be clearly defined. The Contractor is responsible for implementing measures and utilizing technologies that ensure compliance with these defined limits. Regular monitoring and reporting of emissions shall be conducted throughout the project to verify adherence to environmental regulations. This commitment underscores the importance of maintaining air quality standards and minimizing the environmental impact of construction activities.

- ***Management of hazardous and nonhazardous wastes:***

The Contractor shall determine the potential hazardous materials to be used or generated throughout the lifecycle of the project and consider alternatives that use or generate less hazardous materials. The contractor shall not manufacture, trade, donate or use any chemicals that are banned or subject to phase-out by international treaties, including ozone-depleting substances and persistent organic pollutants.

- ***Management of chemicals and hazardous materials:***

The Contractor shall avoid or minimize the potential for community exposure to hazardous materials and substances that may be released by the project. Where there is a potential for the public (including workers and their families) to be exposed to hazards, particularly those that may be life threatening, the Borrower will exercise special care to avoid or minimize their exposure by modifying, substituting, or eliminating the condition or material causing the potential hazards. Where hazardous materials are part of existing project infrastructure or components, the contractor will exercise due care during construction and implementation of the project, including decommissioning, to avoid exposure to the community.

The Contractor shall implement measures and actions to control the safety of deliveries of hazardous materials, and of storage, transportation and disposal of hazardous materials and wastes, and will implement measures to avoid or control community exposure to such hazardous material.

- ***Biodiversity, renewable resources, and ecosystem services***

The contractor shall take all necessary steps to protect and enhance biodiversity in and around the construction sites, prioritize the use of renewable resources wherever possible. This includes using renewable materials and energy sources in the construction process and take into account the value of ecosystem services when planning and implementing the project. This includes avoiding negative impacts on ecosystem services and implementing measures to enhance these services where possible.

- ***Road Safety***

The contractor shall implement measures to enhance road safety on the construction site. This includes providing safety training, organizing the site to allow safe movement of vehicles and pedestrians, increasing worker and worksite visibility, controlling traffic, ensuring the use of safety equipment, and having emergency and first aid plans in place.

- ***Noise and vibration levels***

The Contractor shall be required to adhere to permissible noise levels as defined by local regulations, with specific limits for both daytime and nighttime operations. Additionally, the Contractor shall explicitly address measures for mitigating noise pollution, including those related to excessive vibrations resulting from activities such as blasting.

- ***Payment for E&S Obligations and Requirements***

The Contractor will ensure that the cost the delivery of the ES requirements outlined in this bid document as well as the project ESMP and C-ESMP is covered. The payment for the delivery of ES requirements shall be a subsidiary obligation of the Contractor.

- ***Reporting On E&S***

The Contractor shall undertake daily site inspections to ensure proper implementation of measures, address problematic conditions, and anticipate and mitigate significant negative impacts. A monthly Environmental, Social, Health & Safety Report activity report will summarize all ESHS initiatives implemented in relation to the execution of

the Works during the reporting period to the Project Manager monthly. The Monthly Report should cover at minimum the executive summaries, construction activities, monitoring results, interpretations, graphical representations, status of mitigation measures, corrective and preventive actions, action on recommendations, summary of complaints, investigation results, and future key issues. The report will cover at minimum the Environmental and Social (ES) metrics set out in Appendix C.

Within 6 weeks after completing construction works, the Contractor shall submit the Final Environmental and Social Monitoring Report. These reports will include construction activity descriptions, overall monitoring results, graphical representations, and lessons learned, and metrics set out in Appendix C.

## Contractor's Representative and Key PersonnelT

*Contractor's representative and other key personnel for Narok and Bomet substations*

No.	Position	Requirements			
		Minimum Educational Degree	Total Work Experience (years)	Experience In Similar Work (years)	Special experience
P1	Contractor's Representative	Bachelor's degree in civil/mechanical/electrical engineering	20	15	Project management experience in at least 3 (three) 132 kV (and above) transmission line projects, among which at least 1 (one) shall be in Africa.
P2	Construction Manager and Site Supervisors				
	<ul style="list-style-type: none"> <li>Construction Manager</li> </ul>	Bachelor's degree in electrical/ mechanical/ civil/ Structural Engineering	15	10	Construction management experience in at least 3 (three) 132 kV (and above) transmission line projects, among which at least 1 (one) shall be in Africa
	<ul style="list-style-type: none"> <li>Site Supervisor for Foundation &amp; earthing</li> </ul>	Bachelor's degree in civil/ Structural Engineering	10	7	Site supervision experience in at least 3 (three) 132 kV (and above) transmission line projects
	<ul style="list-style-type: none"> <li>Site Supervisor for Tower Erection</li> </ul>	Bachelor's degree in mechanical/ civil/ Structural Engineering	10	7	
	<ul style="list-style-type: none"> <li>Site Supervisor for Stringing</li> </ul>	Bachelor's degree in mechanical/ civil/ structural/electrical Engineering	10	7	

P3	Project Planner	Bachelor's degree	10	7	Project planning experience in at least 3 (three) 132 kV (and above) transmission line projects, among which at least 1 (one) shall be in Africa
P4	Transmission Line specialist				Transmission line designing experience in at least 3 (three) 132 kV (and above) transmission line projects
	• Electrical design specialist	Bachelor's degree in electrical engineering	15	10	
	• Mechanical design specialist	Bachelor's degree in mechanical/ civil/ Structural Engineering	15	10	
P5	Civil/Structural specialist	Bachelor's degree in civil/ Structural Engineering	15	10	Transmission line designing experience in at least 3 (three) 132 kV (and above) transmission line projects

P6	Social safeguards specialist	Bachelor's degree in sociology, Development studies, community development or relevant field	10	8	<p><i>Social safeguards experience in at least 3 (three) 132 kV (and above) transmission line projects, among which at least 1 (one) shall be in Africa.</i></p> <p><i>Demonstrated experience in implementation or supervision of large-scale infrastructure projects funded by AfDB or an equivalent financial intermediary (e.g. the World Bank, IFC etc.).</i></p> <p><i>The projects needs to be of similar complexity with experience on children and women's right, community engagement, gender based violence prevention, addressing sexual exploitation, sexual abuse and sexual harassment cases etc.</i></p>
----	------------------------------------	--	----	---	--



P7	Safety, Health, and Environment specialist	Bachelor's degree in environmental science, Occupational Health and Safety, Environmental Engineering, or relevant field	10	8	HSE experience in at least 3 (three) 132 kV (and above) transmission line projects, among which at least 1 (one) shall be in Africa. Demonstrated experience in implementation or supervision of large-scale infrastructure projects funded by AfDB or an equivalent financial intermediary (e.g. the World Bank, IFC etc.). Must be a NEMA registered expert with a valid practicing license.
P8	Surveyor	Bachelor's degree in surveying/ geomatic engineering	10	7	Surveying experience in at least 3 (three) 132 kV (and above) transmission line projects, among which at least 1 (one) shall be in Africa

*\* One expert for each substation at Narok and Bomet*

*Notes:*

*All personnel shall be fluent in reading, writing and speaking the English language*

*The contractor's engineers who shall form part of the key personnel must be registered as Professional Engineers with the Engineers Board of Kenya. Compliance with this shall be mandatory upon award.*

## Forms and Procedures

### Form of Completion Certificate

Date: \_\_\_\_\_

Loan/Credit N°: \_\_\_\_\_

IFB N°: \_\_\_\_\_

To: \_\_\_\_\_

Dear Ladies and/or Gentlemen,

Pursuant to GCC Clause 24 (Completion of the Facilities) of the General Conditions of the Contract entered into between yourselves and the Employer dated \_\_\_\_\_, relating to the \_\_\_\_\_, we hereby notify you that the following part(s) of the Facilities was (were) complete on the date specified below, and that, in accordance with the terms of the Contract, the Employer hereby takes over the said part(s) of the Facilities, together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

1. Description of the Facilities or part thereof: \_\_\_\_\_
2. Date of Completion: \_\_\_\_\_

However, you are required to complete the outstanding items listed in the attachment hereto as soon as practicable.

This letter does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the Defect Liability Period.

Very truly yours,

\_\_\_\_\_

Title

(Project Manager)

## Form of Operational Acceptance Certificate

Date: \_\_\_\_\_

Loan/Credit N°: \_\_\_\_\_

IFB N°: \_\_\_\_\_

\_\_\_\_\_

To: \_\_\_\_\_

Dear Ladies and/or Gentlemen,

Pursuant to GCC Sub-Clause 25.3 (Operational Acceptance) of the General Conditions of the Contract entered into between yourselves and the Employer dated \_\_\_\_\_, relating to the \_\_\_\_\_, we hereby notify you that the Functional Guarantees of the following part(s) of the Facilities were satisfactorily attained on the date specified below.

1. Description of the Facilities or part thereof: \_\_\_\_\_
2. Date of Operational Acceptance: \_\_\_\_\_

This letter does not relieve you of your obligation to complete the execution of the Facilities in accordance with the Contract nor of your obligations during the Defect Liability Period.

Very truly yours,

\_\_\_\_\_

Title

(Project Manager)

## Change Order Procedure and Forms

Date: \_\_\_\_\_

Loan/Credit N°: \_\_\_\_\_

IFB N°: \_\_\_\_\_

### CONTENTS

1. General
2. Change Order Log
3. References for Changes

### ANNEXES

- Annex 1 Request for Change Proposal
- Annex 2 Estimate for Change Proposal
- Annex 3 Acceptance of Estimate
- Annex 4 Change Proposal
- Annex 5 Change Order
- Annex 6 Pending Agreement Change Order
- Annex 7 Application for Change Proposal

## Change Order Procedure

### 1. General

This section provides samples of procedures and forms for implementing changes in the Facilities during the performance of the Contract in accordance with GCC Clause 39 (Change in the Facilities) of the General Conditions.

### 2. Change Order Log

The Contractor shall keep an up-to-date Change Order Log to show the current status of Requests for Change and Changes authorized or pending, as Annex 8. Entries of the Changes in the Change Order Log shall be made to ensure that the log is up-to-date. The Contractor shall attach a copy of the current Change Order Log in the monthly progress report to be submitted to the Employer.

### 3. References for Changes

- (1) Request for Change as referred to in GCC Clause 39 shall be serially numbered CR-X-nnn.
- (2) Estimate for Change Proposal as referred to in GCC Clause 39 shall be serially numbered CN-X-nnn.
- (3) Acceptance of Estimate as referred to in GCC Clause 39 shall be serially numbered CA-X-nnn.
- (4) Change Proposal as referred to in GCC Clause 39 shall be serially numbered CP-X-nnn.
- (5) Change Order as referred to in GCC Clause 39 shall be serially numbered CO-X-nnn.

Note: (a) Requests for Change issued from the Employer's Home Office and the Site representatives of the Employer shall have the following respective references:

Home Office	CR-H-nnn
Site	CR-S-nnn

- (b) The above number "nnn" is the same for Request for Change, Estimate for Change Proposal, Acceptance of Estimate, Change Proposal and Change Order.

## Annex 1. Request for Change Proposal

(Employer's Letterhead)

To: \_\_\_\_\_

Date: \_\_\_\_\_

Attention: \_\_\_\_\_

Contract Name: \_\_\_\_\_

Contract Number: \_\_\_\_\_

Dear Ladies and/or Gentlemen:

With reference to the captioned Contract, you are requested to prepare and submit a Change Proposal for the Change noted below in accordance with the following instructions within \_\_\_\_\_ days of the date of this letter \_\_\_\_\_.

1. Title of Change: \_\_\_\_\_

2. Change Request No. \_\_\_\_\_

3. Originator of Change: Employer: \_\_\_\_\_

Contractor (by Application for Change Proposal No. \_\_\_\_\_<sup>1</sup>:

4. Brief Description of Change: \_\_\_\_\_

5. Facilities and/or Item No. of equipment related to the requested Change:  
\_\_\_\_\_

6. Reference drawings and/or technical documents for the request of Change:

<u>Drawing No./Document No.</u>	<u>Description</u>
---------------------------------	--------------------

7. Detailed conditions or special requirements on the requested Change:  
\_\_\_\_\_  
\_\_\_\_\_

8. General Terms and Conditions:

- (a) Please submit your estimate to us showing what effect the requested Change will have on the Contract Price.
- (b) Your estimate shall include your claim for the additional time, if any, for completion of the requested Change.
- (c) If you have any opinion negative to the adoption of the requested Change in connection with the conformability to the other provisions of the Contract or the safety of the Plant or Facilities, please inform us of your opinion in your proposal of revised provisions.
- (d) Any increase or decrease in the work of the Contractor relating to the services of its personnel shall be calculated.
- (e) You shall not proceed with the execution of the work for the requested Change until we have accepted and confirmed the amount and nature in writing.

---

(Employer's Name)

---

(Signature)

---

(Name of signatory)

---

(Title of signatory)

## Annex 2. Estimate for Change Proposal

(Contractor's Letterhead)

To: \_\_\_\_\_

Date: \_\_\_\_\_

Attention: \_\_\_\_\_

Contract Name: \_\_\_\_\_

Contract Number: \_\_\_\_\_

Dear Ladies and/or Gentlemen:

With reference to your Request for Change Proposal, we are pleased to notify you of the approximate cost of preparing the below-referenced Change Proposal in accordance with GCC Sub-Clause 39.2.1 of the General Conditions. We acknowledge that your agreement to the cost of preparing the Change Proposal, in accordance with GCC Sub-Clause 39.2.2, is required before estimating the cost for change work.

1. Title of Change: \_\_\_\_\_
2. Change Request No./Rev.: \_\_\_\_\_
3. Brief Description of Change: \_\_\_\_\_
4. Scheduled Impact of Change: \_\_\_\_\_
5. Cost for Preparation of Change Proposal: \_\_\_\_\_<sup>2</sup>
  - (a) Engineering (Amount)
    - (i) Engineer \_\_\_\_\_ hrs x \_\_\_\_\_ rate/hr = \_\_\_\_\_
    - (ii) Draftsperson \_\_\_\_\_ hrs x \_\_\_\_\_ rate/hr = \_\_\_\_\_
    - Sub-total \_\_\_\_\_ hrs \_\_\_\_\_
    - Total Engineering Cost \_\_\_\_\_

<sup>2</sup> Costs shall be in the currencies of the Contract.



(b) Other Cost \_\_\_\_\_

Total Cost (a) + (b) \_\_\_\_\_

\_\_\_\_\_  
(Contractor's Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name of signatory)

\_\_\_\_\_  
(Title of signatory)

### Annex 3. Acceptance of Estimate

(Employer's Letterhead)

To: \_\_\_\_\_

Date: \_\_\_\_\_

Attention: \_\_\_\_\_

Contract Name: \_\_\_\_\_

Contract Number: \_\_\_\_\_

Dear Ladies and/or Gentlemen:

We hereby accept your Estimate for Change Proposal and agree that you should proceed with the preparation of the Change Proposal.

1. Title of Change: \_\_\_\_\_
2. Change Request No./Rev.: \_\_\_\_\_
3. Estimate for Change Proposal No./Rev.: \_\_\_\_\_
4. Acceptance of Estimate No./Rev.: \_\_\_\_\_
5. Brief Description of Change: \_\_\_\_\_
6. Other Terms and Conditions: In the event that we decide not to order the Change accepted, you shall be entitled to compensation for the cost of preparation of

Change Proposal described in your Estimate for Change Proposal mentioned in para. 3 above in accordance with GCC Clause 39 of the General Conditions.

---

(Employer's Name)

---

(Signature)

---

(Name and Title of signatory)

## Annex 4. Change Proposal

(Contractor's Letterhead)

To: \_\_\_\_\_

Date: \_\_\_\_\_

Attention: \_\_\_\_\_

Contract Name: \_\_\_\_\_

Contract Number: \_\_\_\_\_

Dear Ladies and/or Gentlemen:

In response to your Request for Change Proposal No. \_\_\_\_\_, we hereby submit our proposal as follows:

1. Title of Change: \_\_\_\_\_
2. Change Proposal No./Rev.: \_\_\_\_\_
3. Originator of Change: Employer: / \_\_\_\_\_  
Contractor: \_\_\_\_\_
4. Brief Description of Change: \_\_\_\_\_
5. Reasons for Change: \_\_\_\_\_
6. Facilities and/or Item No. of Equipment related to the requested Change: \_\_\_\_\_
7. Reference drawings and/or technical documents for the requested Change:

<u>Drawing/Document No.</u>	<u>Description</u>
-----------------------------	--------------------

8. Estimate of increase/decrease to the Contract Price resulting from Change Proposal:<sup>3</sup>

	(Amount)
(a) Direct material	_____
(b) Major construction equipment	_____
(c) Direct field labor (Total ____ hrs)	_____
(d) Subcontracts	_____
(e) Indirect material and labor	_____
(f) Site supervision	_____
(g) Head office technical staff salaries	
Process engineer      _____ hrs @ _____ rate/hr	_____
Project engineer      _____ hrs @ _____ rate/hr	_____
Equipment engineer    _____ hrs @ _____ rate/hr	_____
Procurement          _____ hrs @ _____ rate/hr	_____
Draftsperson          _____ hrs @ _____ rate/hr	_____
Total                    _____ hrs	_____
(h) Extraordinary costs (computer, travel, etc.)	_____
(i) Fee for general administration, ____ % of Items	_____
(j) Taxes and customs duties	_____
Total lump sum cost of Change Proposal	_____
<i>(Sum of items (a) to (j))</i>	
Cost to prepare Estimate for Change Proposal	_____

---

<sup>3</sup> Costs shall be in the currencies of the Contract.

*(Amount payable if Change is not accepted)*

9. Additional time for Completion required due to Change Proposal
10. Effect on the Functional Guarantees
11. Effect on the other terms and conditions of the Contract
12. Validity of this Proposal: within *[Number]* days after receipt of this Proposal by the Employer
13. Other terms and conditions of this Change Proposal:
  - (a) You are requested to notify us of your acceptance, comments or rejection of this detailed Change Proposal within \_\_\_\_\_ days from your receipt of this Proposal.
  - (b) The amount of any increase and/or decrease shall be taken into account in the adjustment of the Contract Price.
  - (c) Contractor's cost for preparation of this Change Proposal:<sup>2</sup>

---

(Contractor's Name)

---

(Signature)

---

(Name of signatory)

---

(Title of signatory)

---

<sup>2</sup> Specify where necessary.

## Annex 5. Change Order

(Employer's Letterhead)

To: \_\_\_\_\_

Date: \_\_\_\_\_

Attention: \_\_\_\_\_

Contract Name: \_\_\_\_\_

Contract Number: \_\_\_\_\_

Dear Ladies and/or Gentlemen:

We approve the Change Order for the work specified in the Change Proposal (No. \_\_\_\_\_), and agree to adjust the Contract Price, Time for Completion and/or other conditions of the Contract in accordance with GCC Clause 39 of the General Conditions.

1. Title of Change: \_\_\_\_\_

2. Change Request No./Rev.: \_\_\_\_\_

3. Change Order No./Rev.: \_\_\_\_\_

4. Originator of Change: Employer: \_\_\_\_\_

Contractor: \_\_\_\_\_

5. Authorized Price:

Ref. No.: \_\_\_\_\_

Date: \_\_\_\_\_

Foreign currency portion \_\_\_\_\_ plus Local currency portion \_\_\_\_\_

6. Adjustment of Time for Completion

None

Increase \_\_\_\_\_ days

Decrease \_\_\_\_\_ days

7. Other effects, if any

Authorized by: \_\_\_\_\_  
(Employer)

Date: \_\_\_\_\_

Accepted by: \_\_\_\_\_  
(Contractor)

Date: \_\_\_\_\_



## Annex 6. Pending Agreement Change Order

(Employer's Letterhead)

To: \_\_\_\_\_

Date: \_\_\_\_\_

Attention: \_\_\_\_\_

Contract Name: \_\_\_\_\_

Contract Number: / \_\_\_\_\_

Dear Ladies and/or Gentlemen:

We instruct you to carry out the work in the Change Order detailed below in accordance with GCC Clause 39 of the General Conditions.

1. Title of Change: \_\_\_\_\_
2. Employer's Request for Change Proposal No./Rev.:  
\_\_\_\_\_ dated: \_\_\_\_\_
3. Contractor's Change Proposal No./Rev.: \_\_\_\_\_ dated:  
\_\_\_\_\_
4. Brief Description of Change: \_\_\_\_\_
5. Facilities and/or Item No. of equipment related to the requested Change:  
\_\_\_\_\_
6. Reference Drawings and/or technical documents for the requested Change:  

<u>Drawing/Document No.</u>	<u>Description</u>
7. Adjustment of Time for Completion:
8. Other change in the Contract terms:
9. Other terms and conditions:

---

(Employer's Name)

---

(Signature)

---

(Name of signatory)

---

(Title of signatory)

## Annex 7. Application for Change Proposal

(Contractor's Letterhead)

To: \_\_\_\_\_

Date: \_\_\_\_\_

Attention: \_\_\_\_\_

Contract Name: \_\_\_\_\_

Contract Number: \_\_\_\_\_

Dear Ladies and/or Gentlemen:

We hereby propose that the below-mentioned work be treated as a Change in the Facilities.

1. Title of Change: \_\_\_\_\_
2. Application for Change Proposal No./Rev.: \_\_\_\_\_ dated: \_\_\_\_\_
3. Brief Description of Change: \_\_\_\_\_
4. Reasons for Change:
5. Order of Magnitude Estimation (in the currencies of the Contract):
6. Scheduled Impact of Change:
7. Effect on Functional Guarantees, if any:

8. Appendix:

---

(Contractor's Name)

---

(Signature)

---

(Name of signatory)

---

(Title of signatory)

Drawings

**Refer to Part 2D – Drawings**



Supplementary Information

**Refer to Part 2E – Technical Schedules**







## **PART 3 – Conditions of Contract and Contract Forms**



# Section VIII - General Conditions of Contract

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# General Conditions of Contract

## A. Contract and Interpretation

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

"Contract" means the Contract Agreement entered into between the Employer and the Contractor, together with the Contract Documents referred to therein; they shall constitute the Contract, and the term "the Contract" shall in all such documents be construed accordingly.

"Contract Documents" means the documents listed in Article 1.1 (Contract Documents) of the Contract Agreement (including any amendments thereto).

"GCC" means the General Conditions of Contract hereof.

"PCC" means the Particular Conditions of Contract.

"day" means calendar day.

"year" means 365 days.

"month" means calendar month.

"Party" means the Employer or the Contractor, as the context requires, and "Parties" means both of them.

"Employer" means the person **named as such in the PCC** and includes the legal successors or permitted assigns of the Employer.

"Project Manager" means the person appointed by the Employer in the manner provided in GCC Sub-Clause 17.1 (Project Manager) hereof and **named as such in the PCC** to perform the duties delegated by the Employer.

"Contractor" means the person(s) whose Bid to perform the Contract has been accepted by the Employer and is named as Contractor in the Contract Agreement, and includes the legal successors or permitted assigns of the Contractor.

"Contractor's Representative" means any person nominated by the Contractor and approved by the Employer in the manner

provided in GCC Sub-Clause 17.2 (Contractor's Representative and Construction Manager) hereof to perform the duties delegated by the Contractor.

"Construction Manager" means the person appointed by the Contractor's Representative in the manner provided in GCC Sub-Clause 17.2.4.

"Subcontractor," including manufacturers, means any person to whom execution of any part of the Facilities, including preparation of any design or supply of any Plant, is sub-contracted directly or indirectly by the Contractor, and includes its legal successors or permitted assigns.

"Dispute Board" (DB) means the person or persons named as such in the PCC appointed by agreement between the Employer and the Contractor to make a decision with respect to any dispute or difference between the Employer and the Contractor referred to him or her by the Parties pursuant to GCC Sub-Clause 46.1 (Dispute Board) hereof.

"The Bank" means the financing institution **named in the PCC**.

"Contract Price" means the sum specified in Article 2.1 (Contract Price) of the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.

"Facilities" means the Plant to be supplied and installed, as well as all the Installation Services to be carried out by the Contractor under the Contract.

"Plant" means permanent plant, equipment, machinery, apparatus, materials, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract (including the spare parts to be supplied by the Contractor under GCC Sub-Clause 7.3 hereof), but does not include Contractor's Equipment.

"Installation Services" means all those services ancillary to the supply of the Plant for the Facilities, to be provided by the Contractor under the Contract, such as transportation and provision of marine or other similar insurance, inspection, expediting, site preparation works (including the provision and use of Contractor's Equipment and the supply of all construction

materials required), installation, testing, precommissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc... as the case may require.

“Contractor’s Equipment” means all facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, completion and maintenance of Facilities that are to be provided by the Contractor, but does not include Plant, or other things intended to form or forming part of the Facilities.

“Country of Origin” means the countries and territories eligible under the rules of the Bank as further **elaborated in the PCC**.

“Site” means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the Contract as forming part of the Site.

“Effective Date” means the date of fulfillment of all conditions stated in Article 3 (Effective Date) of the Contract Agreement, from which the Time for Completion shall be counted.

“Time for Completion” means the time within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained, as referred to in GCC Clause 8 and in accordance with the relevant provisions of the Contract.

“Completion” means that the Facilities (or a specific part thereof where specific parts are specified in the Contract) have been completed operationally and structurally and put in a tight and clean condition, that all work in respect of Precommissioning of the Facilities or such specific part thereof has been completed, and that the Facilities or specific part thereof are ready for Commissioning as provided in GCC Clause 24 (Completion) hereof.

“Precommissioning” means the testing, checking and other requirements specified in the Employer’s Requirements that are to be carried out by the Contractor in preparation for Commissioning as provided in GCC Clause 24 (Completion) hereof.

"Commissioning" means operation of the Facilities or any part thereof by the Contractor following Completion, which operation is to be carried out by the Contractor as provided in GCC Sub-Clause 25.1 (Commissioning) hereof, for the purpose of carrying out Guarantee Test(s).

"Guarantee Test(s)" means the test(s) specified in the Employer's Requirements to be carried out to ascertain whether the Facilities or a specified part thereof is able to attain the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, in accordance with the provisions of GCC Sub-Clause 25.2 (Guarantee Test) hereof.

"Operational Acceptance" means the acceptance by the Employer of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts), which certifies the Contractor's fulfillment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GCC Clause 28 (Functional Guarantees) hereof and shall include deemed acceptance in accordance with GCC Clause 25 (Commissioning and Operational Acceptance) hereof.

"Defect Liability Period" means the period of validity of the warranties given by the Contractor commencing at Completion of the Facilities or a part thereof, during which the Contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GCC Clause 27 (Defect Liability) hereof.

"ES" means Environmental and Social (including Sexual Exploitation and Abuse (SEA), and Sexual Harassment (SH)).

"Sexual Exploitation and Abuse" "(SEA)" means the following:

**Sexual Exploitation** is defined as any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.

Sexual Abuse is defined as the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions;



"Sexual Harassment" "(SH)" is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by the Contractor's Personnel with other Contractor's Personnel or Employer's Personnel.

"Contractor's Personnel" means all personnel whom the Contractor utilizes in the execution of the Contract, including the staff, labor and other employees of the Contractor and each Subcontractor; and any other personnel assisting the Contractor in the execution of the Contract; and

"Employer's Personnel" means all staff, labor and other employees of the Project Manager and of the Employer engaged in fulfilling the Employer's obligations under the Contract; and any other personnel identified as Employer's Personnel, by a notice from the Employer to the Contractor.

**2. Contract Documents**      2.1 Subject to Article 1.2 (Order of Precedence) of the Contract Agreement, all documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract shall be read as a whole.

**3. Interpretation**      3.1 In the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word "agree," "agreed," or "agreement" require the agreement to be recorded in writing;
- (d) the word "tender" is synonymous with "Bid," "tenderer," with "Bidder," and "tender documents" with "Bidding Document," and
- (e) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

### 3.2 Incoterms

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*.

Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1<sup>er</sup>, 75008 Paris, France.

### 3.3 Entire Agreement

Subject to GCC Sub-Clause 16.4 hereof, the Contract constitutes the entire agreement between the Employer and Contractor with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of Parties with respect thereto made prior to the date of Contract.

### 3.4 Amendment

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

### 3.5 Independent Contractor

The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the Parties hereto. Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Employer, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and the Employer.

### 3.6 Non-Waiver

3.6.1 Subject to GCC Sub-Clause 3.6.2 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, nor shall any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

3.6.2 Any waiver of a Party's rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.

### 3.7 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.

### 3.8 Country of Origin

"Origin" means the place where the plant and component parts thereof are mined, grown, produced or manufactured, and from which the services are provided. Plant components are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is substantially in its basic characteristics or in purpose or utility from its components.

## 4. **Communica- tions**

4.1 Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

- (a) in writing and delivered against receipt; and
- (b) delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract Agreement.

When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Project Manager, a copy shall be sent to the Project Manager or the other Party, as the case may be.

5. **Law and Language**
- 5.1 The Contract shall be governed by and interpreted in accordance with laws of the country **specified in the PCC**.
- 5.2 The ruling language of the Contract shall be that **stated in the PCC**.
- 5.3 The language for communications shall be the ruling language unless otherwise **stated in the PCC**.
6. **Fraud and Corruption; and Eligibility**
- 6.1 The Bank requires compliance with the Integrity Framework comprising the African Development Bank Group's Sanctions Procedures, the Bank's Whistleblowing and Complaints Policy, the Bank's Procurement Policy under the Procurement Framework and any other applicable Policies and Procedures including their updates, as set forth in Appendix B to the GCC.
- 6.2 The Employer requires the Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the Bidding process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.
- 6.3 The Contractor and its Subcontractor or Suppliers shall have the nationality of an eligible country of the Bank in accordance with the Bank's Procurement Policy for the Bank Group Funded Operation described under the Bank's Procurement Framework, and as listed in Section V, Eligible Countries. The Contractor shall be deemed to have the nationality of a country if the Contractor is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or subconsultants for any part of the Contract including related Services. All materials, equipment and services to be supplied under the Contract shall have their country of origin in an eligible country of the Bank in accordance with the Bank's Procurement Policy for Bank Group Funded Operations described under the Bank's Procurement Framework, and as listed in Section V, Eligible Countries under Appendix D.

## B. Subject Matter of Contract

## 7. Scope of Facilities

- 7.1 Unless otherwise expressly limited in the Employer's Requirements, the Contractor's obligations cover the provision of all Plant and the performance of all Installation Services required for the design, and the manufacture (including procurement, quality assurance, construction, installation, associated civil works, Precommissioning and delivery) of the Plant, and the installation, completion and commissioning of the Facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Section, Employer's Requirements. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labor, materials, equipment, spare parts (as specified in GCC Sub-Clause 7.3 below) and accessories; Contractor's Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and services that will be provided or performed by the Employer, as set forth in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer.
- 7.2 The Contractor shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.
- 7.3 In addition to the supply of Mandatory Spare Parts included in the Contract, the Contractor agrees to supply spare parts required for the operation and maintenance of the Facilities for the period **specified in the PCC** and the provisions, if any, **specified in the PCC**. However, the identity, specifications and quantities of such spare parts and the terms and conditions relating to the supply thereof are to be agreed between the Employer and the Contractor, and the price of such spare parts shall be that given in Price Schedule No. 6, which shall be added to the Contract Price. The price of such spare parts shall include the purchase price therefor and other costs and expenses

(including the Contractor's fees) relating to the supply of spare parts.

**8. Time for Commencement and Completion**

- 8.1 The Contractor shall commence work on the Facilities within the period **specified in the PCC** and without prejudice to GCC Sub-Clause 26.2 hereof, the Contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in the Appendix to the Contract Agreement titled Time Schedule.
- 8.2 The Contractor shall attain Completion of the Facilities or of a part where a separate time for Completion of such part is specified in the Contract, within the time **stated in the PCC** or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.

**9. Contractor's Responsibilities**

- 9.1 The Contractor shall design, manufacture including associated purchases and/or subcontracting, install and complete the Facilities in accordance with the Contract. When completed, the Facilities should be fit for the purposes for which they are intended as defined in the Contract.
- 9.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities including any data as to boring tests provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site if access thereto was available and of other data readily available to it relating to the Facilities as of the date twenty-eight (28) days prior to Bid submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.
- 9.3 The Contractor shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and

Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under GCC Sub-Clause 10.3 hereof and that are necessary for the performance of the Contract.

- 9.4 The Contractor shall comply with all laws in force in the country where the Facilities are to be implemented. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Sub-Clause 10.1 hereof.
- 9.5 Any Plant and Installation Services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under GCC Clause 1 (Country of Origin). Any subcontractors retained by the Contractor shall be from a country as specified in GCC Clause 1 (Country of Origin).
- 9.6 (a) If the Contractor is a joint venture, or association (JV) of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfillment of the provisions of the Contract unless otherwise specified **in the PCC**; (b) The JV shall designate one of such persons to act as a leader with authority to bind the JV; (c) The composition or the constitution of the JV shall not be altered without the prior consent of the Employer; (d) As specified **in the PCC**, there is a limit on the number of members in a JV; and (e) Participation by value of the contract as share of each of the JV partner (member) shall not be less than the percentage specified **in the PCC**.
- 9.7 Pursuant to paragraph 2.2 e. of Appendix B to the General Conditions the Contractor shall permit and shall cause its subcontractors and subconsultants to permit, the Bank and/or persons appointed by the Bank to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the Bank if



requested by the Bank. The Contractor's and its Subcontractors' and subconsultants' attention is drawn to Sub-Clause 6.1 which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Bank's prevailing sanctions procedures).

9.8 The Contractor shall conform to the sustainable procurement contractual provisions, if and as specified in the PCC.

9.9 Contractor's Environmental and Social Management Plan (C-ESMP)

The Contractor shall not carry out mobilization to Site unless the Project Manager gives approval, an approval that shall not be unreasonably delayed, to the measures the Contractor proposes to address environmental and social risks and impacts including the code of conduct, in accordance with GCC Sub-Clause 22.4.

The Contractor shall submit, to the Project Manager for Review, any additional Management Strategies and Implementation Plans as are necessary to manage the ES risks and impacts of the Facilities. These Management Strategies and Implementation Plans collectively comprise the Contractor's Environmental and Social Management Plan (C-ESMP).

The Contractor shall review the C-ESMP, periodically (but not less than every six (6) months), and update it as required to ensure that it contains measures appropriate to the Facilities. The updated C-ESMP shall be submitted to the Project Manager for its approval.

#### 9.10 Training of Contractor's Personnel

The Contractor shall provide appropriate training to relevant Contractor's Personnel on ES aspects of the Contract, including appropriate sensitization on prohibition of SEA and health and safety training referred to in GCC Sub-Clause 22.2.7.

As stated in the Employer's Requirements or as instructed by the Project Manager, the Contractor shall also allow appropriate opportunities for the relevant Contractor's

Personnel to be trained on ES aspects of the Contract by the Employer's personnel and/or other personnel assigned by the Employer.

#### 9.11 Stakeholder engagements

The Contractor shall provide relevant contract- related information, as the Employer and/or Project Manager may reasonably request to conduct contract stakeholder engagement. "Stakeholder" refers to individuals or groups who:

- (a) are affected or likely to be affected by the Contract;  
and
- (b) may have an interest in the Contract.

The Contractor may also directly participate in contract stakeholder engagements, as the Employer and/or Project Manager may reasonably request.

#### 9.12 Forced Labor

The Contractor, including its Subcontractors, shall not employ or engage forced labour. Forced labour consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour-contracting arrangements.

No persons shall be employed or engaged who have been subject to trafficking. Trafficking in persons is defined as the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.

The Contractor shall also take measures to require its suppliers (other than Subcontractors) not to employ or engage forced labour including trafficked persons. If forced labour/trafficking cases are identified, the Contractor shall take measures to require the suppliers to take appropriate steps to remedy them. Where the supplier does not remedy the situation, the

Contractor shall within a reasonable period substitute the supplier with a supplier that is able to manage such risks.

#### 9.13 Child Labor

The Contractor, including its Subcontractors, shall not employ or engage a child under the age of 14 unless the national law specifies a higher age (the minimum age).

The Contractor, including its Subcontractors, shall not employ or engage a child between the minimum age and the age of 18 in a manner that is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

The Contractor including its Subcontractors, shall only employ or engage children between the minimum age and the age of 18 after an appropriate risk assessment has been conducted by the Contractor with the Engineer's consent. The Contractor shall be subject to regular monitoring by the Project Manager that includes monitoring of health, working conditions and hours of work.

Work considered hazardous for children is work that, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety, or morals of children. Such work activities prohibited for children include work:

- (a) with exposure to physical, psychological or sexual abuse;
- (b) underground, underwater, working at heights or in confined spaces;
- (c) with dangerous machinery, equipment or tools, or involving handling or transport of heavy loads;
- (d) in unhealthy environments exposing children to hazardous substances, agents, or processes, or to temperatures, noise or vibration damaging to health; or
- (e) under difficult conditions such as work for long hours, during the night or in confinement on the premises of the employer.

The Contractor shall also take measures to require its suppliers (other than Subcontractors) not to employ or engage child

labor. If child labor cases are identified, the Contractor shall take measures to require the suppliers to take appropriate steps to remedy them. Where the supplier does not remedy the situation, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to manage such risks.

#### 9.14 Serious Safety Issues

The Contractor, including its Subcontractors, shall comply with all applicable safety obligations. The Contractor shall also take measures to require its suppliers (other than Subcontractors) to adopt procedures and mitigation measures adequate to address safety issues related to their personnel. If serious safety issues are identified, the Contractor shall take measures to require the suppliers to take appropriate steps to remedy them. Where the supplier does not remedy the situation, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to manage such risks.

#### 9.15 Obtaining natural resource materials

The Contractor shall obtain natural resource materials from suppliers that can demonstrate, through compliance with the applicable verification and/ or certification requirements, that obtaining such materials is not contributing to the risk of significant conversion or significant degradation of natural or critical habitats such as unsustainably harvested wood products, gravel or sand extraction from river beds or beaches.

If a supplier cannot continue to demonstrate that obtaining such materials is not contributing to the risk of significant conversion or significant degradation of natural or critical habitats, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to demonstrate that they are not significantly adversely impacting the habitats.

### **10. Employer's Responsibilities**

10.1 All information and/or data to be supplied by the Employer as described in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, shall be deemed to be accurate, except when the Employer expressly states otherwise.

- 10.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in that Appendix.
- 10.3 The Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which (a) such authorities or undertakings require the Employer to obtain in the Employer's name, (b) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract, and (c) are specified in the Appendix (Scope of Works and Supply by the Employer).
- 10.4 If requested by the Contractor, the Employer shall use its best endeavors to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.
- 10.5 Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature, including those required by the Contractor to properly carry out Precommissioning, Commissioning and Guarantee Tests, all in accordance with the provisions of the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, at or before the time specified in the program

furnished by the Contractor under GCC Sub-Clause 18.2 hereof and in the manner thereupon specified or as otherwise agreed upon by the Employer and the Contractor.

- 10.6 The Employer shall be responsible for the continued operation of the Facilities after Completion, in accordance with GCC Sub-Clause 24.8, and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with GCC Sub-Clause 25.2.
- 10.7 All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Employer, save those to be incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GCC Sub-Clause 25.2.
- 10.8 In the event that the Employer shall be in breach of any of his obligations under this Clause, the additional cost incurred by the Contractor in consequence thereof shall be determined by the Project Manager and added to the Contract Price.

## **C. Payment**

- 11. Contract Price**
  - 11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.
  - 11.2 Unless an adjustment clause is **provided for in the PCC**, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise provided in the Contract.
  - 11.3 Subject to GCC Sub-Clauses 9.2, 10.1 and 35 hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.
- 12. Terms of Payment**
  - 12.1 The Contract Price shall be paid as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement and in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, which also outlines

the procedures to be followed in making application for and processing payments.

- 12.2 No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Facilities or any part(s) thereof.
- 12.3 In the event that the Employer fails to make any payment by its respective due date or within the period set forth in the Contract, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate(s) shown in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.
- 12.4 The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contractor's Bid.

### **13. Securities**

#### **13.1 Issuance of Securities**

The Contractor shall provide the securities specified below in favor of the Employer at the times, and in the amount, manner and form specified below.

#### **13.2 Advance Payment Security**

13.2.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with the Appendix to the Contract Agreement titled Terms and Procedures of Payment, and in the same currency or currencies.

13.2.2 The security shall be in the form provided in the Bidding documents or in another form acceptable to the Employer. The amount of the security shall be reduced in proportion to the value of the Facilities executed by and paid to the Contractor from time to time, and shall automatically become null and void when the full amount

of the advance payment has been recovered by the Employer. The security shall be returned to the Contractor immediately after its expiration.

### 13.3 Performance Security

13.3.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security for the due performance of the Contract in the amount **specified in the PCC.**

13.3.2 The Performance Security shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Employer, and shall be in the form provided in Section X, Contract Forms, corresponding to the type of bank guarantee stipulated by the Employer in the PCC, or in another form acceptable to the Employer.

13.3.3 Unless otherwise specified in the PCC, the security shall be reduced by half on the date of the Operational Acceptance. The Security shall become null and void, or shall be reduced pro rata to the Contract Price of a part of the Facilities for which a separate Time for Completion is provided, five hundred and forty (540) days after Completion of the Facilities or three hundred and sixty five (365) days after Operational Acceptance of the Facilities, whichever occurs first; provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC Sub-Clause 27.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the Contractor immediately after its expiration, provided, however, that if the Contractor, pursuant to GCC Sub-Clause 27.10, is liable for an extended defect liability obligation, the Performance Security shall be extended for the period specified in the PCC pursuant to GCC Sub-Clause 27.10 and up to the amount specified in the PCC.

13.3.4 The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract. The Employer



shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Employer was not entitled to make the claim.

#### **14. Taxes and Duties**

- 14.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the country where the Site is located.
- 14.2 Notwithstanding GCC Sub-Clause 14.1 above, the Employer shall bear and promptly pay
- (a) all customs and import duties for the Plant specified in Price Schedule No. 1; and
  - (b) other domestic taxes such as, sales tax and value added tax (VAT) on the Plant specified in Price Schedules No. 1 and No. 2 and that is to be incorporated into the Facilities, and on the finished goods, imposed by the law of the country where the Site is located.
- 14.3 If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the country where the Site is located, the Employer shall use its best endeavors to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.
- 14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date twenty-eight (28) days prior to the date of Bid submission in the country where the Site is located (hereinafter called "Tax" in this GCC Sub-Clause 14.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Contractor, Subcontractors or their employees

in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GCC Clause 36 hereof.

## **D. Intellectual Property**

### **15. License/Use of Technical Information**

- 15.1 For the operation and maintenance of the Plant, the Contractor hereby grants a non-exclusive and non-transferable license (without the right to sub-license) to the Employer under the patents, utility models or other industrial property rights owned by the Contractor or by a third Party from whom the Contractor has received the right to grant licenses thereunder, and shall also grant to the Employer a non-exclusive and non-transferable right (without the right to sub-license) to use the know-how and other technical information disclosed to the Employer under the Contract. Nothing contained herein shall be construed as transferring ownership of any patent, utility model, trademark, design, copyright, know-how or other intellectual property right from the Contractor or any third Party to the Employer.
- 15.2 The copyright in all drawings, documents and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third Party, including suppliers of materials, the copyright in such materials shall remain vested in such third Party.

### **16. Confidential Information**

- 16.1 The Employer and the Contractor 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 termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to

perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GCC Clause 16.

- 16.2 The Employer shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the Contractor shall not use such documents, data and other information received from the Employer for any purpose other than the design, procurement of Plant, construction or such other work and services as are required for the performance of the Contract.
- 16.3 The obligation of a Party under GCC Sub-Clauses 16.1 and 16.2 above, however, shall not apply to that information which
- (a) now or hereafter enters the public domain through no fault of that Party
  - (b) 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 hereto
  - (c) otherwise lawfully becomes available to that Party from a third Party that has no obligation of confidentiality.
- 16.4 The above provisions of this GCC Clause 16 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 Facilities or any part thereof.
- 16.5 The provisions of this GCC Clause 16 shall survive termination, for whatever reason, of the Contract.

## **E. Execution of the Facilities**

### **17. Representatives**    17.1 Project Manager

If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Employer shall appoint and notify the Contractor in writing of the name of the Project Manager. The Employer may from time to time appoint some other

person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Employer at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.

All notices, instructions, information and other communications given by the Contractor to the Employer under the Contract shall be given to the Project Manager, except as herein otherwise provided.

## 17.2 Contractor's Representative & Construction Manager

17.2.1 If the Contractor's Representative is not named in the Contract, then within fourteen (14) days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Employer in writing to approve the person so appointed. If the Employer makes no objection to the appointment within fourteen (14) days, the Contractor's Representative shall be deemed to have been approved. If the Employer objects to the appointment within fourteen (14) days giving the reason therefor, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GCC Sub-Clause 17.2.1 shall apply thereto.

17.2.2 The Contractor's Representative shall represent and act for the Contractor at all times during the performance of the Contract and shall give to the Project Manager all the Contractor's notices,

instructions, information and all other communications under the Contract.

All notices, instructions, information and all other communications given by the Employer or the Project Manager to the Contractor under the Contract shall be given to the Contractor's Representative or, in its absence, its deputy, except as herein otherwise provided.

The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC Sub-Clause 17.2.1.

17.2.3 The Contractor's Representative may, subject to the approval of the Employer which shall not be unreasonably withheld, at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Project Manager.

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Sub-Clause 17.2.3 shall be deemed to be an act or exercise by the Contractor's Representative.

17.2.4 From the commencement of installation of the Facilities at the Site until Completion, the Contractor's Representative shall appoint a suitable person as the Construction Manager. The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons

connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as the Construction Manager's deputy.

17.2.5 The Project Manager may require the Contractor to remove (or cause to be removed) the Contractor's Representative or any other person employed by the Contractor in the execution of the Contract, who:

- (a) persists in any misconduct or lack of care;
- (b) carries out duties incompetently or negligently;
- (c) fails to comply with any provision of the Contract;
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment;
- (e) based on reasonable evidence, is determined to have engaged in Fraud and Corruption during the execution of the Contract;
- (f) has been recruited from the Employer's Personnel in breach of GCC Sub-Clause 22.2.2;
- (g) undertakes behaviour which breaches the Code of Conduct (ES), as applicable;

If appropriate, the Contractor shall then promptly appoint (or cause to be appointed) a suitable replacement with equivalent skills and experience.

Notwithstanding any requirement from the Project Manager to remove or cause to remove any person, the Contractor shall take immediate action as appropriate in response to any violation of (a) through (g) above. Such immediate action shall include removing (or causing to be removed) from the Site or other places where the Contract is being executed, any Contractor's Personnel who engages in (a), (b), (c), (d), (e) or (g) above or has been recruited as stated in (f) above

17.2.6. If any representative or person employed by the Contractor is removed in accordance with GCC Sub-Clause 17.2.5, the Contractor shall, where required, promptly appoint a replacement.

## 18. Work Program

### 18.1 Contractor's Organization

The Contractor shall supply to the Employer and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out work on the Facilities within twenty-one (21) days of the Effective Date. The chart shall include the identities of the key personnel and the curricula vitae of such key personnel to be employed shall be supplied together with the chart. The Contractor shall promptly inform the Employer and the Project Manager in writing of any revision or alteration of such an organization chart.

### 18.2 Program of Performance

Within twenty-eight (28) days after the Effective Date, the Contractor shall submit to the Project Manager a detailed program of performance of the Contract, made in a form acceptable to the Project Manager and showing the sequence in which it proposes to design, manufacture, transport, assemble, install and precommission the Facilities, as well as the date by which the Contractor reasonably requires that the Employer shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve Completion, Commissioning and Acceptance of the Facilities in accordance with the Contract. The program so submitted by the Contractor shall accord with the Time Schedule included in the Appendix to the Contract Agreement titled Time Schedule, and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion specified in the PCC pursuant to Sub-Clause 8.2 and any extension granted in accordance with GCC Clause 40, and shall submit all such revisions to the Project Manager.

### 18.3 Progress Report

The Contractor shall monitor progress of all the activities specified in the program referred to in GCC Sub-Clause 18.2 above, and supply a progress report to the Project Manager every month.

The progress report shall be in a form acceptable to the Project Manager and shall indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken.

Unless otherwise stated in the Specifications, each progress report shall include the Environmental and Social (ES) metrics set out in Appendix C.

In addition to the progress reports, the Contractor shall inform the Project Manager immediately of any allegation, incident or accident in the Site, which has or is likely to have a significant adverse effect on the environment, the affected communities, the public, Employer's Personnel or Contractor's Personnel. This includes, but is not limited to, any incident or accident causing fatality or serious injury; significant adverse effects or damage to private property; or any allegation of SEA and/or SH. In case of SEA and/or SH, while maintaining confidentiality as appropriate, the type of allegation (sexual exploitation, sexual abuse or sexual harassment), gender and age of the person who experienced the alleged incident should be included in the information.

The Contractor, upon becoming aware of the allegation, incident or accident, shall also immediately inform the Project Manager of any such incident or accident on the Subcontractors' or suppliers' premises relating to the Facilities which has or is likely to have a significant adverse effect on the environment, the affected communities, the public, Employer's Personnel, or Contractor's, its Subcontractors' and suppliers' personnel. The notification shall provide sufficient detail regarding such incidents or accidents. The Contractor shall provide full details of such



incidents or accidents to the Project Manager within the timeframe agreed with the Project Manager.

The Contractor shall require its Subcontractors and suppliers to immediately notify the Contractor of any incidents or accidents referred to in this Subclause.

#### 18.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the program referred to in GCC Sub-Clause 18.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Employer or the Project Manager, prepare and submit to the Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under GCC Sub-Clause 8.2, any extension thereof entitled under GCC Sub-Clause 40.1, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.

#### 18.5 Procedures

The Contract shall be executed in accordance with the Contract Documents including the procedures given in the Forms and Procedures of the Employer's Requirements.

The Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract.

### 19. Subcontracting

19.1 The Appendix to the Contract Agreement titled List of Major Items of Plant and Installation Services and List of Approved Subcontractors, specifies major items of supply or services and a list of approved Subcontractors against each item, including manufacturers. Insofar as no Subcontractors are listed against any such item, the Contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The Contractor may from

time to time propose any addition to or deletion from any such list. The Contractor shall submit any such list or any modification thereto to the Employer for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the Employer for any of the Subcontractors shall not relieve the Contractor from any of its obligations, duties or responsibilities under the Contract.

- 19.2 The Contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GCC Sub-Clause 19.1.
- 19.3 For items or parts of the Facilities not specified in the Appendix to the Contract Agreement titled List of Major Items of Plant and Installation Services and List of Approved Subcontractors, the Contractor may employ such Subcontractors as it may select, at its discretion.
- 19.4 Each sub-contract shall include provisions which would entitle the Employer to require the sub-contract to be assigned to the Employer under GCC 19.5 (if and when applicable), or in event of termination by the Employer under GCC 42.2.
- 19.5 If a subcontractor's obligations extend beyond the expiry date of the relevant Defects Liability Period and the Project Manager, prior to that date, instructs the Contractor to assign the benefits of such obligations to the Employer, then the Contractor shall do so.
- 19.6 The Contractor shall ensure that its Subcontractors execute the Facilities in accordance with the Contract, including complying with the relevant ES requirements and the obligations set out in GCC Sub-Clause 22.4.

## **20. Design and Engineering**

### **20.1 Specifications and Drawings**

- 20.1.1 The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.

The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and

other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer.

20.1.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the Employer, by giving a notice of such disclaimer to the Project Manager.

## 20.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of Bid submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied subject to approval by the Employer and shall be treated in accordance with GCC Clause 39.

## 20.3 Approval/Review of Technical Documents by Project Manager

20.3.1 The Contractor shall prepare or cause its Subcontractors to prepare, and furnish to the Project Manager the documents listed in the Appendix to the Contract Agreement titled List of Documents for Approval or Review, for its approval or review as specified and in accordance with the requirements of GCC Sub-Clause 18.2 (Program of Performance).

Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.

GCC Sub-Clauses 20.3.2 through 20.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

20.3.2 Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Sub-Clause 20.3.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefor and the modifications that the Project Manager proposes.

If the Project Manager fails to take such action within the said fourteen (14) days, then the said document shall be deemed to have been approved by the Project Manager.

20.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with the Contract or that it is contrary to good engineering practice.

20.3.4 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Sub-Clause 20.3.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.

20.3.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the Parties within a reasonable period, then such dispute or difference may be referred to a Dispute Board for determination in accordance

with GCC Sub-Clause 46.1 hereof. If such dispute or difference is referred to a Dispute Board, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Dispute Board upholds the Contractor's view on the dispute and if the Employer has not given notice under GCC Sub-Clause 46.3 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Dispute Board shall decide, and the Time for Completion shall be extended accordingly.

20.3.6 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.

20.3.7 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GCC Sub-Clause 20.3.

If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 39 shall apply to such request.

## 21. Procurement

### 21.1 Plant

Subject to GCC Sub-Clause 14.2, the Contractor shall procure and transport all Plant in an expeditious and orderly manner to the Site.

## 21.2 Employer-Supplied Plant

If the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, provides that the Employer shall furnish any specific items to the Contractor, the following provisions shall apply:

21.2.1 The Employer shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the Parties and make such item available to the Contractor at the time specified in the program furnished by the Contractor, pursuant to GCC Sub-Clause 18.2, unless otherwise mutually agreed.

21.2.2 Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect or default. The Employer shall immediately remedy any shortage, defect or default, or the Contractor shall, if practicable and possible, at the request of the Employer, remedy such shortage, defect or default at the Employer's cost and expense. After inspection, such item shall fall under the care, custody and control of the Contractor. The provision of this GCC Sub-Clause 21.2.2 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items that have been repaired.

21.2.3 The foregoing responsibilities of the Contractor and its obligations of care, custody and control shall not relieve the Employer of liability for any undetected shortage, defect or default, nor place the Contractor under any liability for any such shortage, defect or default whether under GCC Clause 27 or under any other provision of Contract.

## 21.3 Transportation

21.3.1 The Contractor shall at its own risk and expense transport all the materials and the Contractor's

Equipment to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances.

21.3.2 Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the materials and the Contractor's Equipment.

21.3.3 Upon dispatch of each shipment of materials and the Contractor's Equipment, the Contractor shall notify the Employer by telex, cable, facsimile or electronic means, of the description of the materials and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Contractor shall furnish the Employer with relevant shipping documents to be agreed upon between the Parties.

21.3.4 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the materials and the Contractor's Equipment to the Site. The Employer shall use its best endeavors in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the materials and the Contractor's Equipment to the Site.

#### 21.4 Customs Clearance

The Contractor shall, at its own expense, handle all imported materials and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Employer's obligations under GCC Sub-Clause 14.2, provided that if applicable

laws or regulations require any application or act to be made by or in the name of the Employer, the Employer shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance that are not the fault of the Contractor, the Contractor shall be entitled to an extension in the Time for Completion, pursuant to GCC Clause 40.

## 22. Installation

### 22.1 Setting Out/Supervision

22.1.1 Bench Mark: The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Employer.

If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Employer, the expense of rectifying the same shall be borne by the Employer.

22.1.2 Contractor's Supervision: The Contractor shall give or provide all necessary superintendence during the installation of the Facilities, and the Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

### 22.2 Labor:

#### 22.2.1 Engagement of Staff and Labor



Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labor, local or otherwise, and for their payment, housing, feeding and transport.

The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labor that has the necessary skills.

The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labor and personnel to be employed on the Site into the country where the Site is located. The Employer will, if requested by the Contractor, use his best endeavors in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national or government permission required for bringing in the Contractor's personnel.

The Contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to the place where they were recruited or to their domicile. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Employer may provide the same to such personnel and recover the cost of doing so from the Contractor.

The Contractor shall provide Contractor's Personnel employed for the execution of the Contract at the Site or other places where the Installation Services are carried out, relevant

information and documentation that are clear and understandable regarding their terms and conditions of employment. The information and documentation shall set out their rights under relevant labor laws applicable to the Contractor's Personnel (which will include any applicable collective agreements), including their rights related to hours of work, wages, overtime, compensation and benefits, as well as those arising from any requirements in the Employer's Requirements. The Contractor's Personnel shall be informed when any material changes to their terms or conditions of employment occur.

#### 22.2.2 Persons in the Service of Employer

The Contractor shall not recruit, or attempt to recruit, staff and labor from amongst the Employer's Personnel.

#### 22.2.3 Labor Laws

The Contractor shall comply with all the relevant labor Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labor of its Subcontractors.

The Contractor shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labor.

#### 22.2.4 Rates of Wages and Conditions of Labor

The Contractor shall pay rates of wages, and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

The Contractor shall inform the Contractor's Personnel about:

- (a) any deduction to their payment and the conditions of such deductions in accordance with the applicable laws or as stated in the Employer's Requirements; and
- (b) their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the laws of the Country for the time being in force.

The Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws.

Where required by applicable Laws or as stated in the Employer's Requirements, the Contractor and its Subcontractors shall provide their personnel written notice of termination of employment and details of severance payments in a timely manner. The Contractor and its Subcontractors shall have paid their personnel (either directly or where appropriate for their benefit) all due wages and entitlements including, as applicable, social security benefits and pension contributions, on or before the end of their engagement/ employment.

#### 22.2.5 Working Hours

No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours **stated in the PCC**, unless:

- (a) otherwise stated in the Contract,
- (b) the Project Manager gives consent, or
- (c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Project Manager.

If and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Project Manager's consent thereto, the Project Manager shall not unreasonably withhold such consent.

This Sub-Clause shall not apply to any work which is customarily carried out by rotary or double-shifts.

#### 22.2.6 Facilities for Staff and Labor

Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel employed for the execution of the Contract at the Site or other places where the Installation Services are carried out. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Employer's Requirements.

If stated in the Employer's Requirements, the Contractor shall give access to or provide services that accommodate the physical, social and cultural needs of the Contractor's Personnel. The Contractor shall also provide similar facilities for the Employer's Personnel as stated in the Employer's Requirements.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Facilities.

#### 22.2.7 Health and Safety

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel employed for the execution of Installation Services at the Site (or other places in the country where the Site is located).

The Contractor shall:

- (a) comply with all applicable health and safety regulations and laws;
- (b) comply with all applicable health and safety obligations specified in the Contract;
- (c) develop and implement procedures to establish and maintain a safe working environment without risk to health at all workplaces, machinery, equipment and processes under the control of the Contractor, including control measures for chemical, physical and biological substances and agents;
- (d) provide health and safety training of the Contractor's Personnel as appropriate and maintain training records;
- (e) actively engage the Contractor's Personnel in promoting understanding, and methods for, implementation of health and safety requirements, as well as in providing information to such personnel, and provision of personal protective equipment without expense to the personnel;
- (f) put in place workplace processes for the Contractor's Personnel to report work situations that they believe are not safe or

healthy, and to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health; Contractor's Personnel who remove themselves from such work situations shall not be required to return to work until necessary remedial action to correct the situation has been taken. Such personnel shall not be retaliated against or otherwise subject to reprisal or negative action for such reporting or removal;

- (g) in collaboration with local health authorities, ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel;
- (h) appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the performance of the Contract, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority;
- (i) put in place measures to avoid or minimize the potential for community exposure to water-borne, water-based, water-related, and vector-borne diseases;
- (j) put in place measures to be implemented to avoid or minimize the spread of communicable diseases (including transfer of Sexually Transmitted Diseases or Infections (STDs), such as HIV virus) and non-communicable diseases associated with the Installation Services, taking into consideration

differentiated exposure to and higher sensitivity of vulnerable groups. This includes taking measures to avoid or minimize the transmission of communicable diseases that may be associated with the influx of temporary or permanent Contract-related labor;

- (k) have in place procedures for prevention, preparedness and response activities to be implemented in the case of an emergency event (i.e. an unanticipated incident, arising from both natural and man-made hazards, typically in the form of fire, explosions, leaks or spills, which may occur for a variety of different reasons including failure to implement operating procedures that are designed to prevent their occurrence, extreme weather or lack of early warning);
- (l) collaborate, as applicable, with the Employer's personnel, any other contractors employed by the Employer, and/or personnel of any legally constituted public authorities and private utility companies that are employed in carrying out, on or near the site, of any work not included in the Contract, in applying the health and safety requirements. This is without prejudice to the responsibility of the relevant entities for the health and safety of their own personnel; and
- (m) put in place a system for regular review of health and safety performance and the working environment.

#### 22.2.8 Funeral Arrangements

In the event of the death of any of the Contractor's personnel or accompanying members of their families, the Contractor shall be responsible for making the appropriate arrangements for their

return or burial, unless otherwise **specified in the PCC.**

#### 22.2.9 Records of Contractor's Personnel

The Contractor shall keep accurate records of the Contractor's personnel, including the number of each class of Contractor's Personnel on the Site and the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis in a form approved by the Project Manager and shall be available for inspection by the Project Manager until the Contractor has completed all work.

#### 22.2.10 Supply of Foodstuffs

The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.

#### 22.2.11 Supply of Water

The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.

#### 22.2.12 Measures against Insect and Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce their danger to health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

#### 22.2.13 Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow



importation, sale, gift barter or disposal by Contractor's Personnel.

#### 22.2.14 Arms and Ammunition

The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.

#### 22.2.15 Workers' Organizations

In countries where the relevant labor laws recognize workers' rights to form and to join workers' organizations of their choosing and to bargain collectively without interference, the Contractor shall comply with such laws. In such circumstances, the role of legally established workers' organizations and legitimate workers' representatives will be respected, and they will be provided with information needed for meaningful negotiation in a timely manner. Where the relevant labor laws substantially restrict workers' organizations, the Contractor shall enable alternative means for the Contractor's and its Subcontractors' personnel to express their grievances and protect their rights regarding working conditions and terms of employment. The Contractor shall not seek to influence or control these alternative means. The Contractor shall not discriminate or retaliate against the Contractor's and its Subcontractors' personnel who participate, or seek to participate, in such organizations and collective bargaining or alternative mechanisms. Workers' organizations are expected to fairly represent the workers in the workforce.

#### 22.2.16 Non-Discrimination and Equal Opportunity

The Contractor shall not make decisions relating to the employment or treatment of Contractor's Personnel on the basis of personal characteristics unrelated to inherent job requirements. The

Contractor shall base the employment of Contractor's Personnel on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to any aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, job assignment, promotion, termination of employment or retirement, and disciplinary practices.

Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination. The Contractor shall provide protection and assistance as necessary to ensure non-discrimination and equal opportunity, including for specific groups such as women, people with disabilities, migrant workers and children (of working age in accordance with GCC Sub-Clause 9.13).

#### 22.2.17 Contractor's Personnel Grievance Mechanism

The Contractor shall have a grievance mechanism for the Contractor's Personnel, and where relevant the workers' organizations stated in subclause 22.2.15, to raise workplace concerns. The grievance mechanism shall be proportionate to the nature, scale, risks and impacts of the Contract. The mechanism shall address concerns promptly, using an understandable and transparent process that provides timely feedback to those concerned in a language they understand, without any retribution, and shall operate in an independent and objective manner.

The Contractor's Personnel shall be informed of the grievance mechanism at the time of engagement for the Contract, and the measures put in place to protect them against any reprisal for its use. Measures will be put in place to make the

grievance mechanism easily accessible to all Contractor's and its Subcontractors' personnel.

The grievance mechanism shall not impede access to other judicial or administrative remedies that might be available, or substitute for grievance mechanisms provided through collective agreements.

The grievance mechanism may utilize existing grievance mechanisms, providing that they are properly designed and implemented, address concerns promptly, and are readily accessible to such project workers. Existing grievance mechanisms may be supplemented as needed with Contract-specific arrangements.

### 22.3 Contractor's Equipment

22.3.1 All Contractor's Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Contract.

22.3.2 Unless otherwise specified in the Contract, upon completion of the Facilities, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.

22.3.3 The Employer will, if requested, use its best endeavors to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.

#### 22.4 Site Regulations and Safety

The Employer and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Employer, with a copy to the Project Manager, proposed Site regulations for the Employer's approval, which approval shall not be unreasonably withheld.

Such Site regulations shall include, but shall not be limited to, Code of Conduct for environmental and social aspects submitted as part of the Bid and agreed to by the Employer, , security arrangements in accordance with GCC Sub-Clause 22.8, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.

The Contractor shall take all necessary measures to ensure that each Contractor's Personnel, employed for the execution of the Contract at the Site or other places where the Installation Services are carried out, is made aware of the Code of Conduct including specific behaviors that are prohibited, and understands the consequences of engaging in such prohibited behaviors.

These measures include providing instructions and documentation that can be understood by the Contractor's Personnel and seeking to obtain that person's signature acknowledging receipt of such instructions and/or documentation, as appropriate.

The Contractor shall also ensure that the Code of Conduct is visibly displayed in multiple locations on the Site and any other place where the Installation Services will be carried out, as well as in areas outside the Site accessible to the local community and project affected people. The posted Code of Conduct shall be provided in languages comprehensible to Contractor's Personnel, Employer's Personnel and the local community.

The Contractor's Management Strategy and Implementation Plans shall include appropriate processes

for the Contractor to verify compliance with these obligations.

## 22.5 Opportunities for Other Contractors

22.5.1 The Contractor shall, upon written request from the Employer or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors employed by the Employer on or near the Site.

22.5.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services.

22.5.3 The Contractor shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of the Employer in regard to their work.

22.5.4 The Contractor shall notify the Project Manager promptly of any defects in the other contractors' work that come to its notice, and that could affect the Contractor's work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the

Facilities. Decisions made by the Project Manager shall be binding on the Contractor.

#### 22.6 Emergency Work

If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Facilities, the Contractor shall immediately carry out such work.

If the Contractor is unable or unwilling to do such work immediately, the Employer may do or cause such work to be done as the Employer may determine is necessary in order to prevent damage to the Facilities. In such event the Employer shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefor. If the work done or caused to be done by the Employer is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Employer in connection therewith shall be paid by the Contractor to the Employer. Otherwise, the cost of such remedial work shall be borne by the Employer.

#### 22.7 Site Clearance

22.7.1 Site Clearance in Course of Performance: In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of the Contract.

22.7.2 Clearance of Site after Completion: After Completion of all parts of the Facilities, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and Facilities in a clean and safe condition.

## 22.8 Security of the Site

The Contractor shall be responsible for the security of the Site including providing and maintaining at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Facilities, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.

If required in the Employer's Requirements, the Contractor shall submit for the Project Manager's No-objection a security management plan that sets the security arrangements for the Site.

In making security arrangements, the Contractor shall be guided by applicable laws and any other requirements stated in the Employer's Requirements.

The Contractor shall (i) conduct appropriate background checks on any personnel retained to provide security; (ii) train the security personnel adequately (or determine that they are properly trained) in the use of force (and where applicable, firearms), and appropriate conduct towards Contractor's and Sub-contractor's personnel, Employer's personnel and affected communities; and (iii) require the security personnel to act within the applicable Laws and any requirements set out in the Employer's Requirements.

The Contractor shall not permit any use of force by security personnel in providing security except when used for preventive and defensive purposes in proportion to the nature and extent of the threat.

## 22.9 Protection of the Environment

The Contractor shall take all necessary measures to:

- i. protect the environment (both on and off the Site);  
and

- ii. limit damage and nuisance to people and property resulting from pollution, noise and other results of the Contractor's operations and/ or activities.

The Contractor shall ensure that emissions, surface discharges, effluent and any other pollutants from the Contractor's activities shall exceed neither the values indicated in the Employer's Requirements, nor those prescribed by applicable laws.

In the event of damage to the environment, property and/or nuisance to people, on or off Site as a result of the Contractor's operations, the Contractor shall agree with the Project Manager the appropriate actions and time scale to remedy, as practicable, the damaged environment to its former condition. The Contractor shall implement such remedies at its cost to the satisfaction of the Project Manager.

#### 22.10 Traffic and Road Safety

The Contractor shall take all necessary safety measures to avoid the occurrence of incidents and injuries to any third party associated with the use of Contractor's Equipment on public roads or other public infrastructure.

The Contractor shall monitor and use road safety incidents and accidents reports to identify negative safety issues, and establish and implement necessary measures to resolve them.

#### 22.11 – Cultural Heritage Findings

All fossils, coins, articles of value or antiquity, structures, groups of structures, and other remains or items of geological, archaeological, paleontological, historical, architectural, religious interest found on the Site shall be placed under the care and custody of the Employer.

The Contractor shall:

- (a) take all reasonable precautions, including fencing-off the area or site of the finding, to avoid further disturbance and prevent Contractor's and



Subcontractors' personnel or other persons from removing or damaging any of these findings;

- (b) as soon as practicable after discovery of any such finding, give a notice to the Project Manager, to give the Project Manager the opportunity to promptly inspect and/or investigate the finding before it is disturbed and to issue instructions for dealing with it;
- (c) train relevant Contractor's and its Subcontractors' personnel on the procedures for handling such findings; and
- (d) implement any other action consistent with the requirements of the Employer's Requirements and relevant laws.

If the Contractor suffers delay and/or incurs extra costs from complying with the Project Manager instructions, the Contractor shall be entitled to an extension of time under GCC Sub-Clause 40.1, and the amount of such extra costs shall be added to the Contract Price.

## **23. Test and Inspection**

- 23.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and any part of the Facilities as are specified in the Contract.
- 23.2 The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 23.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third Party or manufacturer any necessary permission or consent to

enable the Employer and the Project Manager or their designated representatives to attend the test and/or inspection.

- 23.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.

If the Employer or Project Manager or their designated representatives fails to attend the test and/or inspection, or if it is agreed between the Parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.

- 23.5 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor'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 impede the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.

- 23.6 If any Plant or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 23.3.

- 23.7 If any dispute or difference of opinion shall arise between the Parties in connection with or arising out of the test and/or inspection of the Plant or part of the Facilities that cannot be settled between the Parties within a reasonable period of time, it may be referred to an Dispute Board for determination in accordance with GCC Sub-Clause 46.3.

- 23.8 The Contractor shall afford the Employer and the Project Manager, at the Employer's expense, access at any reasonable time to any place where the Plant are being manufactured or the Facilities are being installed, in order

to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice. Without prejudice to GCC Sub-Clause 9.7, as instructed by the Project Manager, the Contractor shall also afford other relevant entities (at the Employer's or their respective entities' expense, as appropriate) access to the Facilities, to inspect progress and the manner of the execution of the Facilities, carry out environmental and social audit, as appropriate, or carry out any other duty as stated in the Employer's Requirements or as instructed by the Project Manager.

23.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant or any part of the Facilities, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GCC Sub-Clause 23.4, shall release the Contractor from any other responsibilities under the Contract.

23.10 No part of the Facilities or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Project Manager whenever any such parts of the Facilities or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.

23.11 The Contractor shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.

If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GCC Sub-Clause 23.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by

the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

#### **24. Completion of the Facilities**

24.1 As soon as the Facilities or any part thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Employer's Requirements, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Employer in writing.

24.2 Within seven (7) days after receipt of the notice from the Contractor under GCC Sub-Clause 24.1, the Employer shall supply the operating and maintenance personnel specified in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer for Precommissioning of the Facilities or any part thereof.

Pursuant to the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, the Employer shall also provide, within the said seven (7) day period, the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Precommissioning of the Facilities or any part thereof.

24.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Employer and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters have been provided by the Employer in accordance with GCC Sub-Clause 24.2, the Contractor shall commence Precommissioning of the Facilities or the relevant part thereof in preparation for Commissioning, subject to GCC Sub-Clause 25.5.

24.4 As soon as all works in respect of Precommissioning are completed and, in the opinion of the Contractor, the Facilities or any part thereof is ready for Commissioning, the Contractor shall so notify the Project Manager in writing.

24.5 The Project Manager shall, within fourteen (14) days after receipt of the Contractor's notice under GCC Sub-Clause 24.4, either issue a Completion Certificate in the form specified in the Employer's Requirements (Forms and Procedures), stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's notice under GCC Sub-Clause 24.4, or notify the Contractor in writing of any defects and/or deficiencies.

If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure described in GCC Sub-Clause 24.4.

If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within seven (7) days after receipt of the Contractor's repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's repeated notice.

If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within seven (7) days after receipt of the Contractor's repeated notice, and the above procedure shall be repeated.

24.6 If the Project Manager fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies within fourteen (14) days after receipt of the Contractor's notice under GCC Sub-Clause 24.4 or within seven (7) days after receipt of the Contractor's repeated notice under GCC Sub-Clause 24.5, or if the Employer makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the Contractor's notice or repeated notice, or as of the Employer's use of the Facilities, as the case may be.

- 24.7 As soon as possible after Completion, the Contractor shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the Employer will undertake such completion and deduct the costs thereof from any monies owing to the Contractor.
- 24.8 Upon Completion, the Employer shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.

**25. Commissioning  
and Operational  
Acceptance**

25.1 Commissioning

25.1.1 Commissioning of the Facilities or any part thereof shall be commenced by the Contractor immediately after issue of the Completion Certificate by the Project Manager, pursuant to GCC Sub-Clause 24.5, or immediately after the date of the deemed Completion, under GCC Sub-Clause 24.6.

25.1.2 The Employer shall supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Commissioning.

25.1.3 In accordance with the requirements of the Contract, the Contractor's and Project Manager's advisory personnel shall attend the Commissioning, including the Guarantee Test, and shall advise and assist the Employer.

25.2 Guarantee Test

25.2.1 Subject to GCC Sub-Clause 25.5, the Guarantee Test and repeats thereof shall be conducted by the Contractor during Commissioning of the Facilities or the relevant part thereof to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional

Guarantees. The Employer shall promptly provide the Contractor with such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test and any repeats thereof.

25.2.2 If for reasons not attributable to the Contractor, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period from the date of Completion **specified in the PCC** or any other period agreed upon by the Employer and the Contractor, the Contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and GCC Sub-Clauses 28.2 and 28.3 shall not apply.

### 25.3 Operational Acceptance

25.3.1 Subject to GCC Sub-Clause 25.4 below, Operational Acceptance shall occur in respect of the Facilities or any part thereof when

- (a) the Guarantee Test has been successfully completed and the Functional Guarantees are met; or
- (b) the Guarantee Test has not been successfully completed or has not been carried out for reasons not attributable to the Contractor within the period from the date of Completion specified in the PCC pursuant to GCC Sub-Clause 25.2.2 above or any other period agreed upon by the Employer and the Contractor; or
- (c) the Contractor has paid the liquidated damages specified in GCC Sub-Clause 28.3 hereof; and
- (d) any minor items mentioned in GCC Sub-Clause 24.7 hereof relevant to the Facilities or that part thereof have been completed.

25.3.2 At any time after any of the events set out in GCC Sub-Clause 25.3.1 have occurred, the Contractor may give a notice to the Project Manager requesting the issue of an Operational Acceptance

Certificate in the form provided in the Employer's Requirements (Forms and Procedures) in respect of the Facilities or the part thereof specified in such notice as of the date of such notice.

25.3.3 The Project Manager shall, after consultation with the Employer, and within seven (7) days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.

25.3.4 If within seven (7) days after receipt of the Contractor's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as of the date of the Contractor's said notice.

#### 25.4 Partial Acceptance

25.4.1 If the Contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.

25.4.2 If a part of the Facilities comprises facilities such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the Contractor shall thereafter complete any outstanding minor items that are listed in the Operational Acceptance Certificate.

#### 25.5 Delayed Precommissioning and/or Guarantee Test



25.5.1 In the event that the Contractor is unable to proceed with the Precommissioning of the Facilities pursuant to Sub-Clause 24.3, or with the Guarantee Test pursuant to Sub-Clause 25.2, for reasons attributable to the Employer either on account of non availability of other facilities under the responsibilities of other contractor(s), or for reasons beyond the Contractor's control, the provisions leading to "deemed" completion of activities such as Completion, pursuant to GCC Sub-Clause 24.6, and Operational Acceptance, pursuant to GCC Sub-Clause 25.3.4, and Contractor's obligations regarding Defect Liability Period, pursuant to GCC Sub-Clause 27.2, Functional Guarantee, pursuant to GCC Clause 28, and Care of Facilities, pursuant to GCC Clause 32, and GCC Clause 41.1, Suspension, shall not apply. In this case, the following provisions shall apply.

25.5.2 When the Contractor is notified by the Project Manager that he will be unable to proceed with the activities and obligations pursuant to above Sub-Clause 25.5.1, the Contractor shall be entitled to the following:

- (a) the Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GCC Sub-Clause 26.2;
- (b) payments due to the Contractor in accordance with the provision specified in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, which would not have been payable in normal circumstances due to non-completion of the subject activities, shall be released to the Contractor against submission of a security in the form of a bank guarantee of equivalent amount acceptable to the Employer, and which shall become null and void when the

Contractor will have complied with its obligations regarding those payments, subject to the provision of Sub-Clause 25.5.3 below;

- (c) the expenses towards the above security and extension of other securities under the contract, of which validity needs to be extended, shall be reimbursed to the Contractor by the Employer;
- (d) the additional charges towards the care of the Facilities pursuant to GCC Sub-Clause 32.1 shall be reimbursed to the Contractor by the Employer for the period between the notification mentioned above and the notification mentioned in Sub-Clause 25.5.4 below. The provision of GCC Sub-Clause 33.2 shall apply to the Facilities during the same period.

25.5.3 In the event that the period of suspension under above Sub-Clause 25.5.1 actually exceeds one hundred eighty (180) days, the Employer and Contractor shall mutually agree to any additional compensation payable to the Contractor.

25.5.4 When the Contractor is notified by the Project Manager that the plant is ready for Precommissioning, the Contractor shall proceed without delay in performing Precommissioning in accordance with Clause 24.

## **F. Guarantees and Liabilities**

### **26. Completion Time Guarantee**

26.1 The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified) within the Time for Completion specified in the PCC pursuant to GCC Sub-Clause 8.2, or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.

26.2 If the Contractor fails to attain Completion of the Facilities or any part thereof within the Time for Completion or any

extension thereof under GCC Clause 40, the Contractor shall pay to the Employer liquidated damages in the amount **specified in the PCC** as a percentage rate of the Contract Price or the relevant part thereof. The aggregate amount of such liquidated damages shall in no event exceed the amount **specified as "Maximum" in the PCC** as a percentage rate of the Contract Price. Once the "Maximum" is reached, the Employer may consider termination of the Contract, pursuant to GCC Sub-Clause 42.2.2.

Such payment shall completely satisfy the Contractor's obligation to attain Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension thereof under GCC Clause 40. The Contractor shall have no further liability whatsoever to the Employer in respect thereof.

However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Contractor under the Contract.

Save for liquidated damages payable under this GCC Sub-Clause 26.2, the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in the Appendix to the Contract Agreement titled Time Schedule, and/or other program of work prepared pursuant to GCC Sub-Clause 18.2 shall not render the Contractor liable for any loss or damage thereby suffered by the Employer.

- 26.3 If the Contractor attains Completion of the Facilities or any part thereof before the Time for Completion or any extension thereof under GCC Clause 40, the Employer shall pay to the Contractor a bonus in the amount **specified in the PCC**. The aggregate amount of such bonus shall in no event exceed the amount **specified as "Maximum" in the PCC**.

## 27. Defect Liability

- 27.1 The Contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering,

materials and workmanship of the Plant supplied and of the work executed.

27.2 The Defect Liability Period shall be five hundred and forty (540) days from the date of Completion of the Facilities (or any part thereof) or one year from the date of Operational Acceptance of the Facilities (or any part thereof), whichever first occurs, unless specified otherwise in the PCC pursuant to GCC Sub-Clause 27.10.

If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Plant supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good as the Contractor shall determine at its discretion, such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:

- (a) improper operation or maintenance of the Facilities by the Employer;
- (b) operation of the Facilities outside specifications provided in the Contract; or
- (c) normal wear and tear.

27.3 The Contractor's obligations under this GCC Clause 27 shall not apply to:

- (a) any materials that are supplied by the Employer under GCC Sub-Clause 21.2, are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein;
- (b) any designs, specifications or other data designed, supplied or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility herein; or

- (c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GCC Sub-Clause 27.7.

27.4 The Employer shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect any such defect.

27.5 The Employer shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GCC Clause 27.

The Contractor may, with the consent of the Employer, remove from the Site any Plant or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.

27.6 If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Employer may give to the Contractor a notice requiring that tests of the defective part of the Facilities shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.

If such part fails the tests, the Contractor shall carry out further repair, replacement or making good, as the case may be, until that part of the Facilities passes such tests. The tests shall be agreed upon by the Employer and the Contractor.

27.7 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the Employer may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Employer in connection therewith shall be paid to the Employer by the Contractor or may be deducted by the

Employer from any monies due the Contractor or claimed under the Performance Security.

- 27.8 If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Employer because of any of the aforesaid reasons.
- 27.9 Except as provided in GCC Clauses 27 and 33, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Plant, design or engineering or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, or criminal or willful action of the Contractor.
- 27.10 In addition, any such component of the Facilities, and during the period of time as may be **specified in the PCC**, shall be subject to an extended defect liability period. Such obligation of the Contractor shall be in addition to the defect liability period specified under GCC Sub-Clause 27.2.

## **28. Functional Guarantees**

- 28.1 The Contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, subject to and upon the conditions therein specified.
- 28.2 If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, modifications and/or additions, and shall request the Employer to repeat the Guarantee Test until the minimum level of the Guarantees

has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Employer may consider termination of the Contract, pursuant to GCC Sub-Clause 42.2.2.

28.3 If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the said Appendix to the Contract Agreement is met, the Contractor shall, at the Contractor's option, either

- (a) make such changes, modifications and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Employer to repeat the Guarantee Test or
- (b) pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the Appendix to the Contract Agreement titled Functional Guarantees.

28.4 The payment of liquidated damages under GCC Sub-Clause 28.3, up to the limitation of liability specified in the Appendix to the Contract Agreement titled Functional Guarantees, shall completely satisfy the Contractor's guarantees under GCC Sub-Clause 28.3, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.

## **29. Patent Indemnity**

29.1 The Contractor shall, subject to the Employer's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses,

which the Employer 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 Facilities by the Contractor or the use of the Facilities in the country where the Site is located; and (b) the sale of the products produced by the Facilities in any country.

Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Contractor, pursuant to the Contract Agreement.

- 29.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GCC Sub-Clause 29.1, the Employer shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

- 29.3 The Employer shall indemnify and hold harmless the Contractor 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 whatsoever nature, including attorney's fees and expenses, which the Contractor 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 Employer.

- 30. Limitation of Liability**
- 30.1 Except in cases of criminal negligence or willful misconduct,
- (a) neither Party shall be liable to the other Party, 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, which may be suffered by the other Party in connection with the Contract, other than specifically provided as any obligation of the Party in the Contract, and
  - (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the amount resulting from the application of the multiplier specified in the PCC, to the Contract Price or, if a multiplier is not so specified, 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 Contractor to indemnify the Employer with respect to patent infringement.

## **G. Risk Distribution**

- 31. Transfer of Ownership**
- 31.1 Ownership of the Plant (including spare parts) to be imported into the country where the Site is located shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Plant from the country of origin to that country.

- 31.2 Ownership of the Plant (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Plant are brought on to the Site.
- 31.3 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.
- 31.4 Ownership of any Plant in excess of the requirements for the Facilities shall revert to the Contractor upon Completion of the Facilities or at such earlier time when the Employer and the Contractor agree that the Plant in question are no longer required for the Facilities.
- 31.5 Notwithstanding the transfer of ownership of the Plant, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GCC Clause 32 (Care of Facilities) hereof until Completion of the Facilities or the part thereof in which such Plant are incorporated.

## **32. Care of Facilities**

- 32.1 The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Completion of the Facilities pursuant to GCC Clause 24 or, where the Contract provides for Completion of the Facilities in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GCC Clause 27. Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clauses 32.2 and 38.1.
- 32.2 If any loss or damage occurs to the Facilities or any part thereof or to the Contractor's temporary facilities by reason of

- (a) insofar as they relate to the country where the Site is located, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GCC Clause 34 hereof; or
- (b) any use or occupation by the Employer or any third Party other than a Subcontractor, authorized by the Employer of any part of the Facilities; or
- (c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the Employer, or any such matter for which the Contractor has disclaimed responsibility herein,

the Employer shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed or damaged. If the Employer requests the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with GCC Clause 39. If the Employer does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Employer shall terminate the Contract pursuant to GCC Sub-Clause 42.1 hereof.

32.3 The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the

Facilities, except (i) as mentioned in GCC Sub-Clause 32.2 with respect to the Contractor's temporary facilities, and (ii) where such loss or damage arises by reason of any of the matters specified in GCC Sub-Clauses 32.2 (b) and (c) and 38.1.

32.4 With respect to any loss or damage caused to the Facilities or any part thereof or to the Contractor's Equipment by reason of any of the matters specified in GCC Sub-Clause 38.1, the provisions of GCC Sub-Clause 38.3 shall apply.

**33. Loss of or  
Damage to  
Property;  
Accident or  
Injury to  
Workers;  
Indemnifica-  
tion**

33.1 Subject to GCC Sub-Clause 33.3, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property other than the Facilities whether accepted or not, arising in connection with the supply and installation of the Facilities and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Employer, its contractors, employees, officers or agents.

33.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GCC Sub-Clause 33.1, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

33.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Facilities not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 34, provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.

33.4 The Party entitled to the benefit of an indemnity under this GCC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the Party fails to take such measures, the other Party's liabilities shall be correspondingly reduced.

#### **34. Insurance**

34.1 To the extent specified in the Appendix to the Contract Agreement titled Insurance Requirements, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.

(a) Cargo Insurance During Transport

Covering loss or damage occurring while in transit from the Contractor's or Subcontractor's works or stores until arrival at the Site, to the Plant (including spare parts therefor) and to the Contractor's Equipment.

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities,

with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third Parties including the Employer's personnel, and loss of or damage to property occurring in connection with the supply and installation of the Facilities.

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors, whether or not owned by them, in connection with the execution of the Contract.

(e) Workers' Compensation

In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(f) Employer's Liability

In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(g) Other Insurances

Such other insurances as may be specifically agreed upon by the Parties hereto as listed in the Appendix to the Contract Agreement titled Insurance Requirements.

34.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1 except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances. All insurer's rights of

subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

- 34.3 The Contractor shall, in accordance with the provisions of the Appendix to the Contract Agreement titled Insurance Requirements, deliver to the Employer certificates of insurance or copies of the insurance policies as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.
- 34.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.
- 34.5 The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the Appendix to the Contract Agreement titled Insurance Requirements, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor's Subcontractors shall be named as co-insureds under all such policies. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Employer shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than twenty-one (21) days' notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Employer shall provide copies of the policies taken out by the Employer under this GCC Sub-Clause 34.5.
- 34.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC Sub-Clause 34.1, the Employer may take out and maintain in effect any such

insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If the Employer fails to take out and/or maintain in effect the insurances referred to in GCC 34.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Employer under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Employer. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards the Employer, and the Contractor shall have full recourse against the Employer for any and all liabilities of the Employer herein.

34.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 34, and all monies payable by any insurers shall be paid to the Contractor. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.

### **35. Unforeseen Conditions**

35.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions other than climatic conditions, or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Facilities including any data as to boring tests, provided by the Employer, and on the basis of information that it could



have obtained from a visual inspection of the Site if access thereto was available, or other data readily available to it relating to the Facilities, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant or Contractor's Equipment, notify the Project Manager in writing of

- (a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;
- (b) the additional work and/or Plant and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;
- (c) the extent of the anticipated delay; and
- (d) the additional cost and expense that the Contractor is likely to incur.

On receiving any notice from the Contractor under this GCC Sub-Clause 35.1, the Project Manager shall promptly consult with the Employer and Contractor and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.

- 35.2 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GCC Sub-Clause 35.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.

If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC Sub-Clause 35.1, the Time for Completion shall be extended in accordance with GCC Clause 40.

**36. Change in  
Laws and  
Regulations**

36.1 If, after the date twenty-eight (28) days prior to the date of Bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed which shall be deemed to include any change in interpretation or application by the competent authorities, that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs 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 the PCC pursuant to GCC Sub-Clause 11.2.

**37. Force Majeure**

37.1 "Force Majeure" shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the Party affected, and shall include, without limitation, the following:

- (a) war, hostilities or warlike operations whether a state of war be declared or not, invasion, act of foreign enemy and civil war
- (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts
- (c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler

or any other act or failure to act of any local state or national government authority

- (d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague
- (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster
- (f) shortage of labor, materials or utilities where caused by circumstances that are themselves Force Majeure.

37.2 If either Party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.

37.3 The Party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such Party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GCC Clause 40.

37.4 The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either Party's right to terminate the Contract under GCC Sub-Clauses 37.6 and 38.5.

37.5 No delay or nonperformance by either Party hereto caused by the occurrence of any event of Force Majeure shall

- (a) constitute a default or breach of the Contract, or

- (b) give rise to any claim for damages or additional cost or expense occasioned thereby, subject to GCC Sub-Clauses 32.2, 38.3 and 38.4

if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.

37.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other, but without prejudice to either Party's right to terminate the Contract under GCC Sub-Clause 38.5.

37.7 In the event of termination pursuant to GCC Sub-Clause 37.6, the rights and obligations of the Employer and the Contractor shall be as specified in GCC Sub-Clauses 42.1.2 and 42.1.3.

37.8 Notwithstanding GCC Sub-Clause 37.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.

### **38. War Risks**

38.1 "War Risks" shall mean any event specified in paragraphs (a) and (b) of GCC Sub-Clause 37.1 and any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war, occurring or existing in or near the country (or countries) where the Site is located.

38.2 Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to

- (a) destruction of or damage to Facilities, Plant, or any part thereof;
- (b) destruction of or damage to property of the Employer or any third Party; or
- (c) injury or loss of life

if such destruction, damage, injury or loss of life is caused by any War Risks, and the Employer shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.

38.3 If the Facilities or any Plant or Contractor's Equipment or any other property of the Contractor used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any War Risks, the Employer shall pay the Contractor for

(a) any part of the Facilities or the Plant so destroyed or damaged to the extent not already paid for by the Employer

and so far as may be required by the Employer, and as may be necessary for completion of the Facilities

(b) replacing or making good any Contractor's Equipment or other property of the Contractor so destroyed or damaged

(c) replacing or making good any such destruction or damage to the Facilities or the Plant or any part thereof .

If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to GCC Sub-Clause 42.1.

If the Employer requires the Contractor to replace or make good on any such destruction or damage to the Facilities, the Time for Completion shall be extended in accordance with GCC 40.

38.4 Notwithstanding anything contained in the Contract, the Employer shall pay the Contractor for any increased costs or

incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any War Risks, provided that the Contractor shall as soon as practicable notify the Employer in writing of any such increased cost.

38.5 If during the performance of the Contract any War Risks shall occur that financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other.

38.6 In the event of termination pursuant to GCC Sub-Clauses 38.3 or 38.5, the rights and obligations of the Employer and the Contractor shall be specified in GCC Sub-Clauses 42.1.2 and 42.1.3.

## H. Change in Contract Elements

### 39. Change in the Facilities

#### 39.1 Introducing a Change

39.1.1 Subject to GCC Sub-Clauses 39.2.5 and 39.2.7, the Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Facilities hereinafter called "Change", provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the

technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract.

39.1.2 Value Engineering: The Contractor may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;

- (a) the proposed change(s), and a description of the difference to the existing contract requirements;
- (b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the Employer may incur in implementing the value engineering proposal; and
- (c) a description of any effect(s) of the change on performance/functionality.

The Employer may accept the value engineering proposal if the proposal demonstrates benefits that:

- (a) accelerates the delivery period; or
  - (b) reduces the Contract Price or the life cycle costs to the Employer; or
  - (c) improves the quality, efficiency, safety or sustainability of the Facilities; or
  - (d) yields any other benefits to the Employer,
- without compromising the necessary functions of the Facilities.

If the value engineering proposal is approved by the Employer and results in:

- (a) a reduction of the Contract Price; the amount to be paid to the Contractor shall be the percentage specified in the PCC of the reduction in the Contract Price; or
- (b) an increase in the Contract Price; but results in a reduction in life cycle costs due to any benefit

described in (a) to (d) above, the amount to be paid to the Contractor shall be the full increase in the Contract Price.

39.1.3 Notwithstanding GCC Sub-Clauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.

39.1.4 The procedure on how to proceed with and execute Changes is specified in GCC Sub-Clauses 39.2 and 39.3, and further details and forms are provided in the Employer's Requirements (Forms and Procedures).

## 39.2 Changes Originating from Employer

39.2.1 If the Employer proposes a Change pursuant to GCC Sub-Clause 39.1.1, it shall send to the Contractor a "Request for Change Proposal," requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:

- (a) brief description of the Change
- (b) effect on the Time for Completion
- (c) estimated cost of the Change
- (d) effect on Functional Guarantees (if any)
- (e) effect on the Facilities
- (f) effect on any other provisions of the Contract.

39.2.2 Prior to preparing and submitting the "Change Proposal," the Contractor shall submit to the Project Manager an "Estimate for Change Proposal," which shall be an estimate of the cost of preparing and submitting the Change Proposal.

Upon receipt of the Contractor's Estimate for Change Proposal, the Employer shall do one of the following:



- (a) accept the Contractor's estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal
- (b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate
- (c) advise the Contractor that the Employer does not intend to proceed with the Change.

39.2.3 Upon receipt of the Employer's instruction to proceed under GCC Sub-Clause 39.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Sub-Clause 39.2.1.

39.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the Parties thereto shall agree on specific rates for the valuation of the Change.

39.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this GCC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than fifteen percent (15%), the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor's objection, the Employer shall withdraw the proposed Change and shall notify the Contractor in writing thereof.

The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent

objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.

39.2.6 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.

If the Employer is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.

If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GCC Sub-Clause 39.2.2.

39.2.7 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order."

Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The Parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.

If the Parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be

referred to the Dispute Board in accordance with the provisions of GCC Sub-Clause 46.1.

### 39.3 Changes Originating from Contractor

39.3.1 If the Contractor proposes a Change pursuant to GCC Sub-Clause 39.1.2, the Contractor shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GCC Sub-Clause 39.1.2.

Upon receipt of the Application for Change Proposal, the Parties shall follow the procedures outlined in GCC Sub-Clauses 39.2.6 and 39.2.7. However, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

## **40. Extension of Time for Completion**

40.1 The Time(s) for Completion specified in the PCC pursuant to GCC Sub-Clause 8.2 shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- (a) any Change in the Facilities as provided in GCC Clause 39
- (b) any occurrence of Force Majeure as provided in GCC Clause 37, unforeseen conditions as provided in GCC Clause 35, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clause 32.2
- (c) any suspension order given by the Employer under GCC Clause 41 hereof or reduction in the rate of progress pursuant to GCC Sub-Clause 41.2 or
- (d) any changes in laws and regulations as provided in GCC Clause 36 or
- (e) any default or breach of the Contract by the Employer, Appendix to the Contract Agreement titled ,or any activity, act or omission of the Employer, or the Project

Manager, or any other contractors employed by the Employer, or

- (f) any delay on the part of a Subcontractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this sub-clause, or
- (g) delays attributable to the Employer or caused by customs, or
- (h) any other matter specifically mentioned in the Contract

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

40.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to a Dispute Board, pursuant to GCC Sub-Clause 46.1.

40.3 The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

40.4 In all cases where the Contractor has given a notice of a claim for an extension of time under GCC 40.2, the Contractor shall consult with the Project Manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall there after comply with all reasonable instructions which the Project Manager shall give in order to

minimize such delay. If compliance with such instructions shall cause the Contractor to incur extra costs and the Contractor is entitled to an extension of time under GCC 40.1, the amount of such extra costs shall be added to the Contract Price.

#### **41. Suspension**

41.1 The Employer may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The Contractor shall thereupon suspend performance of such obligation, except those obligations necessary for the care or preservation of the Facilities, until ordered in writing to resume such performance by the Project Manager.

If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Clause 39, excluding the performance of the suspended obligations from the Contract.

If the Employer fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GCC Clause 39 or, where it affects the whole of the Facilities, as termination of the Contract under GCC Sub-Clause 42.1.

41.2 If

- (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period,

has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice or

- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas in accordance with GCC Sub-Clause 10.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,

then the Contractor may by fourteen (14) days' notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

41.3 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GCC Clause 41, then the Time for Completion shall be extended in accordance with GCC Sub-Clause 40.1, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.

41.4 During the period of suspension, the Contractor shall not remove from the Site any Plant, any part of the Facilities or any Contractor's Equipment, without the prior written consent of the Employer.

## **42. Termination**

### **42.1 Termination for Employer's Convenience**

42.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GCC Sub-Clause 42.1.

42.1.2 Upon receipt of the notice of termination under GCC Sub-Clause 42.1.1, the Contractor shall either immediately or upon the date specified in the notice of termination

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii) below
- (c) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition, and
- (d) subject to the payment specified in GCC Sub-Clause 42.1.3,
  - (i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination
  - (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant

as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and

- (iii) deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities.

42.1.3 In the event of termination of the Contract under GCC Sub-Clause 42.1.1, the Employer shall pay to the Contractor the following amounts:

- (a) the Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination
- (b) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel
- (c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges
- (d) costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 42.1.2
- (e) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third Parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.

## 42.2 Termination for Contractor's Default

42.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the



Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the Contractor, referring to this GCC Sub-Clause 42.2:

- (a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up, other than a voluntary liquidation for the purposes of amalgamation or reconstruction, a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt
- (b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 43.
- (c) if the Contractor, in the judgment of the Employer has engaged in Fraud and Corruption, as defined in paragraph 2.2 a. of Appendix B to the GCC, in competing for or in executing the Contract.

#### 42.2.2 If the Contractor

- (a) has abandoned or repudiated the Contract
- (b) has without valid reason failed to commence work on the Facilities promptly or has suspended, other than pursuant to GCC Sub-Clause 41.2, the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Employer to proceed
- (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause

- (d) refuses or is unable to provide sufficient materials, services or labor to execute and complete the Facilities in the manner specified in the program furnished under GCC Sub-Clause 18.2 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Facilities by the Time for Completion as extended,

then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GCC Sub-Clause 42.2.

42.2.3 Upon receipt of the notice of termination under GCC Sub-Clauses 42.2.1 or 42.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) below
- (c) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination
- (d) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required

by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors

- (e) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

42.2.4 The Employer may enter upon the Site, expel the Contractor, and complete the Facilities itself or by employing any third Party. The Employer may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of the Employer and with an indemnification by the Employer for all liability including damage or injury to persons arising out of the Employer's use of such equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Facilities for such reasonable period as the Employer considers expedient for the supply and installation of the Facilities.

Upon completion of the Facilities or at such earlier date as the Employer thinks appropriate, the Employer shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

42.2.5 Subject to GCC Sub-Clause 42.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Facilities executed as of the date of termination, the value of any unused or partially used Plant on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 42.2.3. Any sums due the Employer

from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

42.2.6 If the Employer completes the Facilities, the cost of completing the Facilities by the Employer shall be determined.

If the sum that the Contractor is entitled to be paid, pursuant to GCC Sub-Clause 42.2.5, plus the reasonable costs incurred by the Employer in completing the Facilities, exceeds the Contract Price, the Contractor shall be liable for such excess.

If such excess is greater than the sums due the Contractor under GCC Sub-Clause 42.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under GCC Sub-Clause 42.2.5, the Employer shall pay the balance to the Contractor.

The Employer and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

#### 42.3 Termination by the Contractor

##### 42.3.1 If

- (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest,

fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice, or

- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,

then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Employer referring to this GCC Sub-Clause 42.3.1, forthwith terminate the Contract.

42.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GCC Sub-Clause 42.3.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.

42.3.3 If the Contract is terminated under GCC Sub-Clauses 42.3.1 or 42.3.2, then the Contractor shall immediately

- (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii)
- (c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractors' personnel from the Site, and
- (d) subject to the payment specified in GCC Sub-Clause 42.3.4,
  - (i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination
  - (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors, and
  - (iii) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

42.3.4 If the Contract is terminated under GCC Sub-Clauses 42.3.1 or 42.3.2, the Employer shall pay to the Contractor all payments specified in GCC Sub-Clause 42.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the

Contractor arising out of, in connection with or in consequence of such termination.

42.3.5 Termination by the Contractor pursuant to this GCC Sub-Clause 42.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GCC Sub-Clause 42.3.

42.4 In this GCC Clause 42, the expression "Facilities executed" shall include all work executed, Installation Services provided, and all Plant acquired, or subject to a legally binding obligation to purchase, by the Contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.

42.5 In this GCC Clause 42, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment.

#### **43. Assignment**

43.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other Party, which consent shall not be unreasonably withheld, assign to any third Party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

#### **44. Export Restrictions**

44.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Employer, to the country of the Employer or to the use of the Plant and Installation Services to be supplied which arise from trade regulations from a country supplying those Plant and Installation Services, and which substantially impede the Contractor from meeting its obligations under the Contract, shall release the Contractor

from the obligation to provide deliveries or services, always provided, however, that the Contractor can demonstrate to the satisfaction of the Employer and of the Bank that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the Plant and Installation Services under the terms of the Contract. Termination of the Contract on this basis shall be for the Employer's convenience pursuant to Sub-Clause 42.1.

## **I. Claims, Disputes and Arbitration**

### **45. Contractor's Claims**

45.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall submit a notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Employer's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all



these records, and shall (if instructed) submit copies to the Project Manager.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and
- (c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The Project Manager shall agree with the Contractor or estimate: (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with GCC Clause 40, and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

In the event that the Contractor and the Employer cannot agree on any matter relating to a claim, either Party may refer the matter to the Dispute Board pursuant to GCC 46 hereof.

#### **46. Disputes and Arbitration**

##### **46.1 Appointment of the Dispute Board**

Disputes shall be referred to a DB for decision in accordance with GCC Sub-Clause 46.3. The Parties shall appoint a DB by the date stated in the PCC.

The DB shall comprise, as stated in the PCC, either one or three suitably qualified persons ("the members"), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of activities involved in the performance of the Contract and with the interpretation of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the DB shall comprise three persons, one of whom shall serve as chairman.

If the Parties have not jointly appointed the DB 21 days before the date stated in the PCC and the DB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.

However, if a list of potential members is included in the PCC, the members shall be selected from those on the list,

other than anyone who is unable or unwilling to accept appointment to the DB.

The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Board Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment of the member or such expert (as the case may be). Each Party shall be responsible for paying one-half of this remuneration.

If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire when the Operational Acceptance Certificate has been issued in accordance with GCC Sub-Clause 25.3.

#### 46.2 Failure to Agree on the Composition of the Dispute Board

If any of the following conditions apply, namely:

- (a) the Parties fail to agree upon the appointment of the sole member of the DB by the date stated in the first paragraph of GCC Sub-Clause 46.1,
- (b) either Party fails to nominate a member (for approval by the other Party) of a DB of three persons by such date,

- (c) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DB by such date, or
- (d) the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

then the appointing entity or official **named in the PCC** shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

#### 46.3 Obtaining Dispute Board's Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with the performance of the Contract, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Project Manager, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Project Manager. Such reference shall state that it is given under this Sub-Clause.

For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.

Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be

revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue with the performance of the Facilities in accordance with the Contract.

If either Party is dissatisfied with the DB's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the DB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.

In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in GCC Sub-Clauses 46.6 and 46.7, neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

If the DB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DB's decision, then the decision shall become final and binding upon both Parties.

#### 46.4 Amicable Settlement

Where notice of dissatisfaction has been given under GCC Sub-Clause 46.3 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction and intention to commence arbitration was given, even if no attempt at amicable settlement has been made.

#### 46.5 Arbitration

Unless **indicated otherwise in the PCC**, any dispute not settled amicably and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Unless otherwise agreed by both Parties, arbitration shall be conducted as follows:

(a) For contracts with foreign contractors:

**unless otherwise specified in the PCC**; the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce; by one or three arbitrators appointed in accordance with these Rules. The place of arbitration shall be the neutral location **stated in the PCC**; and the arbitration shall be conducted in the ruling language **stated in the PCC**;

and

(b) For contracts with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's Country.

The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, and any decision of the DB, relevant to the dispute. Nothing shall disqualify the Project Manager from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DB to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Facilities. The obligations of the Parties, the Project Manager and the DB shall not be altered by reason of any

arbitration being conducted during the progress of the Facilities.

#### 46.6 Failure to Comply with Dispute Board's Decision

In the event that a Party fails to comply with a DB decision which has become final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under GCC Sub-Clause 46.5. GCC Sub-Clauses 46.3 and 46.4 shall not apply to this reference.

#### 46.7 Expiry of Dispute Board's Appointment

If a dispute arises between the Parties in connection with the performance of the Contract, and there is no DB in place, whether by reason of the expiry of the DB's appointment or otherwise:

- (a) GCC Sub-Clauses 46.3 and 46.4 shall not apply, and
- (b) the dispute may be referred directly to arbitration under GCC Sub-Clause 46.5

# APPENDIX A

## General Conditions of Dispute Board Agreement

### 1. Definitions

Each "Dispute Board Agreement" is a tripartite agreement by and between:

the "Employer";

the "Contractor"; and

the "Member" who is defined in the Dispute Board Agreement as being:

- (i) the sole member of the "DB" and, where this is the case, all references to the "Other Members" do not apply, or
- (ii) one of the three persons who are jointly called the "DB" (or "dispute board") and, where this is the case, the other two persons are called the "Other Members".

The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Board Agreement, which incorporates this Appendix. In the Dispute Board Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

### 2. General Provisions

Unless otherwise stated in the Dispute Board Agreement, it shall take effect on the latest of the following dates:

- (a) the Commencement Date defined in the Contract,
- (b) when the Employer, the Contractor and the Member have each signed the Dispute Board Agreement, or
- (c) when the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a dispute board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days' notice of resignation to the Employer and to the Contractor, and the Dispute Board Agreement shall terminate upon the expiry of this period.



### 3. Warranties

The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor and the Project Manager. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the Employer and the Contractor relied upon the Member's representations that he/she is:

- (a) experienced in the work which the Contractor is to carry out under the Contract,
- (b) experienced in the interpretation of contract documentation, and
- (c) fluent in the language for communications defined in the Contract.

### 4. General Obligations of the Member

The Member shall:

- (a) have no interest financial or otherwise in the Employer, the Contractor or the Project Manager, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;
- (b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;
- (c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Project Manager, and any previous involvement in the overall project of which the Contract forms part;
- (d) not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);
- (e) comply with the annexed procedural rules and with GCC Sub-Clause 46.3;

- (f) not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
- (g) not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Project Manager regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;
- (h) ensure his/her availability for all site visits and hearings as are necessary;
- (i) become conversant with the Contract and with the progress of the Facilities (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
- (j) treat the details of the Contract and all the DB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and
- (k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

## 5. General Obligations of the Employer and the Contractor

The Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DB's activities under the Contract and the Dispute Board Agreement. The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member and the Other Members (if any):

- (a) be appointed as an arbitrator in any arbitration under the Contract;
- (b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or

- (c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

The Employer and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.

Whenever the Employer or the Contractor refers a dispute to the DB under GCC Sub-Clause 46.3, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

## 6. Payment

The Member shall be paid as follows, in the currency named in the Dispute Board Agreement:

- (a) a retainer fee per calendar month, which shall be considered as payment in full for:
  - (i) being available on 28 days' notice for all site visits and hearings;
  - (ii) becoming and remaining conversant with all project developments and maintaining relevant files;
  - (iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and
  - (iv) all services performed hereunder except those referred to in subparagraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Dispute Board Agreement becomes effective; until the last day of the calendar month in which the Taking-Over Certificate is issued for the whole of the Facilities.

With effect from the first day of the calendar month following the month in which Taking-Over Certificate is issued for the whole of the Facilities, the retainer fee shall be reduced by one third. This reduced fee shall be paid until the first day of the calendar

month in which the Member resigns or the Dispute Board Agreement is otherwise terminated.

- (b) a daily fee which shall be considered as payment in full for:
  - (i) each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Member's home and the site, or another location of a meeting with the Other Members (if any);
  - (ii) each working day on site visits, hearings or preparing decisions; and
  - (iii) each day spent reading submissions in preparation for a hearing.
- (c) all reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Clause;
- (d) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The retainer and daily fees shall be as specified in the Dispute Board Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months, and shall thereafter be adjusted by agreement between the Employer, the Contractor and the Member, at each anniversary of the date on which the Dispute Board Agreement became effective.

If the Parties fail to agree on the retainer fee or the daily fee the appointing entity or official named in the PCC shall determine the amount of the fees to be used.

The Member shall submit invoices for payment of the monthly retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay each of the Member's invoices in full within 56 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in accordance with GCC Sub-Clause 12.3.

If the Member does not receive payment of the amount due within 70 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice under Clause 7.

## 7. Termination

At any time: (i) the Employer and the Contractor may jointly terminate the Dispute Board Agreement by giving 42 days' notice to the Member; or (ii) the Member may resign as provided for in Clause 2.

If the Member fails to comply with the Dispute Board Agreement, the Employer and the Contractor may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

If the Employer or the Contractor fails to comply with the Dispute Board Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the Employer and the Contractor. The notice shall take effect when received by them both.

Any such notice, resignation and termination shall be final and binding on the Employer, the Contractor and the Member. However, a notice by the Employer or the Contractor, but not by both, shall be of no effect.

## 8. Default of the Member

If the Member fails to comply with any of his obligations under Clause 4 concerning his impartiality or independence in relation to the Employer or the Contractor, he/she shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

## 9. Disputes

Any dispute or claim arising out of or in connection with this Dispute Board Agreement, or the breach, termination or invalidity thereof, shall be finally settled by institutional arbitration. If no other arbitration institute is agreed, the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.

# APPENDIX A

## DISPUTE BOARD GUIDELINES

1. Unless otherwise agreed by the Employer and the Contractor, the DB shall visit the site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.
2. The timing of and agenda for each site visit shall be as agreed jointly by the DB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DB. The purpose of site visits is to enable the DB to become and remain acquainted with the progress of the execution of the Contract and of any actual or potential problems or claims, and, as far as reasonable, to prevent potential problems or claims from becoming disputes.
3. Site visits shall be attended by the Employer, the Contractor and the Project Manager and shall be coordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the DB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.
4. The Employer and the Contractor shall furnish to the DB one copy of all documents which the DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.
5. If any dispute is referred to the DB in accordance with GCC Sub-Clause 46.3, the DB shall proceed in accordance with GCC Sub-Clause 46.3 and these Guidelines. Subject to the time allowed to give notice of a decision and other relevant factors, the DB shall:
  - (a) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case, and

- (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.
- 6. The DB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.
- 7. Except as otherwise agreed in writing by the Employer and the Contractor, the DB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Project Manager, and to proceed in the absence of any Party who the DB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.
- 8. The Employer and the Contractor empower the DB, among other things, to:
  - (a) establish the procedure to be applied in deciding a dispute,
  - (b) decide upon the DB's own jurisdiction, and as to the scope of any dispute referred to it,
  - (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Guidelines,
  - (d) take the initiative in ascertaining the facts and matters required for a decision,
  - (e) make use of its own specialist knowledge, if any,
  - (f) decide upon the payment of financing charges in accordance with the Contract,
  - (g) decide upon any provisional relief such as interim or conservatory measures,
  - (h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute, and
  - (i) appoint, should the DB so consider necessary and the Parties agree, a suitable expert at the cost of the Parties to give advice on a specific matter relevant to the dispute.



9. The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with GCC Sub-Clause 46.3, or as otherwise agreed by the Employer and the Contractor in writing. If the DB comprises three persons:

- (a) it shall convene in private after a hearing, in order to have discussions and prepare its decision;
- (b) it shall endeavor to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
- (c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:
  - (i) either the Employer or the Contractor does not agree that they do so, or
  - (ii) the absent Member is the chairman and he/she instructs the other Members to not make a decision.

# APPENDIX B

## Fraud and Corruption

*(Text in this Appendix shall not be modified)*

### 1. Purpose

1.1 The Bank's Integrity Framework and this annex apply with respect to procurement under Bank Investment Project Financing operations.

### 2. Requirements

2.3 The Bank requires that Borrowers (including beneficiaries of Bank financing); bidders (applicants), consultants, contractors and suppliers; any sub-contractors, sub-consultants, service providers or suppliers; any agents (whether declared or not); and any of their personnel, observe the highest standard of ethics during the procurement process, selection and contract execution of Bank-financed contracts, and refrain from Fraud and Corruption.

2.4 To this end, the Bank:

- a. Defines, for the purposes of this provision, the terms set forth below as follows:
  - i. "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - ii. "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
  - iii. "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - iv. "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - v. "obstructive practice" is:
    - (a) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to

prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

- (b) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under paragraph 2.2 e. below.
- b. Rejects a proposal for award if the Bank determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- c. In addition to the legal remedies set out in the relevant Legal Agreement, may take other appropriate actions, including declaring misprocurement, if the Bank determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement process, selection and/or execution of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
- d. Pursuant to the Bank's Integrity Framework and in accordance with the Bank's prevailing sanctions policies and procedures, may sanction a firm or individual, either indefinitely or for a stated period of time, including by publicly declaring such firm or individual ineligible (i) to be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;<sup>1</sup> (ii) to be a nominated<sup>2</sup> sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-financed project;

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<sup>1</sup> For the avoidance of doubt, a sanctioned party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.

<sup>2</sup> A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.

- e. Requires that a clause be included in bidding documents and in contracts financed by a Bank loan, requiring (i) bidders (applicants), consultants, contractors, and suppliers, and their sub-contractors, sub-consultants, service providers, suppliers, agents personnel, permit the Bank to inspect<sup>3</sup> all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the Bank.

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<sup>3</sup> Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Bank or persons appointed by the Bank to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

## APPENDIX C

### Metrics for Progress Reports- Environmental and Social (ES)

*Metrics for regular reporting:*

- a. environmental incidents or non-compliances with contract requirements, including contamination, pollution or damage to ground or water supplies.*
- b. health and safety incidents, accidents, injuries that require treatment and all fatalities;*
- c. interactions with regulators: identify agency, dates, subjects, outcomes (report the negative if none);*
- d. status of all permits and agreements:*
  - (i) work permits: number required, number received, actions taken for those not received;
  - (ii) status of permits and consents:
    - list areas/facilities with permits required (quarries, asphalt & batch plants), dates of application, dates issued (actions to follow up if not issued), dates submitted to resident engineer (or equivalent), status of area (waiting for permits, working, abandoned without reclamation, decommissioning plan being implemented, etc.);
    - list areas with landowner agreements required (borrow and spoil areas, camp sites), dates of agreements, dates submitted to resident engineer (or equivalent);
    - identify major activities undertaken in each area in the reporting period and highlights of environmental and social protection (land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation);
    - for quarries: status of relocation and compensation (completed, or details of activities and current status in the reporting period).
- e. health and safety supervision:*
  - (i) safety officer: number days worked, number of full inspections & partial inspections, reports to construction/project management.

- (ii) number of workers, work hours, metric of PPE use (percentage of workers with full personal protection equipment (PPE), partial, etc.), worker violations observed (by type of violation, PPE or otherwise), warnings given, repeat warnings given, follow-up actions taken (if any);
- f. worker accommodations:*
  - (i) number of expats housed in accommodations, number of locals;
  - (ii) date of last inspection, and highlights of inspection including status of accommodations' compliance with national and local law and good practice, including sanitation, space, etc.;
  - (iii) actions taken to recommend/require improved conditions, or to improve conditions.
- g. Health services: provider of health services, information and/or training, location of clinic, number of non-safety disease or illness treatments and diagnoses (no names to be provided);*
- h. gender (for expats and locals separately): number of female workers, percentage of workforce, gender issues raised and dealt with (cross-reference grievances or other sections as needed);*
- i. training:*
  - (i) number of new workers, number receiving induction training, dates of induction training.
  - (ii) number and dates of toolbox talks, number of workers receiving Occupational Health and Safety (OHS), environmental and social training;
  - (iii) number and dates of communicable diseases (including STDs) sensitization and/or training, no. workers receiving training (in the reporting period and in the past); same questions for gender sensitization, flag person training.
  - (iv) number and date of SEA prevention and SH sensitization and/or training events, including number of workers receiving training on Code of Conduct for Contractor's and Subcontractor's Personnel (in the reporting period and in the past), etc.
- j. environmental and social supervision:*
  - (i) environmentalist: days worked, areas inspected and numbers of inspections of each (road section, work camp, accommodations, quarries, borrow areas, spoil areas, swamps, forest crossings, etc.),

- highlights of activities/findings (including violations of environmental and/or social best practices, actions taken), reports to environmental and/or social specialist/construction/site management;
  - (ii) sociologist: days worked, number of partial and full site inspections (by area: road section, work camp, accommodations, quarries, borrow areas, spoil areas, clinic, HIV/AIDS center, community centers, etc.), highlights of activities (including violations of environmental and/or social requirements observed, actions taken), reports to environmental and/or social specialist/construction/site management; and
  - (iii) community liaison person(s): days worked (hours community center open), number of people met, highlights of activities (issues raised, etc.), reports to environmental and/or social specialist /construction/site management.
- k. *Grievances: list new grievances (e.g. number of allegations of SEA and SH) received in the reporting period and number of unresolved past grievances by date received, complainant's age and sex, how received, to whom referred to for action, resolution and date (if completed), data resolution reported to complainant, any required follow-up (Cross-reference other sections as needed):*
  - (i) Worker grievances;
  - (ii) Community grievances
- l. *Traffic, road safety and vehicles/equipment:*
  - (i) traffic and road safety incidents and accidents involving project vehicles & equipment: provide date, location, damage, cause, follow-up;
  - (ii) traffic and road safety incidents and accidents involving non-project vehicles or property (also reported under immediate metrics): provide date, location, damage, cause, follow-up;
  - (iii) overall condition of vehicles/equipment (subjective judgment by environmentalist); non-routine repairs and maintenance needed to improve safety and/or environmental performance (to control smoke, etc.).
- m. *Environmental mitigations and issues (what has been done):*
  - (i) dust: number of working bowsers, number of waterings/day, number of complaints, warnings given by environmentalist, actions taken to resolve;

highlights of quarry dust control (covers, sprays, operational status); % of rock/ spoil lorries with covers, actions taken for uncovered vehicles;

- (ii) erosion control: controls implemented by location, status of water crossings, environmentalist inspections and results, actions taken to resolve issues, emergency repairs needed to control erosion/sedimentation;
- (iii) quarries, borrow areas, spoil areas, asphalt plants, batch plants: identify major activities undertaken in the reporting period at each, and highlights of environmental and social protection: land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation;
- (iv) blasting: number of blasts (and locations), status of implementation of blasting plan (including notices, evacuations, etc.), incidents of off-site damage or complaints (cross-reference other sections as needed);
- (v) spill clean-ups, if any: material spilled, location, amount, actions taken, material disposal (report all spills that result in water or soil contamination);
- (vi) waste management: types and quantities generated and managed, including amount taken offsite (and by whom) or reused/recycled/disposed on-site;
- (vii) details of tree plantings and other mitigations required undertaken in the reporting period;
- (viii) details of water and swamp protection mitigations required undertaken in the reporting period.

*n. compliance:*

- (i) compliance status for conditions of all relevant consents/permits, for the Work, including quarries, etc.): statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance;
- (ii) compliance status of C-ESMP/ESIP requirements: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
- (iii) compliance status of SEA and SH prevention and response action plan: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance



- (iv) compliance status of Health and Safety Management Plan re: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance.
- (v) other unresolved issues from previous reporting periods related to environmental and social: continued violations, continued failure of equipment, continued lack of vehicle covers, spills not dealt with, continued compensation or blasting issues, etc. Cross-reference other sections as needed.

## APPENDIX D

### Section V - Eligible Countries

#### Eligibility for the Provision of Goods, Works and Non-Consulting Services in Bank-Financed Procurement

##### A. Provisions under Section 5 “Eligibility” of the Procurement Policy for Bank Group Funded Operations and Chapter A2 of the Operations Procurement Manual under Procurement Framework of the African Development Bank

The African Development Fund (ADF) permits firms and individuals from all countries to offer goods, works and services for ADF funded projects. However, the proceeds of any Financing undertaken in the operations of the African Development Bank (ADB) and the Nigeria Trust Fund (NTF) shall be used for procurement of goods and works, including the related services, provided by bidders from Eligible<sup>4</sup> Countries<sup>5</sup>. Any conditions for participation shall be limited to those that are essential to ensure the firm’s capability to fulfill the contract in question. In the case of ADB and NTF, bidders from non-Member Countries offering goods, works and related services (including transportation and insurance) are not eligible even if they offer these from Eligible Member Countries. Any waiver to this rule will be in accordance with the Articles 17(1) (d) of the Agreement Establishing the African Development Bank and 4.1 of the Agreement Establishing the Nigeria Trust Fund.

##### B. Rules and Procedures for Procurement of Goods and Works

###### Overview

1. The eligibility criteria for participation in the supply of goods, works and related services, to be procured through the ADB and NTF Financing, derive from the requirements of the Agreement Establishing the African Development Bank, Article 17.1.d, and the Agreement Establishing the Nigeria Trust Fund, Article 4.1. The foregoing requirements basically prescribe two types of eligibility criteria:
  - (a) The eligibility of the bidder;
  - (b) The eligibility of the goods, works and related services.

---

<sup>4</sup> Refer to Bank Procurement Framework for additional information on Eligibility.

<sup>5</sup> “Eligible Countries” shall mean: (a) in the case of the African Development Bank and the Nigeria trust Fund, the Member Countries of the African Development Bank; and (b) in the case of the African Development Fund, any country.

## Eligibility of the Bidder

2. The eligibility of the bidder shall be based on nationality, in accordance with the following rules:
  - (a) Natural Persons: A natural person is eligible if he or she is a national of a Member Country of the Bank, or a State Participant of the Fund. Where a person has more than one nationality, such a person shall be eligible if the nationality indicated in his or her bid is that of a Member Country of the Bank, or a State Participant of the Fund.
  - (b) Corporations: A corporation is eligible if it satisfies the following criteria:
    1. it is incorporated in a country that is a Member of the Bank, or State Participant of the Fund;
    2. it is a national of a country that is a Member of the Bank, or State Participant of the Fund, as determined by the law of its place of incorporation;
    3. it has its principal place of business in a country that is a Member of the Bank, or State Participant of the Fund.
  - (c) Joint Ventures and Associations: An unincorporated joint venture, partnership, or association, shall be eligible if more than 50% of the value of its works and/or services is executed by its members satisfying the eligibility requirements for individuals or corporations.

## Eligibility of the Goods, Works and Related Services

3. In order to be eligible, the goods to be procured must have been mined, grown, or produced, in the form in which they are purchased, in an Eligible Member Country.
4. For works contracts, which may include civil works, plant construction, or turnkey contracts, the contractor must satisfy the nationality criteria of eligibility, either as a natural person, or corporation, or joint venture and association. Labour, equipment, and materials needed for carrying out the works contract, shall be supplied from Eligible Member Countries.
5. For contracts, which have been awarded on the basis of Cost, Insurance and Freight (CIF), or Carriage and Insurance Paid (CIP), bidders shall be free to arrange for ocean and other transportation, and the related insurance, from any Eligible Member Country. On the other hand, where goods are shipped on FOB basis, and the Bank has agreed to finance transportation and insurance separately, which are

arranged by the purchaser, under a separate contract, the Bank shall be satisfied that the services are supplied from Eligible Member Countries.

### **List of Eligible Countries**

6. List of Eligible countries can be found in African Development Bank's website:  
<https://www.afdb.org/en/about-us/corporate-information/members/>

### **Ineligible Countries in reference to ITB 4.8 and ITB 5.1**

7. In reference to ITB 4.8 and ITB 5.1, for the information of the Bidders, at the present time firms, goods and services from the following countries are excluded from this Bidding process:

Under ITB 4.8(a) and ITB 5.1: *None*

Under ITB 4.8(b) and ITB 5.1: *None*

## Section IX - Particular Conditions of Contract

The following Particular Conditions of Contract shall supplement the General Conditions of Contract in Section VIII. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions.

## Particular Conditions of Contract (PCC)

The following Particular Conditions (PCC) shall supplement the General Conditions (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC. The clause number of the PCC is the corresponding clause number of the GCC.

PCC 1. Definitions	<p>The Employer is: <i>Kenya Electricity Transmission Company Limited (KETRACO)</i></p> <p>The Project Manager is: <i>Eng. Ruth Mburu</i></p> <p>The Bank is: <i>African Development Bank (AfDB)</i></p> <p>Country of Origin: all countries and territories as indicated in Section V of the bidding document, Eligible Countries.</p>
PCC 5. Law and Language	<p>PCC 5.1 The Contract shall be interpreted in accordance with the laws of: <i>Kenya</i></p> <p>PCC 5.2 The ruling language is: <i>English</i></p> <p>PCC 5.3 The language for communications is: <i>English</i></p>
PCC 7. Scope of Facilities [Spare Parts] (GCC Clause 7)	<p>PCC 7.3 The Contractor agrees to supply spare parts for a period of years: <i>5 years</i></p> <p><b>Addition to PCC 7.3</b></p> <p>The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Plant. Other spare parts and components shall be supplied as promptly as possible, but at the most within six (6) months of placing the order and opening the letter of credit. In addition, in the event of termination of the production of spare parts, advance notification will be made to the Employer of the pending termination, with sufficient time to permit the Employer to procure the needed requirement. Following such termination, the Contractor will furnish to the extent possible and at no cost to the Employer the blueprints, drawings and specifications of the spare parts, if requested.</p>

PCC 8. Time for Commencement and Completion	<p>PCC 8.1 The Contractor shall commence work on the Facilities within <b><i>twenty-eight (28) days</i></b> from the Effective Date for determining Time for Completion as specified in the Contract Agreement.</p> <p>PCC 8.2 The Time for Completion of the whole of the Facilities shall be <b><i>twelve (12) months</i></b> from the Effective Date as described in the Contract Agreement.</p>
PCC 9. Contractor's Responsibilities	<p>PCC 9.6 (d) Maximum number of members in the JV: Modify as below:</p> <p>Maximum number of members in the Joint Venture, Consortium or Association (JV) shall not exceed <b><i>three (3)</i></b>.</p>
PCC 9. Contractor's Responsibilities	<p>PCC 9.6 (e) <i>[Add the following text]</i></p> <p>Minimum share of a member of Joint Venture, Consortium or Association (JV) in the contract shall not be less than <b><i>25%</i></b> percent of the total value of the contract.</p>
PCC 11. Contract Price	<p>PCC 11.2 The Contract Price shall not be adjustable.</p>
PCC 13. Securities	<p>PCC 13.3.1 The amount of Performance Security, as a percentage of the Contract Price for the Facility or for the part of the Facility for which a separate Time for Completion is provided, shall be: <b><i>Ten percent (10 %)</i></b></p> <p>PCC 13.3.2 The Performance Security shall be in the form of the Bank Guarantee attached hereto in Section X, Contract Forms.</p> <p>PCC 13.3.3 The Performance Security shall not be reduced on the date of the Operational Acceptance.</p> <p>PCC 13.3.3 The Performance Security shall be reduced to ten percent (10%) of the value of the component covered by the extended defect liability to cover the Contractor's extended defect liability in accordance with the provision in the PCC, pursuant to GCC Sub-Clause 27.10.</p>

	<p><b>NB:</b> All the securities including but not limited to Advance Bank Guarantee and Performance Security shall have to be issued by a large peer group bank as categorized and licensed by the Central Bank of Kenya.</p>
<p><b>PCC 14. Taxes and Duties</b></p>	<p><b>PCC 14.3</b></p> <p><b>a) Taxes, Levies and Duties in Kenya</b></p> <p>Tax exemptions will be applicable on all taxable goods and services imported or purchased locally for the exclusive and direct use in execution of project. In this regard, exemptions shall be applicable per the tax laws of the Republic of Kenya.</p> <p>Exemptions are applicable for VAT as provided for under the First Schedule to the VAT Act 2013. Others include exemptions from Railway Development Levy (RDL), Import Duty, Excise Duty, and Import Declaration Form (IDF) Fees.</p> <p>The employer will facilitate the exemption based on the application and Master List provided by the Contractor and reviewed by the Employer / Employer's representative.</p> <p><b>b) Withholding Tax</b></p> <p>The Contractor and their subcontractors (if any) shall be liable for payment of withholding tax as applicable in Kenya. Nothing in this clause shall prevent the Employer from withholding any taxes that the Employer is required under the laws of the Republic of Kenya to withhold. Where payments for the contract price are made directly to the Contractor, the Contractor shall make the necessary arrangements with the Employer to ensure that withholding tax is remitted to the Kenya Revenue Authority in accordance with Treasury Circular No.15/2019 dated 11th December,2019.</p> <p><b>c) Other Income Taxes</b></p> <p>All income received by the Contractor or their experts or other third party engaged by the contractor in connection with the Project and derived from the proceeds of the Loan, shall be subject to income tax in accordance with the applicable tax laws of the Republic of Kenya.</p> <p>The Contractor's employees shall be liable to pay such tax (es) that may be chargeable and applicable therein under the laws of</p>



	<p>Kenya and that may, for the time being, be in force in Kenya and the Contractor shall perform such duties.</p> <p><b>d) Import Duties and Taxes for Contractor's Equipment and Machinery</b></p> <p>For Contractor's equipment and machinery imported on temporary basis for the execution of the contract, the contractor is liable for payment of duties/taxes on importation, however the Contractor in collaboration with the Employer will request temporary importation approval from Kenya Revenue Authority whereby the duties/taxes will not be paid if the imported materials are re-exported within the granted allowed period.</p> <p>The Contractor will be liable for payment of taxes for consumable items and spare parts of its own machinery.</p> <p>On completion of the project, if the Contractor decides to dispose materials imported under the temporary regime, the buyer will be required to settle the tax dues for the disposed materials.</p> <p>The Contractor/Subcontractor shall indemnify and hold Employer free from any liability on account of all taxes such as payroll taxes and corporate tax in connection with the provision of goods and services during execution of the project.</p>
PCC 22 Installation	<p>PCC22.2.5 Working Hours</p> <p>Normal working hours are: <b>8:00am – 5:00pm</b></p>
PCC 25. Commissioning and Operational Acceptance	<p>PCC 25.2.2 The Guarantee Test of the Facilities shall be successfully completed within one (1) month from the date of Completion.</p>
PCC 26. Completion Time Guarantee	<p>PCC 26.2</p> <p>Applicable rate for liquidated damages: <b><i>one-half percent (0.5%) of the Contract Price per week</i></b></p>

	<p>The above rate applies to the price of the part of the Facilities, as quoted in the Price Schedule, for that part for which the Contractor fails to achieve Completion within the particular Time for Completion.</p> <p>Maximum deduction for liquidated damages: <b><i>Ten percent (10%) of the Contract Price</i></b></p> <p>PCC 26.3 No bonus will be given for earlier Completion of the Facilities or part thereof.</p>
PCC 27. Defect Liability	<p>PCC 27.10 The critical components covered under the extended defect liability are <b><i>Power Transformers (main and auxiliary), Instrument Transformers, Circuit Breakers, Disconnectors, equipment for control and protection, automation and communication</i></b> and the period shall be <b><i>one (1) year</i></b>.</p>
PCC 30. Limitation of Liability	<p><b>Sample Clause</b></p> <p>PCC 30.1 (b) The multiplier of the Contract Price is: <b><i>1.25</i></b></p>
PCC 39. Value Engineering	<p>PCC 39.1.2 If the value engineering proposal is approved by the Employer the amount to be paid to the Contractor shall be 30% of the reduction in the Contract Price</p>
PCC46. Disputes and Arbitration	<p>CC 46.1    <b>The DB shall be appointed within 30 days after the declaration of a dispute.</b></p> <p>                  The DB shall be: <b>three (3) members.</b></p> <p>PCC 46.1    DB members:</p> <p>                  <b>Each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.</b></p> <p>PCC 46.2 Appointment (if not agreed) to be made by: <i>[Insert name of an international organization or official as the appointing entity or official]</i></p> <p>PCC 46.5 Procedure to settle disputes in respect of DB's decisions: _____</p> <p><b>Rules of arbitration</b></p>

	<p>GCC Sub-Clause 46.5(a) <i>[insert either "shall" or "shall not"]</i>  _____apply.</p> <p><i>[Insert rules of arbitration if different from those of the International Chamber of Commerce.]</i></p> <p>GCC Sub-Clause 46.5 (b): <i>[insert either "shall" or "shall not"]</i>  _____apply.</p> <p><i>[GCC Sub-Clause 46.5 (a) shall be retained in the case of a Contract with a foreign Contractor. GCC Sub-Clause 46.5 (b) shall be retained in the case of a Contract with a domestic Contractor.]</i></p> <p><i>[insert place of arbitration if GCC Sub-Clause 46.5 (a) applies]</i></p>
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# Section X - Contract Forms

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## Notification of Intention to Award

*[This Notification of Intention to Award shall be sent to each Bidder that submitted a Bid.]*

*[Send this Notification to the Bidder's Authorized Representative named in the Bidder Information Form]*

For the attention of Bidder's Authorized Representative

Name: *[insert Authorized Representative's name]*

Address: *[insert Authorized Representative's Address]*

Telephone/Fax numbers: *[insert Authorized Representative's telephone/fax numbers]*

Email Address: *[insert Authorized Representative's email address]*

*[IMPORTANT: insert the date that this Notification is transmitted to Bidders. The Notification must be sent to all Bidders simultaneously. This means on the same date and as close to the same time as possible.]*

DATE OF TRANSMISSION: This Notification is sent by: *[email/fax]* on *[date]* (local time)

## Notification of Intention to Award

**Employer:** *Kenya Electricity Transmission Co. Ltd*

**Project:** *[insert name of project]*

**Contract title:** *[insert the name of the contract]*

**Country:** *[insert country where IFB is issued]*

**Loan No. /Credit No. / Grant No.:** *[insert reference number for loan/credit/grant]*

**OCBI No:** *[insert OCBI reference number from Procurement Plan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period, you may:

- a) request a debriefing in relation to the evaluation of your Bid, and/or
- b) submit a Procurement-related Complaint in relation to the decision to award the contract.

### 1. The successful Bidder

Name:	<i>[insert name of successful Bidder]</i>
Address:	<i>[insert address of the successful Bidder]</i>
Contract price:	<i>[insert contract price of the successful Bid]</i>

### 2. Other Bidders *[INSTRUCTIONS: insert names of all Bidders that submitted a Bid. If the Bid's price was evaluated include the evaluated price as well as the Bid price as read out.]*

Name of Bidder	Bid price	Evaluated Bid Cost
<i>[insert name]</i>	<i>[insert Bid price]</i>	<i>[insert evaluated cost]</i>
<i>[insert name]</i>	<i>[insert Bid price]</i>	<i>[insert evaluated cost]</i>
<i>[insert name]</i>	<i>[insert Bid price]</i>	<i>[insert evaluated cost]</i>
<i>[insert name]</i>	<i>[insert Bid price]</i>	<i>[insert evaluated cost]</i>
<i>[insert name]</i>	<i>[insert Bid price]</i>	<i>[insert evaluated cost]</i>

### 3. Reason/s why your Bid was unsuccessful

*[INSTRUCTIONS: State the reason/s why this Bidder's Bid was unsuccessful. Do NOT include: (a) a point by point comparison with another Bidder's Bid or (b) information that is marked confidential by the Bidder in its Bid.]*

### 4. How to request a debriefing

**DEADLINE:** The deadline to request a debriefing expires at midnight on *[insert date]* (local time).

You may request a debriefing in relation to the results of the evaluation of your Bid. If you decide to request a debriefing, your written request must be made within three (3) Business Days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the Bidder, contact details; and address the request for debriefing as follows:

**Attention:** *Mr. Peter Njehia*

**Title/position:** *Senior Manager , Supply Chain*

**Agency:** *Kenya Electricity Transmission Co. Ltd*

**Email address:** *ktrnip@ketraco.co.ke*

If your request for a debriefing is received within the 3 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Contract Award Notice.

## 5. How to make a complaint

**Period:** Procurement-related Complaint challenging the decision to award shall be submitted by midnight, *[insert date]* (local time).

Provide the contract name, reference number, name of the Bidder, contact details; and address the Procurement-related Complaint as follows:

**Attention:** *Mr. Peter Njehia*

**Title/position:** *[insert title/position]*

**Agency:** *[insert name of Employer]*

**Email address:** *[insert email address]*

At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

Further information:

For more information see Part B of the Operations Procurement Manual.

Framework

In summary, there are four essential requirements:

1. You must be an 'interested party'. In this case, that means a Bidder who submitted a Bid in this bidding process, and is the recipient of a Notification of Intention to Award.
2. The complaint can only challenge the decision to award the contract.
3. You must submit the complaint within the period stated above.
4. You must include, in your complaint, all necessary information.

**6. Standstill Period**

**DEADLINE:** The Standstill Period is due to end at midnight on [*insert date*] (local time).

The Standstill Period lasts ten (10) Business Days after the date of transmission of this Notification of Intention to Award.

The Standstill Period may be extended as stated in Section 4 above.

If you have any questions regarding this Notification please do not hesitate to contact us.

On behalf of the Employer:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title/position: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_



## Beneficial Ownership Disclosure Form

***INSTRUCTIONS TO BIDDERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM***

*This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful Bidder. In case of joint venture, the Bidder must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.*

*For the purposes of this Form, a Beneficial Owner of a Bidder is any natural person who ultimately owns or controls the Bidder by meeting one or more of the following conditions:*

- directly or indirectly holding 25% or more of the shares*
- directly or indirectly holding 25% or more of the voting rights*
- directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder*

**OCBI No.:** *[insert number of OCBI number as per procurement plan]*

**Invitation for Bid No.:** *[insert identification]*

**To:** *[insert complete name of Employer]*

In response to your request in the Letter of Acceptance dated *[insert date of letter of Acceptance]* to furnish additional information on beneficial ownership: *[select one option as applicable and delete the options that are not applicable]*

(i) we hereby provide the following beneficial ownership information.

### Details of beneficial ownership

Identity of Beneficial Owner	Directly or indirectly holding	Directly or indirectly holding 25 % or	Directly or indirectly having the right to
------------------------------	--------------------------------	--	--

	25% or more of the shares (Yes / No)	more of the Voting Rights (Yes / No)	appoint a majority of the board of the directors or an equivalent governing body of the Bidder (Yes / No)
<i>[include full name (last, middle, first), nationality, country of residence]</i>			

**OR**

(ii) We declare that there is no Beneficial Owner meeting one or more of the following conditions:

- directly or indirectly holding 25% or more of the shares
- directly or indirectly holding 25% or more of the voting rights
- directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder

**OR**

(iii) We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. *[If this option is selected, the Bidder shall provide explanation on why it is unable to identify any Beneficial Owner]*

- directly or indirectly holding 25% or more of the shares
- directly or indirectly holding 25% or more of the voting rights
- directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder]"

**Name of the Bidder:** *\*[insert complete name of the Bidder]*\_\_\_\_\_

**Name of the person duly authorized to sign the Bid on behalf of the Bidder:** **\*\****[insert complete name of person duly authorized to sign the Bid]*\_\_\_\_\_

**Title of the person signing the Bid:** *[insert complete title of the person signing the Bid]*\_\_\_\_\_

**Signature of the person named above:** *[insert signature of person whose name and capacity are shown above]*\_\_\_\_\_

**Date signed** *[insert date of signing]* **day of** *[insert month]*, *[insert year]*\_\_\_\_\_

\* In the case of the Bid submitted by a Joint Venture specify the name of the Joint Venture as Bidder. In the event that the Bidder is a joint venture, each reference to "Bidder" in the Beneficial Ownership Disclosure Form (including this Introduction thereto) shall be read to refer to the joint venture member.

\*\* Person signing the Bid shall have the power of attorney given by the Bidder. The power of attorney shall be attached with the Bid Schedules.

## Letter of Acceptance

To: \_\_\_\_\_

This is to notify you that your Bid dated \_\_\_\_\_ for execution of the \_\_\_\_\_ for the Contract Price in the aggregate of \_\_\_\_\_, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to furnish (i) the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms and (ii) the additional information on beneficial ownership in accordance with BDS ITB 47.1, within eight (8) Business days using the Beneficial Ownership Disclosure Form, included in Section X, - Contract Forms, of the bidding document.

Authorized Signature: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Agency: \_\_\_\_\_

Attachment: Contract Agreement

## Contract Agreement

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,

BETWEEN

(1) \_\_\_\_\_, a corporation incorporated under the laws of \_\_\_\_\_ and having its principal place of business at \_\_\_\_\_ (hereinafter called "the Employer"), and (2) \_\_\_\_\_, a corporation incorporated under the laws of \_\_\_\_\_ and having its principal place of business at \_\_\_\_\_ (hereinafter called "the Contractor").

WHEREAS the Employer desires to engage the Contractor to design, manufacture, test, deliver, install, complete and commission certain Facilities, viz. \_\_\_\_\_ ("the Facilities"), and the Contractor has agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

### **Article 1. Contract Documents**

#### **1.1 Contract Documents (Reference GCC Clause 2)**

The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:

- (a) This Contract Agreement and the Appendices hereto
- (b) Letter of Bid and Price Schedules submitted by the Contractor
- (c) Particular Conditions
- (d) General Conditions
- (e) Specification
- (f) Drawings
- (g) Other completed Bidding forms submitted with the Bid

- (h) Any other documents forming part of the Employer's Requirements
- (i) Any other documents forming part of the contract, including, but not limited to:
  - i. the ES Management Strategies and Implementation Plans; and
  - ii. Code of Conduct for Contractor's Personnel (ES).

*[Any other documents shall be added here]*

## 1.2 Order of Precedence (Reference GCC Clause 2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.

## 1.3 Definitions (Reference GCC Clause 1)

Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions.

# Article 2. Contract Price and Terms of Payment

## 2.1 Contract Price (Reference GCC Clause 11)

The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of: \_\_\_\_\_, \_\_\_\_\_ as specified in Price Schedule No. 5 (Grand Summary), and \_\_\_\_\_, \_\_\_\_\_, or such other sums as may be determined in accordance with the terms and conditions of the Contract.

## 2.2 Terms of Payment (Reference GCC Clause 12)

The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in the Appendix (Terms and Procedures of Payment) hereto.

The Employer may instruct its bank to issue an irrevocable confirmed documentary credit made available to the Contractor in a bank in the country of the Contractor. The

credit shall be for an amount of \_\_\_\_\_; and shall be subject to the Uniform Customs and Practice for Documentary Credits 2007 Revision, ICC Publication No. 600.

In the event that the amount payable under Schedule No. 1 is adjusted in accordance with GCC 11.2 or with any of the other terms of the Contract, the Employer shall arrange for the documentary credit to be amended accordingly.

**Article 3. Effective Date**

**3.1 Effective Date** (Reference GCC Clause 1)

The Effective Date from which the Time for Completion of the Facilities shall be counted is the date when all of the following conditions have been fulfilled:

- (a) This Contract Agreement has been duly executed for and on behalf of the Employer and the Contractor;
- (b) The Contractor has submitted to the Employer the Performance Security and the advance payment guarantee;
- (c) The Employer has paid the Contractor the advance payment
- (d) The Contractor has been advised that the documentary credit referred to in Article 2.2 above has been issued in its favor.

Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.

- 3.2** If the conditions listed under 3.1 are not fulfilled within two (2) months from the date of this Contract notification because of reasons not attributable to the Contractor, the Parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Completion and/or other relevant conditions of the Contract.

**Article 4. Communications**

- 4.1** The address of the Employer for notice purposes, pursuant to GCC 4.1 is: \_\_\_\_\_.

4.2 The address of the Contractor for notice purposes, pursuant to GCC 4.1 is: \_\_\_\_\_.

**Article 5.  
Appendices**

5.1 The Appendices listed in the attached List of Appendices shall be deemed to form an integral part of this Contract Agreement.

5.2 Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

IN WITNESS WHEREOF the Employer and the Contractor have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

Signed by, for and on behalf of the Employer

\_\_\_\_\_  
*[Signature]*

\_\_\_\_\_  
*[Title]*

in the presence of \_\_\_\_\_

Signed by, for and on behalf of the Contractor

\_\_\_\_\_  
*[Signature]*



---

*[Title]*

in the presence of \_\_\_\_\_

## APPENDICES

- Appendix 1 Terms and Procedures of Payment
- Appendix 2 Price Adjustment
- Appendix 3 Insurance Requirements
- Appendix 4 Time Schedule
- Appendix 5 List of Major Items of Plant and Installation Services and List of Approved Subcontractors
- Appendix 6 Scope of Works and Supply by the Employer
- Appendix 7 List of Documents for Approval or Review
- Appendix 8 Functional Guarantees

## Appendix 1. Terms and Procedures of Payment

In accordance with the provisions of GCC Clause 12 (Terms of Payment), the Employer shall pay the Contractor in the following manner and at the following times, on the basis of the Price Breakdown given in the section on Price Schedules. Payments will be made in the currencies quoted by the Bidder unless otherwise agreed between the Parties. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

### TERMS OF PAYMENT

#### Schedule No. 1. Plant and Equipment Supplied from Abroad

In respect of plant and equipment supplied from abroad, the following payments shall be made:

Ten percent (10%) of the total CIP amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the plant and equipment delivered to the site, as evidenced by shipping and delivery documents.

Sixty percent (60%) of the total or pro rata CIP amount upon Incoterm "CIP", upon delivery to the carrier within ninety (90) days after receipt of documents.

Twenty percent (20%) of the total or pro rata CIP amount upon Incoterm "CIP", upon erection and installation, within ninety (90) days after receipt of invoice and the following documents:

- Confirmation by the Employer or his authorized representative that the erection and installation of the relevant material has been successfully completed.

Five percent (5%) of the total or pro rata CIP amount upon issue of the Completion Certificate, within ninety (90) days after receipt of invoice.

Five percent (5%) of the total or pro rata CIP amount upon issue of the Operational Acceptance Certificate, within ninety (90) days after receipt of invoice.

#### Schedule No. 2. Plant and Equipment Supplied from within the Employer's Country

In respect of plant and equipment supplied from within the Employer's Country, the following payments shall be made:

Ten percent (10%) of the total EXW amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the plant and equipment delivered to the site, as evidenced by shipping and delivery documents.

Eighty percent (80%) of the total or pro rata EXW amount upon Incoterm "Ex-Works," upon delivery to the carrier within ninety (90) days after receipt of invoice and documents.

Five percent (5%) of the total or pro rata EXW amount upon issue of the Completion Certificate, within ninety(90) days after receipt of invoice.

Five percent (5%) of the total or pro rata EXW amount upon issue of the Operational Acceptance Certificate, within ninety (90) days after receipt of invoice.

#### Schedule No. 3. Design Services

In respect of design services for both the foreign currency and the local currency portions, the following payments shall be made:

Ten percent (10%) of the total design services amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer.

Ninety percent (90%) of the total or pro rata design services amount upon acceptance of design in accordance with GCC Clause 20 by the Project Manager within ninety (90) days after receipt of invoice.

#### Schedule No. 4. Installation Services

In respect of installation services for both the foreign and local currency portions, the following payments shall be made:

Ten percent (10%) of the total installation services amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of work performed by the Contractor as evidenced by the invoices for installation services.

Eighty percent (80%) of the measured value of work performed by the Contractor, as identified in the said Program of Performance, during the preceding month, as evidenced by the Employer's authorization of the Contractor's application, will be made monthly within ninety (90) days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Completion Certificate, within ninety (90) days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Operational Acceptance Certificate, within ninety (90) days after receipt of invoice.

In the event that the Employer fails to make any payment on its respective due date, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate of one-half percent (0.5%) per annum for period of delay until payment has been made in full.

#### PAYMENT PROCEDURES

The procedures to be followed in applying for certification and making payments, in addition to provisions of GC Clause 12, shall be as follows:

*All payments shall be made upon certification of invoice by the Engineer. The submission date of the invoice will be the date upon which the Contractor receives a scanned copy of the payment certificate from the Engineer issued by the Employer.*

*The Employer shall issue the payment certificate promptly upon receipt of the correct invoice with the correct relevant attachments as per contract. The relevant attachments shall be as follows:-*

##### Schedule No.1. Plant and Equipment Supplied from Abroad

- a. Valid copy of advance and performance guarantee security*
- b. Packing list for the plant and equipment/materials supplied and being invoiced - this should be verifiable and correlated to the price schedule*
- c. Clean, non-negotiable Transport Document (On Board Ocean Bill of Lading or Air-way bill)*
- d. Insurance policy and certificate (110% of invoice value)*
- e. Certificate of origin of plant and equipment/materials*
- f. Copy of certificate of conformity*
- g. Copy of factory acceptance report*
- h. Copy of signed commercial invoice*

##### Schedule No.2. Plant and Equipment Supplied from within the Employer's Country

- a. Valid copy of advance and performance guarantee security*
- b. Packing list for the plant and equipment/materials supplied and being invoiced - this should be verifiable and correlated to the price schedule*
- c. Insurance policy and certificate (110% of invoice value)*
- d. Copy of signed commercial invoice*
- e. Copy of factory acceptance test where applicable*
- f. Copy of quality assurance certificate*

Schedule No.3. Design Services

- a. Valid copy of advance and performance guarantee
- b. Approval from Engineer indicating acceptance of design and level of completion of design works.

Schedule No.4. Installation Services

- a. Valid copy of advance and performance guarantee
- b. Joint measurement certificate signed by the Contractor and Engineer/Employer. All payments will be made through Direct Transfer to the Contractor's account.

*In the event the Engineer requires the Contractor's invoice to be corrected, the Contractor shall correct the invoice and certification shall only be made after correction of the invoice.*

*The Contractor will additionally be required to raise an invoice directly into KETRACO's SAP System. The Contractor will be expected to have their personnel availed for training by KETRACO for the same prior to raising their invoice. Any delay caused by the Contractor in undertaking the processes required in the KETRACO SAP system shall be on account of the Contractor and shall cause the due date to be moved by a time equal to the delay caused by the Contractor.*

## Appendix 2. Price Adjustment

### NOT APPLICABLE

Where the Contract Period (excluding the Defects Liability Period) exceeds eighteen (18) months, it is normal procedure that prices payable to the Contractor shall be subject to adjustment during the performance of the Contract to reflect changes occurring in the cost of labor and material components. In such cases the bidding document shall include in this Appendix 2 a formula of the following general type, pursuant to GCC Sub-Clause 11.2.

Where Contracts are of a shorter duration than eighteen (18) months or in cases where there is to be no Price Adjustment, the following provision shall not be included. Instead, it shall be indicated under this Appendix 2 that the prices are to remain firm and fixed for the duration of the Contract.

### Sample Price Adjustment Formula

If in accordance with GCC 11.2, prices shall be adjustable, the following method shall be used to calculate the price adjustment:

Prices payable to the Contractor, in accordance with the Contract, shall be subject to adjustment during performance of the Contract to reflect changes in the cost of labor and material components, in accordance with the following formula:

$$P_1 = P_0 \left( a + b \frac{L_1}{L_0} + c \frac{M_1}{M_0} \right) - P_0$$

in which:

$P_1$  = adjustment amount payable to the Contractor

$P_0$  = Contract price (base price)

$a$  = percentage of fixed element in Contract price ( $a$  = %)

$b$  = percentage of labor component in Contract price ( $b$  = %)

$c$  = percentage of material and equipment component in Contract price ( $c$  = %)

$L_0, L_1$  = labor indices applicable to the appropriate industry in the country of origin on the base date and the date for adjustment, respectively

$M_0, M_1$  = material and equipment indices in the country of origin on the base date and the date for adjustment, respectively

N.B.  $a+b+c=100\%$ .

### Conditions Applicable To Price Adjustment

The Bidder shall indicate the source of labor and materials indices, source of exchange rates and the base date indices in its Bid.

<u>Item</u>	<u>Source of Indices Used</u>	<u>Base Date Indices</u>
-------------	-------------------------------	--------------------------

The base date shall be the date twenty-eight (28) days prior to the Bid closing date.

The date of adjustment shall be the mid-point of the period of manufacture or installation of component or Plant.

The following conditions shall apply:

- (a) No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Employer under the terms of the Contract. No price increase will be allowed for periods of delay for which the Contractor is responsible. The Employer will, however, be entitled to any price decrease occurring during such periods of delay.



- (b) If the currency in which the Contract price,  $P_0$ , is expressed is different from the currency of the country of origin of the labor and/or materials indices, a correction factor will be applied to avoid incorrect adjustments of the Contract price. The correction factor shall be:  $Z_0 / Z_1$ , where,

$Z_0$  = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price  $P_0$  on the Base date, and

$Z_1$  = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price  $P_0$  on the Date of Adjustment.

- (c) No price adjustment shall be payable on the portion of the Contract price paid to the Contractor as an advance payment.

## Appendix 3. Insurance Requirements

### Insurances to be Taken Out by the Contractor

In accordance with the provisions of GCC Clause 34, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld.

(a) Cargo Insurance

Covering loss or damage occurring, while in transit from the supplier's or manufacturer's works or stores until arrival at the Site, to the Facilities (including spare parts therefor) and to the construction equipment to be provided by the Contractor or its Subcontractors.

<u>Amount</u>	<u>Deductible limits</u>	<u>Parties insured</u>	<u>From</u>	<u>To</u>
---------------	--------------------------	------------------------	-------------	-----------

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the defect liability period while the Contractor is on the Site for the purpose of performing its obligations during the defect liability period.

<u>Amount</u>	<u>Deductible limits</u>	<u>Parties insured</u>	<u>From</u>	<u>To</u>
---------------	--------------------------	------------------------	-------------	-----------

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property (including the Employer's property and any parts of the Facilities that have been accepted by the Employer) occurring in connection with the supply and installation of the Facilities.

<u>Amount</u>	<u>Deductible limits</u>	<u>Parties insured</u>	<u>From</u>	<u>To</u>
---------------	--------------------------	------------------------	-------------	-----------

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the Facilities. Comprehensive insurance in accordance with statutory requirements.

(e) Workers' Compensation

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(f) Employer's Liability

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(g) Other Insurances

The Contractor is also required to take out and maintain at its own cost the following insurances:

Details:

<u>Amount</u>	<u>Deductible limits</u>	<u>Parties insured</u>	<u>From</u>	<u>To</u>
---------------	--------------------------	------------------------	-------------	-----------

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1, except for the Cargo, Workers' Compensation and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

### Insurances To Be Taken Out By The Employer

The Employer shall at its expense take out and maintain in effect during the performance of the Contract the following insurances.

None

## Appendix 4. Time Schedule

## Appendix 5. List of Major Items of Plant and Installation Services and List of Approved Subcontractors

A list of major items of Plant and Installation Services is provided below.

The following Subcontractors and/or manufacturers are approved for carrying out the items of the Facilities indicated below. Where more than one Subcontractor is listed, the Contractor is free to choose between them, but it must notify the Employer of its choice in good time prior to appointing any selected Subcontractor. In accordance with GCC Sub-Clause 19.1, the Contractor is free to submit proposals for Subcontractors for additional items from time to time. No Subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the Employer and their names have been added to this list of Approved Subcontractors.

Major Items of Plant and Installation Services	Approved Subcontractors/Manufacturers	Nationality

## Appendix 6. Scope of Works and Supply by the Employer

None



## Appendix 7. List of Documents for Approval or Review

Pursuant to GCC Sub-Clause 20.3.1, the Contractor shall prepare, or cause its Subcontractor to prepare, and present to the Project Manager in accordance with the requirements of GCC Sub-Clause 18.2 (Program of Performance), the following documents for

### A. Approval

1.

2.

3.

### B. Review

1.

2.

3.

## Appendix 8. Functional Guarantees

### 1. General

This Appendix sets out

- (a) the functional guarantees referred to in GCC Clause 28 (Functional Guarantees)
- (b) the preconditions to the validity of the functional guarantees, either in production and/or consumption, set forth below
- (c) the minimum level of the functional guarantees
- (d) the formula for calculation of liquidated damages for failure to attain the functional guarantees.

### 2. Preconditions

The Contractor gives the functional guarantees (specified herein) for the facilities, subject to the following preconditions being fully satisfied:

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### 3. Functional Guarantees

Subject to compliance with the foregoing preconditions, the Contractor guarantees as follows:

#### 3.1 Production Capacity

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**and/or**

#### 3.2 Raw Materials and Utilities Consumption

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### 4. Failure in Guarantees and Liquidated Damages

#### 4.1 Failure to Attain Guaranteed Production Capacity

If the production capacity of the facilities attained in the guarantee test, pursuant to GCC Sub-Clause 25.2, is less than the guaranteed figure specified in para. 3.1 above, but the actual production capacity attained in the guarantee test is not less than the minimum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer

in lieu of making changes, modifications and/or additions to the Facilities, pursuant to GCC Sub-Clause 28.3, then the Contractor shall pay liquidated damages at the rate of \_\_\_\_\_ for every complete one percent (1%) of the deficiency in the production capacity of the Facilities, or at a proportionately reduced rate for any deficiency, or part thereof, of less than a complete one percent (1%).

#### 4.2 Raw Materials and Utilities Consumption in Excess of Guaranteed Level

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If the actual measured figure of specified raw materials and utilities consumed per unit (or their average total cost of consumption) exceeds the guaranteed figure specified in para. 3.2 above (or their specified average total cost of consumption), but the actual consumption attained in the guarantee test, pursuant to GCC Sub-Clause 25.2, is not more than the maximum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications and/or additions to the Facilities pursuant to GCC Sub-Clause 28.3, then the Contractor shall pay liquidated damages at the rate of *[amount in the contract currency]* for every complete one percent (1%) of the excess consumption of the Facilities, or part thereof, of less than a complete one percent (1%).

#### 4.3 Minimum Levels

Notwithstanding the provisions of this paragraph, if as a result of the guarantee test(s), the following minimum levels of performance guarantees (and consumption guarantees) are not attained by the Contractor, the Contractor shall at its own cost make good any deficiencies until the Facilities reach any of such minimum performance levels, pursuant to GCC Sub-Clause 28.2:

- (a) production capacity of the Facilities attained in the guarantee test: ninety-five percent (95%) of the guaranteed production capacity (the values offered by the Contractor in its Bid for functional guarantees represents 100%).

**and/or**

- (b) average total cost of consumption of all the raw materials and utilities of the Facilities: one hundred and five percent (105%) of the guaranteed figures (the figures offered by the Contractor in its Bid for functional guarantees represents 100%).

#### 4.4 Limitation of Liability

Subject to para. 4.3 above, the Contractor's aggregate liability to pay liquidated damages for failure to attain the functional guarantees shall not exceed \_\_\_\_\_ percent ( \_\_\_\_ %) of the Contract price.

## Performance Security Form– Bank Guarantee<sup>1</sup>

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[insert name and Address of Employer]*

**Date:** *\_ [Insert date of issue]*

**PERFORMANCE GUARANTEE No.:** *\_\_\_\_[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that \_\_\_\_\_ (hereinafter called "the Applicant") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_(\_\_\_\_)<sup>2</sup>, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall be reduced by half upon our receipt of:

- (a) a copy of the Operational Acceptance Certificate; or

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<sup>1</sup> The Employer should insert either the Bank Guarantee or the Conditional Guarantee.

<sup>2</sup> The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Employer.

- (b) a registered letter from the Applicant (i) attaching a copy of its notice requesting issuance of the Operational Acceptance Certificate and (ii) stating that the Project Manager has failed to issue such Certificate within the time required or provide in writing justifiable reasons why such Certificate has not been issued, so that Operational Acceptance is deemed to have occurred.

This guarantee shall expire no later than the earlier of:<sup>3</sup>

- (a) twelve months after our receipt of either (a) or (b) above; or
- (b) eighteen months after our receipt of:
  - (i) a copy of the Completion Certificate; or
  - (ii) a registered letter from the Applicant, attaching a copy of the notice to the Project Manager that the Facilities are ready for commissioning, and stating that fourteen days have elapsed from receipt of such notice (or seven days have elapsed if the notice was a repeated notice) and the Project Manager has failed to issue a Completion Certificate or inform the Applicant in writing of any defects or deficiencies; or
  - (iii) a registered letter from the Applicant stating that no Completion Certificate has been issued but the Employer is making use of the Facilities; or
- (c) the \_\_\_\_ day of \_\_\_\_, 2\_\_\_\_.<sup>4</sup>

Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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<sup>3</sup> This text shall be revised as and where necessary to take into account (i) partial acceptance of the Facilities in accordance with Sub-Clause 25.4 of the GCC; and (ii) extension of the Performance Security when the Contractor is liable for an extended warranty obligation pursuant to Sub-Clause 27.10 of the GCC (although in this latter case the *Employer* might want to consider an extended warranty security in lieu of the extension of the Performance Security).

<sup>4</sup> Insert the date twenty-eight days after the expected expiration date of the Defect Liability Period. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

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*[signature(s)]*

*Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.*

## Performance Security Form- Conditional Bank Guarantee

Date: \_\_\_\_\_

Loan/Credit N°: \_\_\_\_\_

IFB N°: \_\_\_\_\_

To: \_\_\_\_\_

Dear Ladies and/or Gentlemen,

We refer to the Contract Agreement ("the Contract") signed on *[date]* between you and \_\_\_\_\_ ("the Contractor") concerning design, execution and completion of \_\_\_\_\_.

By this letter we, the undersigned, [name of Bank], a Bank (or company) organized under the laws of \_\_\_\_\_ and having its registered/principal office at \_\_\_\_\_, do hereby jointly and severally with the Contractor irrevocably guarantee payment owed to you by the Contractor, pursuant to the Contract, up to the sum of \_\_\_\_\_, equivalent to \_\_\_\_\_ percent (%) of the Contract Price until the date of the Operational Acceptance Certificate and thereafter up to a sum of \_\_\_\_\_, equivalent to \_\_\_\_\_ percent (%) of the Contract Price, until twelve (12) months after the date of Operational Acceptance, or eighteen (18) months after Completion of the Facilities, whichever comes first.

Where it is agreed between you and the Contractor that the Facilities are to be accepted in parts, and thus where there are separate Completion and Operational Acceptance Certificates for each part, this Letter of Guarantee shall be apportioned to the value of each such part and shall reduce or expire as provided above on or following Completion or Operational Acceptance of each part.

We shall only undertake to make payment under this Letter of Guarantee upon our receipt of a written demand signed by your duly authorized officer for a specified sum, where such demand sets out the reasons for your claim under this Letter of Guarantee and is accompanied by

- (a) a copy of the written notice sent by you to the Contractor before making the claim under this Guarantee, specifying the Contractor's breach of contract and requesting the Contractor to remedy it
- (b) a letter signed by your duly authorized officer certifying that the Contractor has failed to remedy the default within the period allowed for remedial action



- (c) a copy of your written notice to the Contractor stating your intent to claim under this Letter of Guarantee because of the Contractor's failure to remedy the default in accordance with the request referred to in para. (a) above.

Our liability under this Letter of Guarantee shall be to pay to you whichever is the lesser of the sum so requested or the amount then guaranteed hereunder in respect of any demand duly made hereunder prior to expiry of this Letter of Guarantee, without being entitled to inquire whether or not this payment is lawfully demanded.

This Letter of Guarantee shall be valid from the date of issue until the earlier of twelve (12) months after the date of Operational Acceptance or eighteen (18) months after the date of Completion of the Facilities or, where the Facilities are to be accepted in parts, twelve (12) months after the date of Operational Acceptance or eighteen (18) months after the date of Completion of the last part or [date], whichever comes first.

Except for the documents herein specified, no other documents or other action shall be required, notwithstanding any applicable law or regulation.

If the Defect Liability Period is extended with respect to any part of the Facilities in accordance with the Contract, you shall notify us, and the validity of this Letter of Guarantee shall be extended with respect to the percentage of the Contract Price stipulated in the notification until expiry of such extended Defect Liability Period.

Our liability under this Letter of Guarantee shall become null and void immediately upon its expiry, whether it is returned or not, and no claim may be made hereunder after such expiry or after the aggregate of the sums paid by us to you shall equal the sums guaranteed hereunder, whichever is the earlier.

All notices to be given hereunder shall be given by registered (airmail) post to the addressee at the address herein set out or as otherwise advised by and between the parties hereto.

We hereby agree that any part of the Contract may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement between you and the Contractor, and this security may be exchanged or surrendered without in any way impairing or affecting our liabilities hereunder without notice to us and without the necessity for any additional endorsement, consent or guarantee by us, provided, however, that the sum guaranteed shall not be increased or decreased.

No action, event or condition which by any applicable law should operate to discharge us from liability hereunder shall have any effect and we hereby waive any right we may have to apply such law, so that in all respects our liability hereunder shall be irrevocable and, except as stated herein, unconditional in all respects.

Yours truly,

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Authorized Signature

## Advance Payment Security

### Demand Guarantee

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[Name and Address of Employer]*

**Date:** *[Insert date of issue]*

**Advance Payment Guarantee No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that \_\_\_\_\_ (hereinafter called "the Applicant") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of, \_\_\_\_\_ (hereinafter called "the Contract").

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum \_\_\_\_\_ (\_\_\_\_\_) is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of. (\_\_\_\_\_) <sup>1</sup> upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the applicant:

- (a) has used the advance payment for purposes other than the costs of mobilization in respect of the Facilities; or

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<sup>1</sup> The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.

- (b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number \_\_\_\_\_ at \_\_\_\_\_.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of documentation indicating full repayment by the Applicant of the amount of the advance payment, or on the \_\_\_\_\_ day of \_\_\_\_\_,<sup>2</sup>, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

\_\_\_\_\_ [signature(s)]

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

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<sup>2</sup> Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."