



**Islamic Emirate of Afghanistan**

**Standard Bidding Document for Procurement of Plant (Design,  
Supply and Installation)**

**General Directorate of State-Owned Enterprises**

**Da Afghanistan Breshna Sherkat (DABS)**

**The Renovation Project of the First Turbine of the  
Mahipar Hydroelectric Plant**

Ref. Number: NPD/DABS/1403/ICB/W-922

Entity Address: DABS, Dehmazang, Kabul – Afghanistan

Facilitator Add: National Procurement Directorate (NPD), General Directorate of  
Administrative Office, Pashtunistan Watt, Kabul – Afghanistan

**Budget/Grant No: 7012**

**Contract Duration: 2 Years**

**Contract type: Lump sum**

Dear Bidder,

The bid opening for this project will be held at 10:00 AM on 18 December 2024. You are requested to be present at the entrance gate of the General Directorate of the Administrative Office of the Islamic Emirate of Afghanistan one hour prior to the bid opening time for security checks. Please ensure to bring the original documents, including the business license, Tazkira (ID), and authorization letter. Please note that if even one-minute passes beyond the deadline for the bid opening, your bid will be rejected and will not be accepted.

Issue Date: November 2024

# Foreword

This Standard Bidding Document for Procurement of Plant Design, Supply, and Installation have been issued by National Procurement Directorate (NPD) and is based on the Master Document for Procurement of Plant Design, Supply, and Installation and its User's Guide, prepared by the Multilateral Development Banks and International Financing Institutions.

This document reflects the structure and the provisions of the Master Procurement Document for the Procurement of Plant Design, Supply, and Installation.

# Preface

This Standard Bidding Document for Procurement of Plant Design, Supply, and Installation has been prepared for use in contracts processed by Government of Afghanistan involving the design, supply, installation and commissioning of specially engineered plant and equipment, such as turbines, generators, boilers, switchyards, pumping stations, telecommunications, process and treatment plants, and the like for power, water, sewerage, telecommunication and similar projects. Normally, this set of documents should be used when (i) the value of the plant and equipment portion represents the major part of the estimated contract value, or (ii) the nature and complexity of the plant and equipment is such that the facilities cannot safely be taken over by the Entity without elaborate testing, precommissioning, commissioning and acceptance procedures being followed. These documents are intended to be used where the Contractor is responsible for each activity required for completion of the facilities, e.g., design, manufacture delivery, installation, testing, commissioning, training, etc. However, these conditions may be adapted for use for single responsibility contracts where some activities, such as parts of the preliminary design or site preparation works, are done by others. If the user has questions regarding which SBD should be used in a particular case, the appropriate NPD staff should be consulted.

# Summary Description

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The use of this Standard Bidding Document for Procurement of Plant Design, Supply, and Installation applies with or without prequalification. A brief description of these documents is given below. The text shown in *Italics* corresponds to institution specific clauses that each Entity will replace with provisions consistent with its respective policy.

## **SBD for Procurement of Plant Design, Supply, and Installation**

### **PART 1 – BIDDING PROCEDURES**

#### **Section I: Instructions to Bidders (ITB)**

This Section provides relevant information to help Bidders prepare their bids. Information is also provided on the submission, opening, and evaluation of bids and on the award of Contracts. **Section I contains provisions that are to be used without modification.**

#### **Section II. Bid Data Sheet (BDS)**

This Section consists of provisions that are specific to each procurement and that supplement the information or requirements included in Section I, Instructions to Bidders.

#### **Section III. Evaluation and Qualification Criteria**

This Section contains the criteria to determine the lowest evaluated bid and the qualifications of the Bidder to perform the contract. Two alternative Sections III, Evaluation and Qualification Criteria are provided to address the possibility of having or not having prequalification of Bidders.

#### **Section IV: Bidding Forms**

This Section contains the forms which are to be completed by the Bidder and submitted as part of his Bid

#### **Section V. Eligible Countries**

This Section contains information regarding eligible countries.

### **PART 2 – EMPLOYER’S REQUIREMENTS**

#### **Section VI. Employer’s Requirements**

This Section contains the Specification, the Drawings, and supplementary information that describe the Plant and Installation Services to be procured.

### **PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS**

#### **Section VII. General Conditions (GC)**

This Section contains the general clauses to be applied in all contracts. **The text of the clauses in this Section shall not be modified.**

**Section VIII. Particular Conditions (PC)**

This Section consists of Part A, Contract Data which contains data, and Part B, Specific Provisions which contains clauses specific to each contract. The contents of this Section modify or supplement the General Conditions and shall be prepared by the Employer.

**Section IX: Contract Forms**

This Section contains forms which, once completed, will form part of the Contract. The forms for **Performance Security** and **Advance Payment Security**, when required, shall only be completed by the successful Bidder after contract award.

# Standard Bidding Document

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## Table of Contents

### **PART 1 – Bidding Procedures**

#### **OPTION A: Single Stage Bidding**

Section I. Instructions to Bidders

Section II. Bid Data Sheet

Section III. Evaluation and Qualification Criteria (Following Prequalification)

Section III. Evaluation and Qualification Criteria (Without Prequalification)

#### **OPTION B: Two Stage Bidding**

Section I. Instructions to Bidders

Section II. Bid Data Sheet

Section III. Evaluation and Qualification Criteria (Following Prequalification)

Section III. Evaluation and Qualification Criteria (Without Prequalification)

Section IV. Bidding Forms

Section V. Eligible Countries

### **PART 2 –Employer’s Requirements**

Section VI. Employer’s Requirements

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

Section VII. General Conditions (GC)

Section VIII. Particular Conditions

Section IX. - Contract Forms

### **User’s Guide**

# **PART 1 – Bidding Procedures**

# Section I. Instructions to Bidders

## General

- 1. Scope of Bid**
  - 1.1 In connection with the Invitation for Bids **indicated in the Bid Data Sheet (BDS)**, the entity, as **indicated in the BDS**, issues this Bidding Document for the procurement of Plant and Installation Services as specified in Section VI, Employer's Requirements. The name, identification, and number of lots (contracts) of the International Competitive Bidding (ICB) are **provided in the BDS**.
  - 1.2 Unless otherwise stated, throughout this Bidding Document definitions and interpretations shall be as prescribed in the General Conditions, Section VII.
- 2. Source of Funds**
  - 2.1 The entity **indicated in the BDS** has budget (hereinafter called "funds") from the DABS toward the cost of the project named in the BDS. The entity intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding Document is issued.
  - 2.2 Payments by the DABS will be made only at the request of the entity in accordance with respective legal documents.
- 3. Fraud and Corruption**
  - 3.1 The Procurement law requires that entity as well as Bidders, Suppliers, Contractors and their agents (whether declared or not), personnel, subcontractors, sub-consultants, service providers and suppliers, under Government financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuit of this policy, the government:
    - (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<sup>1</sup>;*
      - (ii) *"fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or*

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<sup>1</sup> "Another party" refers to a public official acting in relation to the procurement process or contract execution. In this context, "public official" includes government staff and employees of other organizations taking or reviewing procurement decisions.



*attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation<sup>2</sup>;*

(iii) *“collusive practice” is an arrangement between two or more parties<sup>3</sup> 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<sup>4</sup> or the property of the party to influence improperly the actions of a party;

(v) “obstructive practice” is

(aa) 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

(bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under sub-clause 3.2 below.

(b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;

(c) will debar a firm or an individual, at any time, in accordance with prevailing government debarment procedures.

3.2 In further pursuance of this policy, Bidders shall permit the entity to inspect any accounts and records and other documents relating to the Bid submission and contract performance, and to have them audited by auditors appointed by the Entity.

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<sup>2</sup> “Party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

<sup>3</sup> “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

<sup>4</sup> “Party” refers to a participant in the procurement process or contract execution.

- 3.3 Furthermore, Bidders shall be aware of the provision stated in the General Conditions (GC 42.2.1(c)).

#### 4. Eligible Bidders

- 4.1 A Bidder may be a private entity or a government-owned entity—subject to ITB 4.5—or any combination of such entities in the form of a joint venture, or association (JVA) 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 or association:
- (a) **unless otherwise specified in the BDS**, all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms, and
  - (b) the JVA shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the partners of the JVA during the bidding process and, in the event the JVA is awarded the Contract, during contract execution.
- 4.2 A Bidder, and all partners constituting the Bidder, shall have a nationality of an eligible country under respective law of Islamic Emirate of Afghanistan.
- 4.3 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if :
- (a) they have a controlling partner in common; or
  - (b) they receive or have received any direct or indirect subsidy from any of them; or
  - (c) they have the same legal representative for purposes of this bid; or
  - (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder, or influence the decisions of the Entity regarding this bidding process; or
  - (e) A Bidder submits more than one bid in this bidding process, either individually or as a partner in a joint venture, except for alternative offers permitted under ITB Clause 13. This will result in the disqualification of all such bids. However, this does not limit the participation of a Bidder as a subcontractor in another bid or of a firm as a subcontractor in more than one bid. or

(f) A Bidder 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.

(g) A Bidder or any of its affiliates has been hired (or is proposed to be hired) by the Entity as Project Manager for the contract.

4.4 A Bidder that has been debarred by the NPD in accordance with the Procurement Law and respective Procedure shall be ineligible to be awarded contract during such period of time as the debarment notice shall determine.

4.5 Government-owned entities shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under the principles of commercial law, and (iii) are not dependent agencies of the entity.

4.6 Bidders shall provide such evidence of their continued eligibility satisfactory to the entity, as the entity shall reasonably request.

4.7 In case a prequalification process has been conducted prior to the bidding process, this bidding is open only to prequalified Bidders.

4.8 Firms shall be excluded if:

(a) as a matter of law or official regulation, the government 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 related 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 Islamic Emirate of Afghanistan prohibits any import of goods or contracting of works or services from that country or any payments to persons or entities in that country.

## **5. Eligible Plant and Installation Services**

5.1 The Plant and Installation Services to be supplied under the Contract shall have their origin in eligible source countries as defined in ITB 4.2 above and all expenditures under the Contract will be limited to such Plant and Installation 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 in its basic characteristics or in purpose or utility from its components.

## **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
- PART 2 Entity's Requirements**
- Section VI. Entity's Requirements
- PART 3 Conditions of Contract and Contract Forms**
- Section VII. General Conditions (GC)
  - Section VIII. Particular Conditions (PC)
  - Section IX. Contract Forms
- 6.2 The Invitation for Bids issued by the entity is not part of the Bidding Document.
- 6.3 The entity is not responsible for the completeness of the Bidding Document and its addenda, if they were not obtained directly from the source stated by the entity in the Invitation for Bids.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the bid.
- 7. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting**
- 7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the entity 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 entity will respond to any request for clarification, provided that such request is received no later than seven (7) days prior to the deadline for submission of bids. The entity's response shall be in writing with copies 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.

Should the entity deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so 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 Entity 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 entity 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 The Bidder's designated representative is invited to attend a pre-bid meeting, if **provided for in the BDS**. 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, as far as possible, to submit any questions in writing, to reach the entity 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. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by the entity exclusively through the issue of an Addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting.
- 7.7 Nonattendance at 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 entity 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 entity in accordance with ITB 6.3.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the entity may, at its

discretion, extend the deadline for the submission of bids, pursuant to ITB 23.2

## **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 Entity 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 entity, 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 submitted by the Bidder shall comprise the following:
- (a) Letter of Bid
  - (b) Completed schedules as required, including Price Schedules, in accordance with ITB 12 and 17;
  - (c) Bid Security or Bid Securing Declaration, in accordance with ITB 20;
  - (d) alternative bids, if permissible, in accordance with ITB 13;
  - (e) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 21.2;
  - (f) 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;
  - (g) documentary evidence in accordance with ITB 15 establishing the Bidder's eligibility and qualifications to perform the contract if its Bid is accepted;
  - (h) documentary evidence established in accordance with ITB 16 that the Plant and Installation Services offered by the Bidder conform to the Bidding Document;
  - (i) in the case of a bid submitted by a JVA, JVA agreement, or letter of intent to enter into a JVA including a draft agreement, indicating at least the parts of the Plant to be executed by the respective partners;
  - (j) List of subcontractors, in accordance with ITB 16.2; and

(k) any other document **required in the BDS**.

**12. Letter of Bid and Schedules**

12.1 The Bidder shall complete the Letter of Bid, including the appropriate Price Schedules, using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed as instructed in each form.

**13. Alternative Bids**

13.1 **The BDS indicates** whether alternative bids are allowed. If they are allowed, the BDS will also indicate whether they are permitted in accordance with ITB 13.3, **or** invited in accordance with ITB 13.2 and/or ITB 13.4.

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, Bidders wishing to offer technical alternatives to the entity'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 entity's requirements; and (ii) all information necessary for a complete evaluation of the alternatives by the entity, 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 lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the entity.

13.4 When bidders are **invited in the BDS** to submit alternative technical solutions for specified parts of the facilities, such parts shall be described in Section VI, entity's Requirements. Technical alternatives that comply with the performance and technical criteria specified for the Plant and Installation Services shall be considered by the entity on their own merits, pursuant to ITB 35.

**14. Documents Establishing the Eligibility of the Plant and Installation Services**

14.1 To establish the eligibility of the Plant and Installation Services in accordance with ITB Clause 5, Bidders shall complete the 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**

15.1 To establish its eligibility and 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 in Section IV, Bidding Forms.

- 15.2 Domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility as described in ITB 34.
- 16. Documents establishing conformity of the Plant and Installation Services**
- 16.1 The Bidder shall furnish the information stipulated in Section IV, in sufficient detail to demonstrate substantial responsiveness of the Bidders' proposal to the work requirements and the completion time.
- 16.2 For major items of Plant and Installation Services as listed by the entity 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. In addition, the Bidder shall include in its bid information establishing compliance with the requirements specified by the entity for these 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 proposed complies with the requirements of ITB 4, and that any plant, or services to be provided by the Subcontractor comply with the requirements of ITB 5 and ITB 15.1
- 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 such that the total bid price covers 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 may be 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 Entity when executed and shall be deemed to be covered by the prices for other items.
- 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



1-4 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.

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

Bidders shall note that the plant and equipment included in Schedule Nos. 1 and 2 above **exclude** materials used for civil, building and other construction works. All such materials shall be included and priced under Schedule No. 4, Installation Services.

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 Islamic Emirate of Afghanistan (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 Islamic Emirate of Afghanistan on the plant if the contract is awarded to the Bidder, and

(iii) The total price for the item.

(c) Design Services (Schedule No. 3).

(d) Installation Services shall be quoted separately (Schedule No. 4) and 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 Islamic Emirate of Afghanistan as of seven (7) days prior to the deadline for submission of bids.

- (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 current edition of Incoterms, published by the International Chamber of Commerce shall govern.

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 quotation will not be rejected, but the price adjustment will be treated as zero. Bidders are required to indicate the source of labor and material indices in the corresponding Form in Section IV, Bidding Forms.

17.10 If so indicated in ITB 1.1, bids are being invited for individual lots (contracts) or for any combination of lots (packages). 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 package, or alternatively, to individual Contracts within the package, and the manner in which the price reductions will apply.

17.11 Bidders wishing to offer any unconditional discount shall specify in their Letter of Bid the offered discounts and the manner in which price discounts will apply.

## **18. Currencies of Bid and Payment**

18.1 The currency (ies) of the bid shall be, as **specified in the BDS**.

18.2 Bidders may be required by the entity to justify, to the Employer's satisfaction, their local and foreign currency requirements.

## 19. Period of Validity of Bids

19.1 Bids shall remain valid for the period **specified in the BDS** after the bid submission deadline date prescribed by the entity. A bid valid for a shorter period shall be rejected by the entity as non-responsive.

19.2 In exceptional circumstances, prior to the expiration of the bid validity period, the entity 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 In the case of fixed price contracts, if the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial bid validity, the Contract price shall be adjusted by a factor or factors specified in the request for extension. Bid evaluation shall be based on the Bid Price without taking into consideration the above correction.

## 20. Bid Security

20.1 The Bidder shall furnish as part of its bid, either a Bid-Securing Declaration or a bid security as **specified in the BDS**, in original form and in the amount **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 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 surety;
- (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. If the unconditional guarantee is issued by an insurance company or a bonding company located outside Afghanistan, the issuer shall have a correspondent financial institution located in Afghanistan to make it enforceable. 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 Entity prior to bid submission. In either case, the form must include the complete name of the Bidder. The bid

security shall be valid for twenty-eight days (28) 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 is specified pursuant to ITB 20.1, any bid not accompanied by a substantially responsive bid security or Bid-Securing Declaration shall be rejected by the Entity as non-responsive.

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 furnishing of the performance security pursuant to ITB 42.

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 may be forfeited or the Bid-Securing Declaration executed:

- a. modification or withdrawal of a bid after the deadline for submission of bids;
- b. Refusal by a bidder to accept a correction of an arithmetical error appearing on price table of the bid;
- c. Failure by the successful bidder to enter into the contract in accordance with the terms set forth in the bidding documents and the request for proposal;
- d. Failure by the successful bidder to provide the performance security as required by the bidding documents;
- e. In case of debarment of the bidder pursuant to the article 49 of Procurement law;

(i)

20.8 The Bid Security or the Bid Securing Declaration of a JVA shall be in the name of the JVA that submits the bid. If the JVA has not been legally constituted into a legally enforceable JVA at the time of bidding, the Bid Security or the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent referred to in ITB 4.1.

20.9 If a Bid-Securing Declaration is executed in accordance with ITB 20.7, the entity will declare the Bidder ineligible to be awarded a contract by the Entity for the period of time stated in the Form of Bid-Securing Declaration.

20.10 If a bid security is not required in the BDS, and

- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid Form, except as provided in ITB 19.2, or
- (b) if the successful Bidder fails to: sign the Contract in accordance with ITB 41; or furnish a performance security in accordance with ITB 42;

the NPD may, **if provided for in the BDS**, declare the Bidder disqualified to be awarded a contract by the entities 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 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.
- 21.3 A bid submitted by a JVA shall comply with the following requirements:
  - (a) Unless not required in accordance with ITB 4.1 (a), be signed so as to be legally binding on all partners and
  - (b) Include the Representative’s authorization referred to in ITB 4.1 (b), consisting of a power of attorney signed by those legally authorized to sign on behalf of the JVA.
- 21.4 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid.

## **Submission and Opening of Bids**

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

- 22.1 Bidders may always submit their bids by mail or by hand. When so **specified in the BDS**, bidders shall have the option of submitting their bids electronically. Procedures for submission, sealing and marking are as follows:

- (a) **Bidders submitting bids by mail or by hand shall enclose the original and each copy of the Bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL,” “ALTERNATIVE” and “COPY.” These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB sub-Clauses 22.2 and 22.3.**
- (b) **Bidders submitting bids electronically shall follow the electronic bid submission procedures specified in the BDS.**

22.2 The inner and outer envelopes shall:

- (a) bear the name and address of the Bidder;
- (b) be addressed to the Entity in accordance with ITB 24.1;
- (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 entity 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 Entity at the address and no later than the date and time **indicated in the BDS.**

23.2 The entity 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 entity and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

**24. Late Bids**

24.1 The entity shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 23. Any bid received by the entity 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 21.2, (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 received by the Entity 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 The Entity shall conduct the bid opening in public, in the presence of Bidders` designated representatives and anyone who choose to attend, and at the address, date and time **specified in the BDS**. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 22.1, shall be as **specified in the BDS**.

26.2 First, 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. 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. 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. Only bids that are opened and read out at bid opening shall be considered further.

26.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and the Bid Price(s), 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; and any other details as the Entity may consider appropriate. Only discounts and alternative bids read out at bid opening shall be considered for evaluation. No bid shall be rejected at bid opening except for late bids, in accordance with ITB 24.1.

- 26.4 The Entity shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot if applicable, including any discounts and alternative bids; and the presence or absence of a bid security or a Bid-Securing Declaration. 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 who submitted bids in time, and posted online when electronic bidding is permitted.

## **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 such process until information on Contract award is communicated to all Bidders.
- 27.2 Any attempt by a Bidder to influence the Entity 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 Entity on any matter related to the bidding process, it should do so in writing.
- 28. Clarification of Bids**
- 28.1 To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Entity 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 Entity shall not be considered. The Entity'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 Entity in the evaluation of the bids, in accordance with ITB 32.
- 28.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Entity'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 The entity’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 entity’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 The entity shall examine the technical aspects of the bid in particular, to confirm that all requirements of Section VI, Entity’s Requirements have been met without any material deviation, reservation, or omission.
- 30.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

**31. Nonmaterial Nonconformities**

- 31.1 Provided that a bid is substantially responsive, the entity 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 entity 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 entity 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. The adjustment shall be made using the method indicated in Section III, Evaluation and Qualification Criteria.

- 32. Correction of Arithmetical Errors**
- 32.1 Provided that the bid is substantially responsive, the entity shall correct arithmetical errors on the following basis:
- (a) 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;
  - (b) 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
  - (c) 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 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be declared non-responsive.
- 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 No margin of domestic preference shall apply.
- 35. Evaluation of Bids**
- 35.1 The entity shall use the criteria and methodologies indicated in this Clause. No other evaluation criteria or methodologies shall be permitted.

#### Technical Evaluation

- 35.2 The entity 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 entity 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 entity'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 entity will make a similar evaluation of the alternatives. Where alternatives have not been allowed but have been offered, they shall be ignored.

#### Economic Evaluation

35.4 To evaluate a bid, the Entity shall consider the following:

- (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 17.9 or ITB17.10;
- (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; and
- (f) the evaluation factors indicated in Section III, Evaluation and Qualification Criteria.

35.5 If price adjustment is allowed in accordance with ITB 17.6, 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 price of the lot (contract) combinations, including any discounts offered in the Letter of Bid, is specified in Section III, Evaluation and Qualification Criteria.

35.7 If the bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the entity, the entity may

require the Bidder to produce detailed price analyses for any or all items of the Price Schedules, to demonstrate the internal consistency of those prices with the methods and time schedule proposed. After evaluation of the price analyses, taking into consideration the terms of payments, the entity may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the entity against financial loss in the event of default of the successful Bidder under the Contract.

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| <b>36. Comparison of Bids</b>  | 36.1 The Entity shall compare all substantially responsive bids in accordance with ITB 35.4 to determine the lowest evaluated bid.   |
| <b>37. Eligibility and Qualification of the Bidder</b>                     | <p>37.1 The Entity shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid is eligible and meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.</p> <p>37.2 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.</p> <p>37.3 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 entity shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.</p> <p>37.4 The capabilities of the manufacturers and subcontractors proposed in its Bid to be used by the lowest evaluated Bidder 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 be determined to be unacceptable, the Bid will not be rejected, but the Bidder will be required to substitute an acceptable manufacturer or subcontractor without any change to the bid price. 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.</p> |
| <b>38. Entity's Right to Accept Any Bid, and to Reject Any or All Bids</b> | 38.1 The entity 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.  |

## **Award of Contract**

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|----------------------------------|--|
| <b>39. Award Criteria</b>        | 39.1 Subject to ITB 38.1, and article 43 and 63 of Procurement law the entity shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be eligible and qualified to perform the Contract satisfactorily.   |
| <b>40. Notification of Award</b> | <p>40.1 Prior to the expiration of the period of bid validity, the Entity shall notify the successful Bidder, in writing, that its bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the “Letter of Acceptance”) shall specify the sum that the Entity will pay the Contractor in consideration of the execution and completion of the Plant and Installation Services (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”). Provisions article 63 and 43 of procurement law shall apply.</p> <p>40.2 At the same time, the Entity shall also notify all other Bidders of the results of the bidding, and shall the results identifying the bid and lot numbers and the following information: (i) name of each Bidder who submitted a Bid; (ii) bid prices as read out at Bid Opening; (iii) name and evaluated prices of each Bid that was evaluated; (iv) name of bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, and the Price it offered, as well as the duration and summary scope of the contract awarded.</p> <p>40.3 The Entity shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 40.2, requests in writing the grounds on which its bid was not selected.</p> |
| <b>41. Signing of Contract</b>   | <p>41.1 Promptly upon notification, the Entity shall send the successful Bidder the Contract Agreement.</p> <p>41.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the entity.</p> <p>41.3 Notwithstanding ITB 41.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to Islamic Emirate of Afghanistan, 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 Entity that signing of the Contact 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</p>   |

the export of the Plant and Installation Services under the terms of the Contract.

**42. Performance  
Security**

- 42.1 Within twenty-eight (28) days of the receipt of notification of award from the entity, the successful Bidder shall furnish the performance security in accordance with the General Conditions, subject to ITB 35.7, using for that purpose the Performance Security Form included in Section IX, Contract Forms, or another form acceptable to the Entity. 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 entity. A foreign institution providing a performance security shall have a correspondent financial institution located in the Islamic Emirate of Afghanistan.
- 42.2 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 entity may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the entity to be qualified to perform the Contract satisfactorily.



**Section II. Bid Data Sheet**

<b>A. Introduction</b>	
<b>ITB 1.1</b>	The number of the Invitation for Bids is: NPD/DABS/1403/ICB/W-922
<b>ITB 1.1</b>	The entity is: Da Afghanistan Breshna Sherkat (DABS)
<b>ITB 1.1</b>	<p>The name of the ICB is: <b>The renovation project of the first turbine of the Mahipar Hydroelectric Plant</b></p> <p>The identification number of the NCB is: NPD/DABS/1403/ICB/W-922</p> <p>The number and identification of lots (contracts) comprising this ICB is: N/A</p>
<b>ITB 2.1</b>	The name of the Project is: <b>The renovation project of the first turbine of the Mahipar Hydroelectric Plant</b>
<b>ITB 4.1 (a)</b>	The individuals or firms in a joint venture, consortium or association shall be jointly and severally liable.
<b>B. Bidding Document</b>	
<b>ITB 7.1</b>	<p>The following are authorized agents of the Entity for the purpose of providing the Bidding Documents: <b>For finding of bidding documents for this project please refer to</b> <a href="https://aop.gov.af/dr/access_to_information/administrative">https://aop.gov.af/dr/access_to_information/administrative</a> or <a href="https://tenders.ageops.af/prs/bid-opportunities-notices">https://tenders.ageops.af/prs/bid-opportunities-notices</a> or <a href="https://main.dabs.af/tender">https://main.dabs.af/tender</a> or <a href="https://www.dgmarket.com/">https://www.dgmarket.com/</a></p> <p>In case of not downloading the bidding documents please send email to the following add: bellow mentioned emails.</p> <p>Note: the bidder who downloaded or received the bidding documents (SBD &amp; Technical Document) of the project; should send its company information (name of company, license No, email, contact No, project name and Ref. No) to the National Procurement Directorate through mentioned emails, for timely receiving of SBD revised or clarification document, if needed.</p> <p>For <b>clarification purposes</b> only, the entity's address is:</p> <p>Attention: <u>Department of Consolidation of Plans and Preparation of Procurement Documents</u></p> <p>Add: National Procurement Directorate, General Directorate of Administrative Office IEA, Next to Marble Palace of AOP, Pashtunistan Watt, Kabul – Afghanistan</p> <p><b>Name:</b> Sanaullah Shahid</p> <p><b>Email:</b> <a href="mailto:npd.bidding1@gmail.com">npd.bidding1@gmail.com</a></p> <p><b>Copy to:</b> <a href="mailto:mufti.wasif.arif@gmail.com">mufti.wasif.arif@gmail.com</a></p> <p><b>Telephone:</b> (+93) 0202143274</p> <p>Note: In accordance with rule 1 article 30 of the procurement procedure, the request for clarification in competitive bidding must be submitted at least 10 calendar days before the deadline for submission of offers, and the entity will reply in 3 working days.</p>
<b>ITB 7.4</b>	<b>Pre-Bid Meeting: Not Applicable</b>



	<p>Note: if the bidder has questions, please share its questions through these emails according to ITB 7.1.</p> <p><b>Name:</b> Sanaullah Shahid</p> <p><b>Email:</b> <a href="mailto:npd.bidding1@gmail.com">npd.bidding1@gmail.com</a></p> <p><b>Copy to:</b> <a href="mailto:mufti.wasif.arif@gmail.com">mufti.wasif.arif@gmail.com</a></p> <p><b>Site Visit: Applicable</b></p> <p>For Site Visit purposes, the bidder should contact the following address in the specified date:</p> <p>Contact person: Ajmal Khan Esmatzai and Nasratullah Azizi</p> <p>Email: <a href="mailto:ajmalkhan.esmatzai@dabs.af">ajmalkhan.esmatzai@dabs.af</a> , <a href="mailto:nasratullah.az@dabs.af">nasratullah.az@dabs.af</a></p> <p>Telephone: +93 766 330 019 , +93 729 002 503</p> <p>Date &amp; Time: 04/12/2024, 10:00 AM (Local time: Kabul)</p>
<b>ITB 7.6</b>	The minutes of pre-bid meeting shall be transmitted through e-mail to the prospective (participant) bidders or uploaded on website. N/A
<b>ITB 8.2</b>	<p>The amendment to Bidding Documents if any, shall be communicated through e-mail to the prospective (participant) bidders and uploaded on these websites.</p> <p><a href="https://aop.gov.af/dr/access_to_information/administrative">https://aop.gov.af/dr/access_to_information/administrative</a> or <a href="https://tenders.ageops.af/prs/bid-opportunities-notice">https://tenders.ageops.af/prs/bid-opportunities-notice</a> or <a href="https://main.dabs.af/tender">https://main.dabs.af/tender</a> or <a href="https://www.dgmarket.com/">https://www.dgmarket.com/</a></p>
<b>C. Preparation of Bids</b>	
<p><b>Important Note:</b> All applicants wishing to participate in the procurement stages must create an account on the electronic procurement system through the following link: <a href="https://vendors.ageops.af/">https://vendors.ageops.af/</a>. Before submitting their offers, they must obtain the Vendor Procurement Identification Number (Vpin) and attach the receipt to their offer.</p> <p>Additionally, to receive necessary guidance and promptly resolve any potential issues while using the electronic procurement system, applicants may contact the Electronic Procurement System Development Directorate of the National Procurement Authority via email at: <a href="mailto:npd.vendors@aop.gov.af">npd.vendors@aop.gov.af</a> or by phone at: 0202143204.</p>	
<b>ITB 10.1</b>	The language of the bid is: English
<b>ITB 11.1 (k)</b>	<p>The Bidder shall submit with its bid the following additional documents:</p> <ul style="list-style-type: none"> <li>a) Updated &amp; valid copy of the bidder's business registration or business license;</li> <li>b) A CD or DVD or Flash containing the (i) the price schedule and (ii) Technical Proposal;</li> <li>c) Manufacturer Authorization Letter are required for all items except for design and installation.</li> <li>d) Type Test Report are required for all items except for design and installation.</li> <li>e) Type Test certificate are required for all items except for design and installation.</li> <li>f) Tax clearance document for latest financial period before this bid opening session. The bidders registered in Afghanistan shall submit their tax clearance confirmation issued by the Ministry of Finance for the last fiscal year. If the bidder's tax clearance for the last year is under the process, the bidder shall present the relevant documentation in its bid;</li> <li>g) Providing of commitment letter that the bidder is able to pay its liabilities, not bankrupt/insolvent, not debarred and not convicted by court on violation in business during two years before participating in the bidding, and not having any conflict of interest;</li> </ul>

	<p>h) The Bidder (its president or vice-president) is obliged to completely fill, sign and stamp the Beneficial Ownership Disclosure Form and submit along with the offer;</p> <p>i) In case of participation of an authorized representative, having an official authorization letter;</p> <p>j) JV Agreement (In case of two or more companies);</p> <p>k) Filling and submitting of any other forms or documents as per technical document requirement.</p> <p>l) Annual Turnover</p> <p>m) Financial Resources</p> <p>n) Experience</p> <p>All pages of the bidding documents shall be dully filled, singed &amp; stamped by the bidder authorized representative. The bidder is obliged to press the price schedule form, bid information form and bid submission (letter of bid) form with a transparent adhesive (tear tape) for security purposes when it's filled, signed and stamped;</p>
<b>ITB 13.1</b>	Alternative bids are not permitted.
<b>ITB 13.2</b>	Alternatives to the Time Schedule shall not be permitted.
<b>ITB 13.4</b>	Alternative technical solutions for the following parts of the Plant and Installation Services: shall not be permitted
<b>ITB 17.1</b>	Bidders shall quote for the following components or services on a single responsibility basis: N/A
<b>ITB 17.5(a)</b>	<b>Named place of destination is:</b> The project implementation will take place in Mahipar hydro power plant, Kabul, Afghanistan, and the spare parts will be delivered to Mahipar Breshna's warehouse, after the completion and activation of the turbine, but before the end of the project timeline.
<b>ITB 17.5(d)</b>	<b>Named place of final destination is:</b> Implementation of the project at Mahipar hydro power plant and spare part to Mahipar Breshna's warehouse
<b>ITB 17.6</b>	The Incoterms edition is: DDP 2010
<b>ITB 17.7</b>	The prices quoted by the Bidder shall be: <b>Fixed price and not subject to Adjustment</b>
<b>ITB 18.1</b>	The currency (ies) of the bid shall be as follows: <b>USD</b>
<b>ITB 19.1</b>	The bid validity period shall be <b>120</b> days.
<b>ITB 20.1</b>	<p>A Bid Security is required to be submitted for the amount specified below:</p> <p>Name of the Project: <b>The renovation project of the first turbine of the Mahipar Hydroelectric Plant</b></p> <p>Amount of Bid Security: <b>250,000 USD</b></p> <p>Bid security, to be submitted only in the form of a Bank Guarantee and shall remain valid for a period of 28 days beyond the validity period of the bids i.e. (120+28=148) days from bid submission deadline. The bid security could be submitted in USD or equivalent to any other freely convertible currency. In case of JV, the bid security must be submitted in all JV partners name. The bid security shall be submitted in original form. Photo copies/Scanned copies will not be accepted. According to NPA circular No.</p>

	<p>NPA/PPD/NO.25/1397: the state – owned companies or bidders are waived from bid security and performance guarantee.</p> <p>Note: Bid Security in the form of a bank guarantee, shall be issued either (a) by a Bank located in Afghanistan, or (b) reputed foreign bank and in case, the Bank guarantee is issued by a Bank situated outside Afghanistan then it must have correspondent financial institutions in Afghanistan for verification and confirmation. The name of the correspondent Financial Bank/Institution in such cases must be declared with full address and details like phone no., e-mail address etc.</p>
<b>ITB 20.3 (d)</b>	Other types of acceptable securities: <b>Not acceptable</b>
<b>ITB 20.10</b>	If the bidder incurs any of the actions prescribed in subparagraph (a) or (b) of this provision, the government of Islamic Emirate of Afghanistan will declare the bidder ineligible to be awarded contracts by the entity for a period of ( ) years: <b>Not Applicable.</b>
<b>ITB 21.1</b>	<p>In addition to the original of the bid, the number of copies is: <b>one soft copy shall be submitted.</b></p> <p>Note: in the event of any discrepancy between the original and copies, the original shall be acceptable.</p>
<b>ITB 21.2</b>	<p>The written confirmation of authorization to sign on behalf of the Bidder shall consist of: <b>Power of Attorney</b></p> <p>Note: in case of Joint Venture (JV), the power of attorney should signed by all partners of the JV authorizing the signatory to sign on behalf of the JV.</p>
<b>D. Submission and Opening of Bids</b>	
<b>ITB 22.1</b>	Bidders <b>Shall not</b> have the option of submitting their bids electronically.
<b>ITB 22.1 (b)</b>	If bidders shall have the option of submitting their bids electronically, the electronic bidding submission procedures shall be: <b>Not Applicable</b>
<b>ITB 23.1</b>	<p>For <b><u>bid submission purposes</u></b> only, the Employer's address is :</p> <p>Attention: Bid Opening Facilitation Secretariat Department</p> <p>Address: National Procurement Directorate of General Directorate of Administrative Office IEA, Next to Marble Palace of AOP, Pashtunistan Watt, Kabul – Afghanistan</p> <p>Telephone: in case of any difficulties in locating the address and submission of bid, please contact: 0202143219</p> <p>Email: <a href="mailto:npd.bofs@aop.gov.af">npd.bofs@aop.gov.af</a> , <a href="mailto:bofsecretariat.npd@gmail.com">bofsecretariat.npd@gmail.com</a></p> <p>To: <a href="mailto:npd.bidding1@gmail.com">npd.bidding1@gmail.com</a> , <a href="mailto:mufti.wasif.arif@gmail.com">mufti.wasif.arif@gmail.com</a></p> <p><b>The deadline for bid submission is:</b></p> <p><b>Date: 18/12/2024 Time: 10:00 A.M (Local Time: Kabul)</b></p> <p>The late bid and electronic bid is not acceptable.</p> <p>Note: In case the specified deadline for bid submission is declared a holiday for the purchaser, the bids shall be submitted and opened at the specified time on the next working day.</p>
<b>ITB 26.1</b>	The bid opening shall take place at: National Procurement Directorate of General Directorate of Administrative Office

	<p>Address: Hindukosh Saloon, National Procurement Directorate, General Directorate of Administrative Office IEA, Next to Marble Palace of AOP, Pashtunistan Watt, Kabul – Afghanistan</p> <p><b>Date: 18/12/2024 Time: 10:00 A.M (Local Time: Kabul)</b></p> <p>Telephone: 0202143219</p> <p>Email: <a href="mailto:npd.bofs@aop.gov.af">npd.bofs@aop.gov.af</a> , <a href="mailto:bofsecretariat.npd@gmail.com">bofsecretariat.npd@gmail.com</a></p> <p>To: <a href="mailto:npd.bidding1@gmail.com">npd.bidding1@gmail.com</a> , <a href="mailto:mufti.wasif.arif@gmail.com">mufti.wasif.arif@gmail.com</a></p> <p>Note1: The bid opening for this project will be held at 10:00 AM on 18 December 2024. You are requested to be present at the entrance gate of the General Directorate of the Administrative Office of the Islamic Emirate of Afghanistan one hour prior to the bid opening time for security checks. Please ensure to bring the original documents, including the business license, Tazkira (ID), and authorization letter.</p> <p>Please note that if even one-minute passes beyond the deadline for the bid opening, your bid will be rejected and will not be accepted.</p> <p>Note2: In case the specified date of bid opening is declared a holiday for the purchaser, the bids shall be opened at the specified time on the next working day.</p>
<b>ITB 26.1</b>	If electronic bid submission is permitted in accordance with ITB 22.1, the specific bid opening procedures shall be: <b>Not Applicable</b>
<b>E. Evaluation, and Comparison of Bids</b>	
<b>ITB 33.1</b>	<p>The currency(ies) of the Bid shall be converted into a single currency as follows: USD</p> <p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: USD</p> <p>The source of exchange rate shall be: <u>Da Afghanistan Bank (Transfer Buying rate)</u></p> <p>The date for the exchange rate shall be: <u>Bid submission Deadline</u></p> <p>If a bidder has not submitted a price to one or more items in his/her bid, the item or items for which the price has not been given will not be payable and will be included in the total price of the bid. In works procurement, if the total price of item or items are not priced is more than (10%) percent of bidder's offer, its bid will be considered disqualified. If the bidder has removed one or more items from bid price schedule or BOQ and added one or more items in it. Its bid will be considered disqualified</p>



### **Section III. Evaluation and Qualification Criteria (Without Prequalification)**

This Section contains all the criteria that the Entity shall use to evaluate bids and qualify Bidders. In accordance with ITB 35 and ITB 37, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

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 Most Advantageous Bid. This is the Bid of the Bidder that meets the qualification criteria and whose Bid has been determined to be:

- (a) Substantially responsive to the bidding document; and
- (b) The lowest evaluated cost.

## **1. Evaluation**

### **1.1 Technical Evaluation**

In addition to the criteria listed in ITB 35.2 (a) – (c) the following factors shall apply:

Evaluation of the Bidder's Technical Proposal will include an assessment of the Bidder's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section 6 (Employer's Requirements).

Non-compliance with equipment and personnel requirements described in (Employer's Requirements) shall not normally be a ground for bid rejection and such non-compliance will be subject to clarification during bid evaluation and rectification prior to contract award.

### **1.2 Economic Evaluation**

The following factors and methods will apply:

#### **(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: [**Two Years**]. No credit will be given for earlier completion.

#### **(b) Operating and Maintenance Costs/ Not Applicable**

Since the operating and maintenance costs of the facilities being procured form a major part of the life cycle cost of the facilities, these costs will be evaluated according to the principles given hereafter, including the cost of spare parts for the initial period of operation stated below and based on prices furnished by each Bidder in Price Schedule Nos. 1 and 2, as well as on past experience of the Entity or other entity's similarly placed. Such costs shall be added to the bid price for evaluation.

Option 1: The operating and maintenance costs factors for calculation of the life cycle cost are:

- (i) number of years for life cycle: N/A[Insert number of years]
- (ii) operating costs: N/A [state how they will be determined]
- (iii) maintenance costs, including the cost of spare parts for the initial period of operation: N/A [state how they will be determined], and
- (iv) Discount rate: \_\_\_\_N/A\_\_\_\_[insert discount rate in percent] to be used to discount to present value all annual future costs calculated under (ii) and (iii) above for the period specified in (i).

Or Option 2: Reference to the methodology specified in the Specification or elsewhere in the bidding document. The price of recommended spare parts quoted in Price Schedule No. 5 shall not be considered for evaluation.

#### **(c) Functional Guarantees of the facilities: N/A**

The minimum (or maximum) requirements stated in the Specification for functional guarantees required in the Specification are:

Functional Guarantee	Minimum (or Maximum, as appropriate) Requirement
1.	
2.	
3.	
...	

For the purposes of evaluation, for each percentage point that the functional guarantee of the proposed Plant and Installation Services is below the norm specified in the Specification and in the above table, but above the minimum acceptable levels also specified therein, an adjustment of \_\_\_\_\_N/A\_\_\_\_\_ will be added to the tender price. If the drop below the norm or the excess above the minimum acceptable levels is less than one percent, the adjustment will be prorated accordingly.

Warranty Period: The warranty period for the turbine generator is required to be 8,760 hours of operation, and for other parts, it is one year. The duration of effectiveness is 30 years.

**(d) Work, services, facilities, etc., to be provided by the Entity: N/A**

Where bids include the undertaking of work or the provision of services or facilities by the entity in excess of the provisions allowed for in the bidding document, the entity shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation.

**(e) Specific additional criteria**

The relevant evaluation method, if any, shall be as follows:

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.

**DOMESTIC PREFERENCE:** The Maximum Margin for the domestic preference in accordance with the rule (4) of Procurement Procedure is as follow:

1- Classification of bids:

1. The Domestic Products compared to the foreign products: **(25%)**.
2. Domestic Firms and resident foreign firms compared to the non-resident foreign firms in Afghanistan: **(10%)**.
3. Foreign firms that has a domestic partner of the Joint venture (JV) or committed to have domestic subcontractor, compared to the other foreign firms: **(5%)**.
4. Domestic women-owned Firms, Compared to the domestic and Resident Foreign Firms in Afghanistan: **(5%)**

2- Compression of bids:

In the light of Domestic Preference percentage, the Entity shall decrease the real price of beneficiary bids in accordance with the Preferences percentage and consider that for compression with other bids.

Note: other contents of procurement law article.7, procurement procedure rule.4, NPA (PPD) Circulars No. NPA/PPD/C20/1396 and NPA/PPD/No.29/1399 regarding domestic preference is applicable.

**1.3 Technical alternatives/N/A**

Technical alternatives, if invited in accordance with ITB 13.4, will be evaluated as follows: N/A



## 2. Qualification

Factor	2.1 Eligibility					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.1.1 Nationality	Nationality in accordance with ITB 4.2.	Must meet requirement	Existing or intended JVA must meet requirement	Must meet requirement	N / A	Form ELI –1.1 and 1.2, with attachments
2.1.2 Conflict of Interest	No- conflicts of interests as described in ITB 4.3.	Must meet requirement	Existing or intended JVA must meet requirement	Must meet requirement	N / A	Letter of Bid
2.1.3 Debarment	Not having been declared debarred as described in ITB 4.4.	Must meet requirement	Existing JVA must meet requirement	Must meet requirement	N / A	Letter of Bid
2.1.4 Government Owned Entity	Compliance with conditions of ITB 4.5	Must meet requirement	Must meet requirement	Must meet requirement	N / A	Form ELI –1.1 and 1.2, with attachments
Factor	2.2 Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
			Joint Venture, Consortium or Association			

		<b>Single Entity</b>	<b>All partner s combine d</b>	<b>Each partner</b>	<b>At least one partner</b>	
2.2.1 History of non-performing contracts/ <b>Not Applicable</b>	Non-performance <sup>5</sup> of a contract did not occur within the last (5) years prior to the deadline for application submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one 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.	Must meet requirement by itself or as partner to past or existing JVA. N/A	N/A	N/A	N/A	Form CON – 2 N/A
2.2.2 Pending Litigation/ <b>Not Applicable</b>	All pending litigation shall in total not represent more than Ten percent (10%) of the Bidder's net worth and shall be treated as resolved against the Bidder.	Must meet requirement by itself or as partner to past or existing JVA. N/A	N/A	Must meet requirement by itself or as partner to past or existing JVA. N/A	N/A	Form CON – 2 N/A
<b>Factor</b>	<b>2.3 Financial Situation</b>					
<b>Sub-Factor</b>	Criteria					

<sup>5</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.

	Requirement	Bidder				Documentation Required
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.3.1 Historical Financial Performance/ <b>Not Applicable</b>	Submission of audited balance sheets or if not required by the law of the bidder's country, other financial statements acceptable to the Entity, for the last [5] years to demonstrate the current soundness of the bidders financial position and its prospective long term profitability. <i>(a) [Net worth of the firm should be positive]</i> <i>(b) [The firm should have + profit (before tax) earned during last five years]</i>	N/A	N/A	N/A	N/A	Form FIN – 3.1 with attachments N/A
2.3.2 Annual Turnover	Minimum annual turnover of <b>(11,000,000 USD)</b> calculated as total certified payments received for contracts in progress or completed; average of the last Five (5) years.  Note: Bidder should provide the audited financial report or balance sheet of last five years which prepared or verified by independent	Must meet requirement	Must meet requirement	Minimum Must meet (25 %) Twenty Five percent of the requirement(JV )	Minimum Must meet (40%) Forty percent of the requirement (Lead)	Form FIN –3.2

	auditor or other valid financial documents that shows the availability of aforementioned amount. According to NPA circular No. NPA/PPD/NO.22/1397: the state – owned companies or bidders are waived from financial capability and annual turnover.					
<b>2.3.3 Financial Resources</b>	<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:  <b>2,200,000 USD</b> or equivalent to any other freely convertible currency.</p> <p>Note: The issue of any financial document e.g. Bank Statement, Line of credit shall be in the name of (bidder). The issue date of any financial document e.g. Bank Statement, Line of Credit. etc. shall be between the date of bidding announcement and the deadline for</p>	Must meet requirement	Must meet requirement	Minimum Must meet (25 %) Twenty Five percent of the requirement(JV )	Minimum Must meet (40%) Forty percent of the requirement (Lead)	Form FIN –3.3

	submission of bids. In order to better implementation of instructions contained in Circular NPA/PPD/C22/1397 No: 15289 dated 5/12/1397, the evaluation committee shall consider the final amount in the bank account (Closing Balance) submitted by the bidder as financial capability. According to NPA circular No. NPA/PPD/NO.22/1397: the state – owned companies or bidders are waived from financial capability and annual turnover.  and  (ii) The overall cash flow requirements for this contract and its current commitments. N/A					
Factor	2.4 Experience					
Sub-Factor	Criteria					Documentat ion Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.4.1 General Experience / Not Applicable	Experience under contracts in the role of contractor, subcontractor, or management contractor for at least the last [10]	N/A	N/A	N/A	N/A	Form EXP-2.4.1 N/A

	years prior to the applications submission deadline.					
<b>2.4.2 Specific Experience</b>	<p>(a) Participation as contractor in at least One (1) contract within the last Ten (10) years with a value of at least <b>7,700,000 USD</b>, or two contracts with value of <b>11,000,000 USD</b> that have been successfully and substantially implemented. The evaluation committee will determine the bidder's contract similarity to the project based on nature, complexity and technical Specification. Note: The bidder shall provide the similar contract documents included the following details but not limited to (Name of the contract with reference No, Amount and date (start – end) of contract, Scope of works of the contract, Name and contact details of client). For calculation of the values of similar contracts submitted by the bidders, the bid evaluation committee will consider the inflation rate of the FY in which the submitted contract(s) was completed.</p>	Must meet requirement	Must meet requirements	Minimum Must meet (25 %) Twenty Five percent of the requirement(J V)	Minimum Must meet (40%) Forty percent of the requirement (Lead)	Form EXP 2.4.2(a)
<b>2.4.2 Specific Experience/ Not Applicable</b>	<p>(b)) For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum experience in the following key activities: Not Applicable.</p>	N/A	N/A	N/A	N/A	Form EXP- 2.4.2(b) N/A

## 2.5 Personnel

The Bidder must demonstrate that it will have the personnel for the key positions that meet the following requirements:

No.	Position	Total Work Experience(years)	Similar Works Experience (years)
1	Bidder must attach a list of key personnel based on the needs of the project area and the project requirements.		
2			
3			
4			
5			
6			
7			
8			

The Bidder shall provide details of the proposed personnel, their CV's, experience records in the relevant Forms included in Section IV, Bidding Forms.

The contractor shall submit details of the proposed personnel qualifications and their experience records in the relevant field along with the organization chart, the above list and number of key staff is considered as for one construction team. Employer has the right to interview any of the staff during execution of the contract

## 2.6 Equipment

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

The Bidder shall provide further details and copy of (rent, lease or purchased bill) document of proposed items of equipment using the relevant Form in Section IV.

**All other required tools equipment's to complete the project**

No.	Equipment Type and Characteristics	Minimum Number required
1	Bidder must attach a list of Equipment based on the needs of the project area and the project requirements.	
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		

## 2.7 Subcontractors/manufacturer: not applicable

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

Item No.	Description of Item	Minimum Criteria to be met
1		

---

2		
3		

Failure to comply with this requirement will result in 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 Afghanistan. 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.





## **Section IV. Bidding Forms**

### **Table of Forms**

#### **Letter of Bid**

##### **Schedules of Rates and Prices**

Schedule No. 1. Plant and Mandatory Spare Parts

Schedule No. 2. Design Services

Schedule No. 3. Installation and Other Services

Schedule No. 4. Grand Summary

Schedule No. 5. Recommended Spare Parts

Price Adjustment

##### **Technical Proposal**

Site Organization

Method Statement

Mobilization Schedule

Construction Schedule

Plant

Contractor's Equipment

Personnel

Proposed Subcontractors for Major Items of Plant and Installation Services

Others - Time Schedule

Others – Commercial or contractual aspects of the bidding documents that the Bidder would like to discuss with the Entity during clarifications

##### **Bidder Information Sheet**

Party to JVA Information Sheet

Historical Contract Non-Performance

Current Contract Commitments / Works in Progress

Financial Situation

Historical Financial Performance

Average Annual Turnover

Financial Resources

Experience - General Experience

Specific Experience

Specific Experience in Key Activities

Form of Bid Security (Bank Guarantee)

Form of Bid-Securing Declaration

Manufacturer's Authorization

## Letter of Bid

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

NCB No.: \_\_\_\_\_

Invitation for Bid No.: \_\_\_\_\_

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

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including Addenda issued in accordance with Instructions to Bidders (ITB) 8 \_\_\_\_\_;
- (b) We offer to \_\_\_\_\_, in conformity with the Bidding Document, the following Plant and Installation Services: \_\_\_\_\_
- (c) The price of our Bid, excluding any discounts offered in item (d) below is the sum of:  
\_\_\_\_\_, (\_\_\_\_\_), **and** \_\_\_\_\_, (\_\_\_\_\_)
- (d) The discounts offered and the methodology for their application are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;
- (e) Our bid shall be valid for a period of \_\_\_\_\_ days from the date fixed for the bid submission deadline in accordance with the Bidding Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

- (f) If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Document;
- (g) We, including any subcontractors or manufacturers for any part of the contract , have or will have nationalities from eligible countries, in accordance with ITB-4.2;
- (h) We, including any subcontractors or manufacturers for any part of the contract, do not have any conflict of interest in accordance with ITB-4.3;
- (i) We are not submitting more than one bid in this bidding process as a Bidder, either individually or as a partner in a joint venture, in accordance with ITB-4.3, except for alternative offers permitted under ITB Clause 13;
- (j) We, are not ineligible under the Islamic Emirate of Afghanistan’s laws or official regulations or pursuant to a decision of the United Nations Security Council;
- (k) We are not a government owned entity/ We are a government owned entity but meet the requirements of ITB-4.5;<sup>6</sup>
- (l) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(If none has been paid or is to be paid, indicate “none.”)

\_\_\_\_\_

<sup>6</sup> Bidder to use as appropriate

(m) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and

(n) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

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

Signed \_\_\_\_\_

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

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

## **Schedules of Rates and Prices**

**Attached separately**

### Schedule No. 5. Recommended Spare Parts (Not Applicable)

Item	Description	Qty.	Unit Price		Total Price  <i>(1) x (2) or(3)</i>
			DDP (foreign parts)  <i>(2)</i>	EXW (local parts)  <i>(3)</i>	
		Name of Bidder _____			
		Signature of Bidder _____			

Price for the recommended spare parts are for information and use for future needs in case of any change order if so raises, this price will not be included in the evaluation and nor contribute to final contract price of awarded bidder.

## 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 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:

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

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 Proposal**

- Site Organization
- Method Statement
- Mobilization Schedule
- Construction Schedule
- Plant
- Contractor's Equipment
- Personnel
- Proposed Subcontractors for Major Items of Plant and Installation Services
- Others

**Site Organization**

**Method Statement**

**Mobilization Schedule**

**Construction Schedule**

## **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  <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> Owned           <input type="checkbox"/> Rented           <input type="checkbox"/> Leased           <input type="checkbox"/> Specially manufactured         </div>	

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	



### 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 Entity 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.

<b>Required Functional Guarantee</b>	<b>Value of Functional Guarantee of the Proposed Plant and Equipment</b>
1.	
2.	
3.	
...	

## Personnel

### Form PER -1

#### Proposed Personnel

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

1.	Title of position*
	Name
2.	Title of position*
	Name
3.	Title of position*
	Name
4.	Title of position*
	Name

\*As listed in Section III.

**Form PER-2****Resume of Proposed Personnel**

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

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

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

## **Others - Time Schedule**

(To be used by Bidder when alternative Time for **Completion** is invited in ITB 13.2) Not Applicable

**Others – Commercial or contractual aspects of the bidding documents that the Bidder would like to discuss with the Entity during clarifications** (to be used by Bidder)  
Not Applicable

## **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: \_\_\_\_\_

NCB No.: \_\_\_\_\_

Invitation for Bid No.: \_\_\_\_\_

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

1. Bidder's Legal Name
2. In case of JVA, 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:  <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITB Sub-Clauses 4.1 and 4.2.  <input type="checkbox"/> In case of JVA, letter of intent to form JVA including a draft agreement, or JVA agreement, in accordance with ITB Sub-Clauses 4.1 and 11.1(i) Single Stage Bidding or 11.1(g) Two Stage Bidding.  <input type="checkbox"/> In case of government owned entity from the Employer's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Sub-Clause 4.5.  <input type="checkbox"/> A list of Board of Directors, and the beneficial ownership in accordance with ITB clause 11.1(k). [If required, the successful Bidder shall provide additional information on beneficial ownership, using the Beneficial Ownership Disclosure Form.]

Form ELI 1.2

## Party to JVA Information Sheet

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

NCB No.: \_\_\_\_\_

Invitation for Bid No.: \_\_\_\_\_

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

1. Bidder's Legal Name:
2. JVA's Party legal name:
3. JVA's Party Country of Registration:
4. JVA's Party Year of Registration:
5. JVA's Party Legal Address in Country of Registration:
6. JVA'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 Registration of firm named in 1, above, in accordance with ITB Sub-Clauses 4.1 and 4.2. <input type="checkbox"/> In case of government owned entity from the Employer's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Sub-Clause 4.5. <input type="checkbox"/> A list of Board of Directors, and the beneficial ownership in accordance with ITB clause 11.1(k). [If required, the successful Bidder shall provide additional information on beneficial ownership, using the Beneficial Ownership Disclosure Form.]

**Form CON – 2****Historical Contract Non-Performance**

**In case a prequalification process was conducted this form should be used only if the information submitted at the time of prequalification requires updating**

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

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

JVA Partner Legal Name: \_\_\_\_\_

NCB No.: \_\_\_\_\_

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

Non-Performing Contracts in accordance with Section III, Evaluation Criteria			
<input type="checkbox"/> Contract non-performance did not occur during the stipulated period, in accordance with Sub- Factor 2.2.1 of Section III, Evaluation Criteria			
Year	Non- performed portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and US\$ equivalent)
[insert year]	[insert amount and percentage]	Contract Identification: [indicate complete contract name/ number, and any other identification] Name of Employer: [insert full name] Address of Employer: [insert street/city/country] Reason(s) for nonperformance: [indicate main reason(s)]	[insert amount]
Pending Litigation, in accordance with Section III, Evaluation Criteria			
<input type="checkbox"/> No pending litigation in accordance with Sub-Factor 2.2.2 of Section III, Evaluation Criteria <input type="checkbox"/> Pending litigation in accordance with Sub-Factor 2.2.2 of Section III, Evaluation Criteria, as indicated below			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, US\$ equivalent)
_____	_____	Contract Identification: Name of Employer: Address of Employer: Matter in dispute: Party who initiated the dispute: Reason(s) for Litigation and award decision	_____

**Form CCC****Current Contract Commitments / Works in Progress**

Bidders and each partner to a JVA 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.

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

## Form FIN – 3.1

## Financial Situation

### Historical Financial Performance

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

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

JVA Partner Legal Name: \_\_\_\_\_

NCB No.: \_\_\_\_\_

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

To be completed by the Bidder and, if JVA, by each partner

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>							
<b>Total Assets (TA)</b>							
<b>Total Liabilities (TL)</b>							
<b>Net Worth (NW)</b>							
<b>Current Assets (CA)</b>							
<b>Current Liabilities (CL)</b>							
<b>Information from Income Statement</b>							
<b>Total Revenue (TR)</b>							
<b>Profits Before Taxes (PBT)</b>							


☐ 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 partner to a JVA, 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**

**Annual Turnover**

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

JVA Partner Legal Name: \_\_\_\_\_ NCB No.: \_\_\_\_\_

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

Annual turnover data		
Year	Amount and Currency	US\$ equivalent
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
Average of last five years turnover		

\* Average of last five years turnover calculated as total certified payments received for contracts in progress or completed, by the 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 construction cash flow demands of the subject contract or contracts as indicated in Section III, Evaluation and Qualification Criteria

<b>Source of financing</b>	<b>Amount (USD or equivalent)</b>
1.	
2.	
3.	
4.	

**Form EXP 2.4.1****Experience - General Experience**

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

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

JVA Partner Legal Name: \_\_\_\_\_

NCB 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:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____

<b>Starting Month / Year</b>	<b>Ending Month / Year</b>	<b>Years*</b>	<b>Contract Identification</b>	<b>Role of Bidder</b>
_____	_____		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 – 2.4.2(a)****Specific Experience**

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

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

JVA Partner Legal Name: \_\_\_\_\_

NCB 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 partner in a JVA or subcontractor, specify participation of total contract amount	_____ %	_____	US\$ _____
Employer's Name:	_____		
Address:	_____ _____ _____		
Telephone/fax number:	_____ _____		
E-mail:	_____		



**Form EXP – 2.4.2(a) (cont.)**

**Specific Experience (cont.)**

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

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

JVA Partner Legal Name: \_\_\_\_\_

<b>Similar Contract No. __[insert specific number] of [total number of contracts] __ required</b>	<b>Information</b>
Description of the similarity in accordance with Sub-Factor 2.4.2a) of Section III:	
Amount	_____
Physical size	_____
Complexity	_____
Methods/Technology	_____
Physical Production Rate	_____

**Form EXP – 2.4.2(b)****Specific Experience in Key Activities**

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

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

JVA Partner Legal Name: \_\_\_\_\_

NCB No.: \_\_\_\_\_

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

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

	Information		
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 partner in a JVA or subcontractor, specify participation of total contract amount	_____ %	_____	US\$_____
Employer's Name:	_____		
Address:	_____ _____ _____		
Telephone/fax number:	_____		
E-mail:	_____		

**Form EXP – 2.4.2 (b)(cont.)**

**Specific Experience in Key Activities (cont.)**

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

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

JVA Partner Legal Name: \_\_\_\_\_

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

	<b>Information</b>
Description of the key activities in accordance with Sub-Factor 2.4.2b) of Section III:	

## **Bid Security: Bank Guarantee**

Invitation for Bid No: *[Insert the number of bidding process]*

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

Date *[Insert date, as day, month and year of Bid Submission]*

Pages *[Insert the number of page]* of *[Insert the total number of pages]* pages

*[This Bank Guarantee Form for the Bid Security is to be issued by a registered bank in accordance with the instructions indicated.]*

WE, *[Insert Bank's Name and Address of Issuing Branch or Office]*

Beneficiary: *[Insert complete Name and Address of Purchaser]*

Date: *[Insert the date]*

BID GUARANTEE NO.: *[Insert the number in figures]*

Have been informed that *[Insert the complete Name of the Bidder]*, hereinafter called "THE BIDDER", has submitted to you its Bid, for the execution of *[Insert the Name of contract]* under Invitation for Bids No. *[Insert the FFB number]*. Furthermore, we understand that, according to your conditions Bids must be supported by a Bid Guarantee.

At the request of the Bidder, we *[Insert the name of the bank]* hereby irrevocably undertake to pay you, without cavil or argument, any sum or sums not exceeding in total an amount of *[Insert amount in figures AND in words]* upon receipt by us of your first demand in writing accompanied by a written statement that the Bidder is in breach of its obligation(s) under the Bid conditions, because the Bidder:

- (a) Has modified or withdrawn its Bid after the deadline for submission of bids
- (b) Does not accept the correction of arithmetic errors in the table of prices of the offer
- (c) Avoiding the signing of contract as per the requirements of the bidding document and request for proposal by the successful bidder
- (d) Not providing the contract execution guarantee as per the requirements of the bidding document by the successful bidder
- (e) In case of the debarment of the bidder for violation in the bidding process pursuant the provisions of article 49 of this law.

This guarantee shall become invalid in the following circumstances;

- (f) If the bidder is the winner, on receiving offer guarantee, the signing of contract as per the .....
- (g) If the bidder is not the winner, on (1) signing contract with the successful bidder, or (2) 28 days after the end of offer validation period, including offer validation extension period (insert offer end date)

As a result, any request for the payment under this guarantee should have been obtained before the above-mentioned date.

This guarantee is subjected to regulation number 758 issued by the International Trade Chambers.

Signature: (the responsible officer should sign here)

Stamp: (it should be stamped)

## Form of Bid-Securing Declaration/Not Applicable

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

Bid 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 in any contract with the Government of Islamic Emirate for the period of time of \_\_\_\_\_, starting on \_\_\_\_\_, 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
- (b) having been notified of the acceptance of our Bid by the Entity 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.

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: \_\_\_\_\_

NCB 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 \_\_\_\_\_, \_\_\_\_\_

## Line of Credit

*(The bank is obliged to arrange this standard form on its official sheet without any modification/change except for the issues inside of the brackets)*

Name of beneficiary: { *Insert name of the bidder to whom this line of credit will be issued* }

No: { *Insert the line of credit number* }

Date: { *Insert the issue date of line of credit* }

To: { *Insert the relevant Entity Name/Ministry* }

According to request No {.....} date {...../...../.....} { *Insert name of the bidder to whom this line of credit will be issued* }, Line of credit over { *Amount of line of credit* } has been issued. This line of credit is terminated or modified only in case of termination of the procurement process/contract for which this document is issued.

This line of credit is approved in accordance to provisions of laws, regulations, circulars and orders of the Da Afghanistan Bank and as per internal policies, procedures and guidelines of the bank considering the delegated authority on these policies, by { *senior managers, credit committee, the board of directors or the bank's supervisory board* }. The line of credit has been awarded to the bidders after the receipt of fees and the bank's commission.

This line of credit only in case of winning of { *Insert name of the bidder to whom this line of credit will be issued* } in bidding of { *Insert the Reference Number & Project Name* } is utilizable from the bidder and is valid up to { *expiration date* }.

Signature: { *The signature of responsible employee* }

Stamp: { *Stamp of Bank* }

<b>Beneficial Ownership Disclosure Form</b>												
<b>A) Instructions:</b>												
1- This Form is prepared for collection of Beneficial Ownership information. 2- The Bidder (its president or vice-president) is obliged to completely fill, sign and stamp this form and submit along with the offer. 3- In case of JV or Consortium, each member has to fill, sign and stamp this form separately. 4- Sub-Contractor (s) has to fill, sign and stamp this form separately. 5- Successful bidder provides additional information/clarification as and when requested. 6- According this form, Beneficial Ownership: the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement including but not limited to; principle owner or its legal representative, members of Board of Directors/Management, Directors, Senior Managers, Trustee, Shareholders and other person(s) who directly or indirectly, wholly or partially have control on the Company and/or affects the company's decisions or affected from company's benefit or loss. 7- The Contractor's (Successful Bidder) B/O information form is published in NPD website. 8- This form is referred to relevant authorities.												
<b>B) Bidder's Identity:</b>												
<b>Name</b>		Dari: _____ Pashto: _____ English: _____										
<b>License No:</b>				<b>Issuing Authority:</b>								
<b>Date of Issue:</b>				<b>Date of Expiry:</b>								
<b>Type of Company:</b>		Liability Company <input type="checkbox"/> LTD <input type="checkbox"/> Corporation <input type="checkbox"/> Individual Enterprise <input type="checkbox"/> Other: _____										
<b>C) Company's Authorities (Director, Deputy Director and Board of Directors/Management) Identification:</b>												
No.	Given Name	Father Name	Surname	ID No.	Residential Address	Contact No.	Job title in the Company	Holding share/s (Directly or Indirectly) Yes / No	Percentage and Amount of Share		Holding the Voting Rights (Directly or Indirectly) Yes / No	Having the right to appoint the board of directors or staff in the company (Directly or Indirectly) Yes / No
									Percentage	Amount		
1												
2												
3												
<b>D) Shareholders Identification:</b>												
No.	Given Name	Father Name	Surname	ID No.	Residential Address	Contact No.	Job title in the Company (if applicable)	Holding share/s (Directly or Indirectly) Yes / No	Percentage and Amount of Share		Holding the Voting Rights (Directly or Indirectly) Yes / No	Having the right to appoint the board of directors or staff in the company (Directly or Indirectly) Yes / No
									Percentage	Amount		
1												
2												
3												
<b>E) Beneficial Ownership Identification:</b>												



No.	Given Name	Father Name	Surname	ID No.	Residential Address	Contact No.	Job title in the Company (if applicable)	Type of B/O	Holding share/s (Directly or Indirectly - if applicable) Yes / No	Percentage and Amount of Share		Holding the Voting Rights (Directly or Indirectly) Yes / No	Having the right to appoint the board of directors or staff in the company (Directly or Indirectly) Yes / No
										Percentage	Amount		
1													
2													
3													
<b>F) Declaration</b>													
I, hereby, declare that the information provided in this form is true and accurate to the best of my knowledge. In case of hiding, contradiction and/or inaccuracy of provided information, I will be legally held responsible for.													
<b>Name:</b>									<b>Signature and Stamp</b>				
<b>Job Title:</b>									<b>Date:</b>				
National Procurement Directorate prepared this form and has the right to amend it, when required.													

## Section V. Eligible Countries

### **ELIGIBILITY FOR THE PROVISION OF GOODS, WORKS AND SERVICES IN PUBLIC FUNDS FINANCED PROCUREMENT**

The Provider of Funds permits firms and individuals from all countries to offer goods, works and services for Public funds Financed projects. As an exception, firms of a Country or goods manufactured in a Country may be excluded if:

- (a) as a matter of law or official regulation, the Procuring Entity's country prohibits commercial relations with that Country, provided that the Provider of Funds is satisfied that such exclusion does not preclude effective competition for the supply of the Goods or Works 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 Procuring Entity's country prohibits any import of goods from that Country or any payments to persons or entities in that Country.

2. For the information of bidders, at the present time firms, goods and services from the following countries are excluded from this bidding:

- (a) With reference to national legislation: Not Applicable
- (b) With reference to international commitments: Not Applicable

## **Part2-Employer's Requirements**

## **Contents**

### **Scope of Supply of Plant and Installation Services by the Contractor**

#### **Specification**

#### **Forms and Procedures**

Form of Completion Certificate

Form of Operational Acceptance Certificate

Change Order Procedure and Forms

Change Order Procedure

***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***

#### **Drawings**

#### **Supplementary Information**

## **Scope of Supply of Plant and Installation Services by the Contractor**

General and specific requirement and detail descriptions are specified in employer requirement as follow:

- Scope of supply of plant and services
- General requirement
- Technical requirement
- Technical schedule
- Drawings

**Employer's Requirement for The renovation project of the first turbine of the Mahipar Hydroelectric Plant (Technical Document) is Attached Separately in Annexure No.1**

## **Specification**

The Bidder should refer to the Annexure No.1 for more information about technical specification of the project, which is attached as a separate document.

## **Forms and Procedures**

### **Form of Completion Certificate**

### **Form of Operational Acceptance Certificate**

### **Change Order Procedure and Forms**

#### **Change Order Procedure**

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

## Form of Completion Certificate

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

Loan/Credit N°: \_\_\_\_\_

IFB N°: \_\_\_\_\_

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

Dear Ladies and/or Gentlemen,

Pursuant to GC Clause 24 (Completion of the Facilities) of the General Conditions of the Contract entered into between yourselves and the Entity 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 Entity 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 GC Sub-Clause 25.3 (Operational Acceptance) of the General Conditions of the Contract entered into between yourselves and the Entity 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 GC 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 GC Clause 39 shall be serially numbered CR-X-nnn.
- (2) Estimate for Change Proposal as referred to in GC Clause 39 shall be serially numbered CN-X-nnn.
- (3) Acceptance of Estimate as referred to in GC Clause 39 shall be serially numbered CA-X-nnn.
- (4) Change Proposal as referred to in GC Clause 39 shall be serially numbered CP-X-nnn.
- (5) Change Order as referred to in GC 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 Entity 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: Entity: \_\_\_\_\_

Contractor (by Application for Change Proposal No. \_\_\_\_\_<sup>7</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:

Drawing No./Document No.

Description

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.

---

(Entity'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 GC 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 GC 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>8</sup>
  - (a) Engineering (Amount)

(i) Engineer	_____ hrs x _____ rate/hr =	_____
(ii) Draftsperson	_____ hrs x _____ rate/hr =	_____
Sub-total	_____ hrs	_____
Total Engineering Cost		_____
  - (b) Other Cost \_\_\_\_\_
  - Total Cost (a) + (b) \_\_\_\_\_

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

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

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

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

<sup>8</sup> Costs shall be in the currencies of the Contract.

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 GC Clause 39 of the General Conditions.

---

(Entity's Name)

---

(Signature)

---

(Name and Title of signatory)





(j) Taxes and customs duties \_\_\_\_\_

Total lump sum cost of Change Proposal \_\_\_\_\_

*(Sum of items (a) to (j))*

Cost to prepare Estimate for Change Proposal \_\_\_\_\_

*(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  
(Entity'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 GC 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: \_\_\_\_\_

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

(Entity)

Accepted by: \_\_\_\_\_

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

(Contractor)

Annex 6. Pending Agreement Change Order  
(Entity'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 GC 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**

**Attached Separately in Annexure No.1 (Technical Document)**

## **Supplementary Information**



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





## Section VII. General Conditions (GC)

### Table of Clauses

- A. Contract and Interpretation**
  - 1. Definitions
  - 2. Contract Documents
  - 3. Interpretation
  - 4. Communications
  - 5. Law and Language
  - 6. Fraud and Corruption
- B. Subject Matter of Contract**
  - 7. Scope of Facilities
  - 8. Time for Commencement and Completion
  - 9. Contractor's Responsibilities
  - 10. Employer's Responsibilities
- C. Payment**
  - 11. Contract Price
  - 12. Terms of Payment
  - 13. Securities
  - 14. Taxes and Duties
- D. Intellectual Property**
  - 15. License/Use of Technical Information
  - 16. Confidential Information
- E. Execution of the Facilities**
  - 17. Representatives
  - 18. Work Program
  - 19. Subcontracting
  - 20. Design and Engineering
  - 21. Procurement
  - 22. Installation
  - 23. Test and Inspection
  - 24. Completion of the Facilities
  - 25. Commissioning and Operational Acceptance
- F. Guarantees and Liabilities**

- 26. Completion Time Guarantee
- 27. Defect Liability
- 28. Functional Guarantees
- 29. Patent Indemnity
- 30. Limitation of Liability

**G. Risk Distribution**

- 31. Transfer of Ownership
- 32. Care of Facilities
- 33. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification
- 34. Insurance
- 35. Unforeseen Conditions
- 36. Change in Laws and Regulations
- 37. Force Majeure
- 38. War Risks

**H. Change in Contract Elements**

- 39. Change in the Facilities
- 40. Extension of Time for Completion
- 41. Suspension
- 42. Termination
- 43. Assignment
- 44. Export Restrictions

**I. Claims, Disputes and Arbitration**

- 45. Contractor's Claims
- 46. Disputes and Arbitration

## General Conditions

### 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 entity 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).

“GC” means the General Conditions hereof.

“PC” means the Particular Conditions.

“day” means calendar day .

“year” means 365 days.

“month” means calendar month.

“Party” means the entity or the Contractor, as the context requires, and “Parties” means both of them.

“entity” means the person **named as such in the PC** and includes the legal successors or permitted assigns of the Employer.

“Project Manager” means the person appointed by the entity in the manner provided in GC Sub-Clause 17.1 (Project Manager) hereof and **named as such in the PC** to perform the duties delegated by the entity.

“Contractor” means the person(s) whose bid to perform the Contract has been accepted by the Entity 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 entity in the manner provided in GC 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 GC 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 PC appointed by agreement between the entity and the Contractor to make a decision with respect to any dispute or difference between the entity and the Contractor referred to him or her by the Parties pursuant to GC Sub-Clause 46.1 (Dispute Board) hereof.

“The Bank” means the financing institution **named in the PC**.

“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 there from, 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 GC 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.

“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 GC 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 GC Clause 24 (Completion) hereof.

“Precommissioning” means the testing, checking and other requirements specified in the entity’s Requirements that are to be carried out by the Contractor in preparation for Commissioning as provided in GC 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 GC 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 GC Sub-Clause 25.2 (Guarantee Test) hereof.

“Operational Acceptance” means the acceptance by the Entity 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 GC Clause 28 (Functional Guarantees) hereof and shall include deemed acceptance in accordance with GC 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 GC Clause 27 (Defect Liability) hereof.

- |                                     |  |
|-------------------------------------|--|
| <p><b>2. Contract Documents</b></p> | <p>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.</p> |
| <p><b>3. Interpretation</b></p>     | <p>3.1 In the Contract, except where the context requires otherwise:</p>   |

- (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 documents,” 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 there under 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.

### 3.4 Entire Agreement

Subject to GC Sub-Clause 16.4 hereof, the Contract constitutes the entire agreement between the Entity 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.

### 3.5 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.

### 3.6 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 entity.

### 3.7 Non-Waiver

3.7.1 Subject to GC Sub-Clause 3.7.2 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.

3.7.2 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.

### 3.8 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.

### 3.9 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. Communications**
- 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 Afghanistan **specified in the PC.**
- 5.2 The ruling language of the Contract shall be that **stated in the PC.**
- 5.3 The language for communications shall be the ruling language unless otherwise **stated in the PC.**

**6. Fraud and Corruption**

- 6.1 If the Entity determines that the Contractor and/or any of its personnel, or its agents, or its Subcontractors, subconsultants, services providers, suppliers and/or their employees has engaged in corrupt, fraudulent, collusive coercive, or obstructive practices, in competing for or in executing the Contract, then the Entity may, after giving 14 days notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 42 shall apply as if such expulsion had been made under Sub-Clause 42.2.1 (c).

For the purposes of this Sub-Clause,

- (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<sup>10</sup>;*
- (ii) *“fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or*

---

<sup>10</sup> “Another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes government staff taking or reviewing procurement decisions.

*attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation<sup>11</sup>;*

- (iii) *“collusive practice” is an arrangement between two or more parties<sup>12</sup> 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<sup>13</sup> or the property of the party to influence improperly the actions of a party;
- (v) “obstructive practice” is
  - (aa) 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
  - (bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under Sub-Clause 9.8.

---

<sup>11</sup> “Party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

<sup>12</sup> “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

<sup>13</sup> “Party” refers to a participant in the procurement process or contract execution.

## **Subject Matter of Contract**

**7. Scope of Facilities**

- of** 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 GC 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 PC** and the provisions, if any, **specified in the PC**. 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 Entity 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.

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|---|--|
| <p><b>8. Time for Commencement and Completion</b></p> | <p>8.1 The Contractor shall commence work on the Facilities within the period <b>specified in the PC</b> and without prejudice to GC 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.</p> <p>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 <b>stated in the PC</b> or within such extended time to which the Contractor shall be entitled under GC Clause 40 hereof.</p>   |
| <p><b>9. Contractor's Responsibilities</b></p>        | <p>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.</p> <p>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.</p> <p>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 Entity under GC Sub-Clause 10.3 hereof and that are necessary for the performance of the Contract.</p> <p>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 Entity 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 GC Sub-Clause 10.1 hereof.</p> |

- 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 GC Clause 1 (Country of Origin). Any subcontractors retained by the Contractor shall be from a country as specified in GC Clause 1 (Country of Origin).
- 9.6 The Contractor shall permit the Bank to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Bank, if so required by the Bank.
- 9.7 If the Contractor is a joint venture, or association (JVA) of two or more persons, all such persons shall be jointly and severally bound to the Entity for the fulfillment of the provisions of the Contract, unless otherwise specified in the PC, and shall designate one of such persons to act as a leader with authority to bind the JVA. The composition or the constitution of the JVA shall not be altered without the prior consent of the Employer.
- 9.8 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 all accounts and records relating to the performance of the Contract and the submission of the Bid, 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 [Fraud and Corruption] which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under Sub-Clause 9.8 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Bank's prevailing sanctions procedures).

**10. Employer's  
Responsibilities**

- 10.1 All information and/or data to be supplied by the Entity 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 Entity expressly states otherwise.
- 10.2 The Entity 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 Entity 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 Entity 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 Entity 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 Entity 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 Entity 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 Entity and the Contractor, the Entity 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 GC Sub-Clause 18.2 hereof and in the manner thereupon specified or as otherwise agreed upon by the Entity and the Contractor.
- 10.6 The Entity shall be responsible for the continued operation of the Facilities after Completion, in accordance with GC Sub-Clause 24.8, and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with GC Sub-Clause 25.2.
- 10.7 All costs and expenses involved in the performance of the obligations under this GC 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 GC Sub-Clause 25.2.
- 10.8 In the event that the Entity 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.

## 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 PC**, 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 GC 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 Entity herein shall be deemed to constitute acceptance by the Entity of the Facilities or any part(s) thereof.
- 12.3 In the event that the Entity fails to make any payment by its respective due date or within the period set forth in the Contract, the Entity 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 Entity 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 PC**.

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 IX, Contract Forms, corresponding to the type of bank guarantee stipulated by the Entity in the PC, or in another form acceptable to the Employer.

13.3.3 Unless otherwise specified in the PC, 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 GC 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 GC Sub-Clause 27.10, is liable for an extended defect liability obligation, the performance security shall be extended for the period specified in the PC pursuant to GC Sub-Clause 27.10 and up to the amount specified in the PC.

13.3.4 The Entity shall not make a claim under the Performance Security, except for amounts to which the Entity is entitled under the Contract. The Entity 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 Entity 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 GC Sub-Clause 14.1 above, the Entity 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 Entity 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 GC 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 GC Clause 36 hereof.

## Intellectual Property

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| <b>15. License/Use of Technical Information</b> | <ul style="list-style-type: none"> <li>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 Entity 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 Entity 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 Entity 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.</li> <li>15.2 The copyright in all drawings, documents and other materials containing data and information furnished to the Entity by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Entity directly or through the Contractor by any third Party, including</li> </ul> |
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suppliers of materials, the copyright in such materials shall remain vested in such third Party.

**16. Confidential Information**

- 16.1 The Entity 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 Entity 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 GC Clause 16.
- 16.2 The Entity 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 Entity 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 GC 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 GC 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 GC Clause 16 shall survive termination, for whatever reason, of the Contract.

**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 Entity shall appoint and notify the Contractor in writing of the name of the Project Manager. The Entity 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 Entity 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 Entity 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 Entity in writing to approve the person so appointed. If the Entity makes no objection to the appointment within fourteen (14) days, the Contractor's Representative shall be deemed to have been approved. If the Entity 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 GC 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 Entity 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 Entity consents thereto, the Contractor shall appoint some other person as the Contractor's

Representative, pursuant to the procedure set out in GC Sub-Clause 17.2.1.

17.2.3 The Contractor's Representative may, subject to the approval of the Entity 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 Entity 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 GC 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 Entity may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GC Sub-Clause 22.3. The Entity shall provide evidence of the same, whereupon the Contractor shall remove such person from the Facilities.

17.2.6 If any representative or person employed by the Contractor is removed in accordance with GC 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 Entity 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 Entity 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 Entity 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 PC pursuant to Sub-Clause 8.2 and any extension granted in accordance with GC 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 GC 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.

#### 18.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the program referred to in GC Sub-Clause 18.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Entity 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 GC Sub-Clause 8.2, any extension thereof entitled under GC Sub-Clause 40.1, or any extended period as may otherwise be agreed upon between the Entity 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 Entity for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the Entity 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 GC 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 Entity to require the sub-contract to be assigned to the Entity under GC 19.5 (if and when applicable), or in event of termination by the Entity under GC 42.2.
- 19.5 If a sub-contractor'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.

## 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 Entity and shall be treated in accordance with GC 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 GC 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.

GC 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 GC 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 GC 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 Entity 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 GC 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 Entity has not given notice under GC Sub-Clause 46.3 hereof, then the Contractor shall be reimbursed by the Entity 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 GC 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 GC Clause 39 shall apply to such request.

## **21. Procurement**

### **21.1 Plant**

Subject to GC 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 Entity shall furnish any specific items to the Contractor, the following provisions shall apply:

21.2.1 The Entity 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 GC 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 Entity 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 GC 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 Entity 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 GC 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 Entity 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 Entity 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 Entity 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 Entity 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 GC 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 Entity 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 GC 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 Entity 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 Entity may provide the same to such personnel and recover the cost of doing so from the Contractor.

### 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 their liability to pay personal income taxes in the Country in respect of such of their salaries, wages and allowances as are chargeable under the Laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

### 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 PC**, 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. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification.

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 Permanent Works.

#### 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. In collaboration with local health authorities, the Contractor shall 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 Entity's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall 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.

The Contractor shall send to the Project Manager, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Engineer may reasonably require.

The Contractor shall throughout the contract (including the Defects Notification Period): (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labor (including all the Contractor's employees, all Sub-Contractors and Employer's and Project Manager's' employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behavior with respect to Sexually Transmitted Diseases (STD)—or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labor as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counseling and referral to a dedicated national STI and HIV/AIDS program, (unless otherwise agreed) of all Site staff and labor.

The Contractor shall include in the program to be submitted for the execution of the Facilities under Sub-Clause 18.2 an alleviation program for Site staff and labor and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation program shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Sub-Clause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related sub-contracting proposed. The program shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for preparation and implementation this program shall not exceed the Provisional Sum dedicated for this purpose.

#### 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 PC**.

#### 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 Prohibition of All Forms of Forced or Compulsory Labor



The contractor shall not employ “forced or compulsory labor” in any form. “Forced or compulsory labor” consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

#### 22.2.16 Prohibition of Harmful Child Labor

The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, 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.

### 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 Entity 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 Entity 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, rules in respect of security, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.

## 22.5 Opportunities for Other Contractors

- 22.5.1 The Contractor shall, upon written request from the Entity or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors employed by the Entity on or near the Site.
- 22.5.2 If the Contractor, upon written request from the Entity 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 Entity 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 Entity 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 Entity may do or cause such work to be done as the Entity may determine is necessary in order to prevent damage to the Facilities. In such event the Entity 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 Entity is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Entity 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 Watching and Lighting**

The Contractor shall provide and maintain 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.

- 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 Entity and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Entity 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 Entity 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 Entity 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 GC 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 GC Sub-Clause 6.1.
- 23.8 The Contractor shall afford the Entity 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.
- 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 Entity or the Project Manager, nor the issue of any test certificate pursuant to GC 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 GC 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 Entity in writing.

24.2 Within seven (7) days after receipt of the notice from the Contractor under GC Sub-Clause 24.1, the Entity shall supply the operating and maintenance personnel specified in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Entity 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 Entity 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 Entity and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters have been provided by the Entity in accordance with GC Sub-Clause 24.2, the Contractor shall commence Precommissioning of the Facilities or the relevant part thereof in preparation for Commissioning, subject to GC 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 GC 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 GC 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 GC 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 GC Sub-Clause 24.4 or within seven (7) days after receipt of the Contractor's repeated notice under GC Sub-Clause 24.5, or if the Entity 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 Entity will undertake such completion and deduct the costs thereof from any monies owing to the Contractor.

24.8 Upon Completion, the Entity 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 GC Sub-Clause 24.5, or immediately after the date of the deemed Completion, under GC Sub-Clause 24.6.

25.1.2 The Entity 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 GC 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 Entity 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 PC** or any other period agreed upon by the Entity and the Contractor, the Contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and GC Sub-Clauses 28.2 and 28.3 shall not apply.

## 25.3 Operational Acceptance

25.3.1 Subject to GC 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 PC pursuant to GC Sub-Clause 25.2.2 above or any other period agreed upon by the Entity and the Contractor; or
- (c) the Contractor has paid the liquidated damages specified in GC Sub-Clause 28.3 hereof; and
- (d) any minor items mentioned in GC 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 GC 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 Entity 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 GC Sub-Clause 24.6, and Operational Acceptance, pursuant to GC Sub-Clause 25.3.4, and Contractor's obligations regarding Defect Liability Period, pursuant to GC Sub-Clause 27.2, Functional Guarantee, pursuant to GC Clause 28, and Care of Facilities, pursuant to GC Clause 32, and GC 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 13.1, 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 GC 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 GC Sub-Clause 32.1 shall be reimbursed to the Contractor by the Entity for the period between the notification mentioned above and the notification mentioned in Sub-Clause 25.5.4 below. The provision of GC 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 Entity 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.

## **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 PC pursuant to GC Sub-Clause 8.2, or within such extended time to which the Contractor shall be entitled under GC 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 GC Clause 40, the Contractor shall pay to the Entity liquidated damages in the amount **specified in the PC** 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 PC** as a percentage rate of the Contract Price. Once the “Maximum” is reached, the Entity may consider termination of the Contract, pursuant to GC 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 GC Clause 40. The Contractor shall have no further liability whatsoever to the Entity 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 GC 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 GC 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 GC Clause 40, the Entity shall pay to the Contractor a bonus in the amount **specified in the PC**. The aggregate amount of such bonus shall in no event exceed the amount **specified as “Maximum” in the PC**.

**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 PC pursuant to GC 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 Entity 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 GC Clause 27 shall not apply to:

- (a) any materials that are supplied by the Entity under GC 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 Entity 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 Entity under GC Sub-Clause 27.7.

27.4 The Entity 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 Entity shall afford all reasonable opportunity for the Contractor to inspect any such defect.

27.5 The Entity shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GC 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 Entity 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 Entity 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 Entity may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Entity in connection therewith shall be paid to the Entity by the Contractor or may be deducted by the Entity 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 Entity because of any of the aforesaid reasons.
- 27.9 Except as provided in GC 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 PC**, 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 GC 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 Entity upon completion of the necessary changes, modifications and/or additions, and shall request the Entity 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 Entity may consider termination of the Contract, pursuant to GC 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 Entity to repeat the Guarantee Test or
- (b) pay liquidated damages to the Entity 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 GC 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 GC Sub-Clause 28.3, and the Contractor shall have no further liability whatsoever to the Entity 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 GC Sub-Clause 29.2, indemnify and hold harmless the Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Entity may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the 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 Entity arising out of the matters referred to in GC Sub-Clause 29.1, the Entity 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 Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Entity shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Entity within the twenty-eight (28) day period, the Entity shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Entity 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 Entity 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 PC, 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 Entity with respect to patent infringement.

## **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 Entity 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 Entity 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 Entity 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 GC 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 GC 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 GC 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 GC 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 GC Clause 34 hereof; or

- (b) any use or occupation by the Entity or any third Party other than a Subcontractor, authorized by the Entity 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 Entity 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 Entity 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 Entity in accordance with GC Clause 39. If the Entity does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Entity shall either request a change in accordance with GC 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 Entity shall terminate the Contract pursuant to GC 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 GC 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 GC 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 GC Sub-Clause 38.1, the provisions of GC Sub-Clause 38.3 shall apply.

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| <b>33. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification</b> | <p>33.1 Subject to GC Sub-Clause 33.3, the Contractor shall indemnify and hold harmless the Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of 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.</p> <p>33.2 If any proceedings are brought or any claim is made against the Entity that might subject the Contractor to liability under GC Sub-Clause 33.1, the Entity shall promptly give the Contractor a notice thereof and the Contractor</p> |
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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 Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Entity shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Entity within the twenty-eight (28) day period, the Entity shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Entity 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 Entity 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 GC 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 GC 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 Entity shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC 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 GC 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 Entity 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 Entity 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 Entity 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 Entity 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 Entity shall provide copies of the policies taken out by the Entity under this GC Sub-Clause 34.5.
- 34.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GC Sub-Clause 34.1, the Entity 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 Entity shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If the Entity fails to take out and/or maintain in effect the insurances referred to in GC 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 Entity 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 Entity for any and all liabilities of the Entity 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 GC Clause 34, and all monies payable by any insurers shall be paid to the Contractor. The Entity 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 Entity 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 GC Sub-Clause 35.1, the Project Manager shall promptly consult with the Entity 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 GC Sub-Clause 35.1 shall be paid by the Entity 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 GC Sub-Clause 35.1, the Time for Completion shall be extended in accordance with GC 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 PC pursuant to GC Sub-Clause 11.2.

**37. Force Majeure**

37.1 “Force Majeure” shall mean any event beyond the reasonable control of the Entity 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 GC 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 GC 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 GC 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 GC Sub-Clause 38.5.
- 37.7 In the event of termination pursuant to GC Sub-Clause 37.6, the rights and obligations of the Entity and the Contractor shall be as specified in GC Sub-Clauses 42.1.2 and 42.1.3.
- 37.8 Notwithstanding GC Sub-Clause 37.5, Force Majeure shall not apply to any obligation of the Entity 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 GC 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 Entity 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 Entity 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 Entity 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 Entity does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Entity shall either request a change in accordance with GC 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 GC Sub-Clause 42.1.

If the Entity 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 GC 40.

38.4 Notwithstanding anything contained in the Contract, the Entity 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 Entity 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 GC Sub-Clauses 38.3 or 38.5, the rights and obligations of the Entity and the Contractor shall be specified in GC Sub-Clauses 42.1.2 and 42.1.3.

## **Change in Contract Elements**

### **39. Change in the Facilities**      39.1 Introducing a Change

39.1.1 Subject to GC Sub-Clauses 39.2.5 and 39.2.7, the Entity 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 The Contractor may from time to time during its performance of the Contract propose to the Entity with a copy to the Project Manager, any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Facilities. The Entity may at its discretion approve or reject any Change proposed by the Contractor, provided that the Entity shall approve any Change proposed by the Contractor to ensure the safety of the Facilities.

39.1.3 Notwithstanding GC 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 GC 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 Entity proposes a Change pursuant to GC 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 Entity 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 Entity does not intend to proceed with the Change.

39.2.3 Upon receipt of the Employer’s instruction to proceed under GC Sub-Clause 39.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GC 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 GC 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 Entity accepts the Contractor's objection, the Entity 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 Entity and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after such agreement, the Entity shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.

If the Entity 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 Entity 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 GC Sub-Clause 39.2.2.

- 39.2.7 If the Entity 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 Entity 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 GC Sub-Clause 46.1.

### 39.3 Changes Originating from Contractor

39.3.1 If the Contractor proposes a Change pursuant to GC 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 GC Sub-Clause 39.2.1.

Upon receipt of the Application for Change Proposal, the Parties shall follow the procedures outlined in GC Sub-Clauses 39.2.6 and 39.2.7. However, should the Entity choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

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| <p><b>40. Extension of Time for Completion</b></p> | <p>40.1 The Time(s) for Completion specified in the PC pursuant to GC 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:</p> <ul style="list-style-type: none"> <li>(a) any Change in the Facilities as provided in GC Clause 39</li> <li>(b) any occurrence of Force Majeure as provided in GC Clause 37, unforeseen conditions as provided in GC Clause 35, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GC Sub-Clause 32.2</li> <li>(c) any suspension order given by the Entity under GC Clause 41 hereof or reduction in the rate of progress pursuant to GC Sub-Clause 41.2 or</li> <li>(d) any changes in laws and regulations as provided in GC Clause 36 or</li> <li>(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</li> <li>(f) any delay on the part of a sub-contractor, 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</li> <li>(g) delays attributable to the Entity or caused by customs, or</li> <li>(h) any other matter specifically mentioned in the Contract</li> </ul> <p>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.</p> |
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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 Entity 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 GC Sub-Clause 46.1.

The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

In all cases where the Contractor has given a notice of a claim for an extension of time under GC 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 GC 40.1, the amount of such extra costs shall be added to the Contract Price.

#### **41. Suspension**

41.1 The Entity 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 Entity 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 GC Clause 39, excluding the performance of the suspended obligations from the Contract.

If the Entity 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 GC Clause 39 or, where it affects the whole of the Facilities, as termination of the Contract under GC Sub-Clause 42.1.

41.2 If

- (a) the Entity 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 Entity that requires payment of such sum, with interest thereon as stipulated in GC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Entity to remedy the same, as the case may be. If the Entity 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 GC 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 Entity 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 GC Clause 41, then the Time for Completion shall be extended in accordance with GC 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 Entity 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 Entity may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GC Sub-Clause 42.1.

42.1.2 Upon receipt of the notice of termination under GC 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 Entity 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 Entity 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 GC Sub-Clause 42.1.3,
  - (i) deliver to the Entity the parts of the Facilities executed by the Contractor up to the date of termination
  - (ii) to the extent legally possible, assign to the Entity 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 Entity 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 GC Sub-Clause 42.1.1, the Entity 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 GC 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 GC 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 GC Clause 43.
- (c) if the Contractor, in the judgment of the Entity has engaged in corrupt, collusive, coercive, or fraudulent practices, as defined in GC Clause 6, 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 GC Sub-Clause 41.2, the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Entity 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 GC Sub-Clause 18.2 at rates of progress that give reasonable assurance to the Entity that the Contractor can attain Completion of the Facilities by the Time for Completion as extended,

then the Entity 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 Entity may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GC Sub-Clause 42.2.

42.2.3 Upon receipt of the notice of termination under GC 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 Entity 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 Entity pursuant to paragraph (d) below
- (c) deliver to the Entity the parts of the Facilities executed by the Contractor up to the date of termination
- (d) to the extent legally possible, assign to the Entity 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 Entity 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 Entity may enter upon the Site, expel the Contractor, and complete the Facilities itself or by employing any third Party. The Entity 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 Entity and with an indemnification by the Entity 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 Entity considers expedient for the supply and installation of the Facilities.

Upon completion of the Facilities or at such earlier date as the Entity thinks appropriate, the Entity 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 GC 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 GC Sub-Clause 42.2.3. Any sums due the Entity 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 Entity completes the Facilities, the cost of completing the Facilities by the Entity shall be determined.

If the sum that the Contractor is entitled to be paid, pursuant to GC Sub-Clause 42.2.5, plus the reasonable costs incurred by the Entity 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 GC 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 GC Sub-Clause 42.2.5, the Entity shall pay the balance to the Contractor.

The Entity 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 Entity 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 Entity that requires payment of such sum, with interest thereon as stipulated in GC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Entity to remedy the same, as the case may be. If the Entity 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 Entity thereof, and if the Entity 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 Entity within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Entity referring to this GC 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 Entity to that effect, referring to this GC Sub-Clause 42.3.2, if the Entity 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 Entity takes or suffers any other analogous action in consequence of debt.

42.3.3 If the Contract is terminated under GC 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 Entity 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 GC Sub-Clause 42.3.4,
  - (i) deliver to the Entity the parts of the Facilities executed by the Contractor up to the date of termination
  - (ii) to the extent legally possible, assign to the Entity 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 Entity 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 GC Sub-Clauses 42.3.1 or 42.3.2, the Entity shall pay to the Contractor all payments specified in GC 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 GC 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 GC Sub-Clause 42.3.

42.4 In this GC 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 GC Clause 42, in calculating any monies due from the Entity to the Contractor, account shall be taken of any sum previously paid by the Entity 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 Entity 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 Entity 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 Entity 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.

## **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 Entity 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 GC 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 Entity cannot agree on any matter relating to a claim, either Party may refer the matter to the Dispute Board pursuant to GC 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 GC Sub-Clause 46.3. The Parties shall appoint a DB by the date stated in the PC.

The DB shall comprise, as stated in the PC, 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 PC 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 PC, 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 Entity 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 GC 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 GC Sub-Clause 46.1,

either Party fails to nominate a member (for approval by the other Party) of a DB of three persons by such date,

the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DB by such date, or

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 PC** 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 GC 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 GC 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 PC**, 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:
  - (i) international arbitration with proceedings administered by the international arbitration institution **appointed in the PC**, in accordance with the rules of arbitration of the appointed institution;,
  - (ii) the place of arbitration shall be the city where the headquarters of the appointed arbitration institution is located or such other place selected in accordance with the applicable arbitration rules; and
  - (iii) the arbitration shall be conducted in the language for communications defined in Sub-Clause 5.3; 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 Works. 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 Works.

**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 GC Sub-Clause 46.5. GC 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) GC Sub-Clauses 46.3 and 46.4 shall not apply, and
- (b) the dispute may be referred directly to arbitration under GC 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 Entity 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 Entity 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 Entity 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 Entity 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 GC 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 Entity and the Contractor, subject to the agreement of the Other Members (if any).

#### 5. General Obligations of the Entity 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 Entity and the Contractor shall be responsible for compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

The Entity 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 Entity 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 Entity or the Contractor refers a dispute to the DB under GC Sub-Clause 46.3, which will require the Member to make a site visit and attend a hearing, the Entity 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 sub-paragraphs (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 Works.

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 Works, 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 PC 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 Entity (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Entity 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 Entity 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 Entity 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 GC 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 Entity 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 Entity 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 Entity 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 Entity 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 Entity 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 Entity 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 Entity 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.

## **Annex**

### **DISPUTE BOARD GUIDELINES**

1. Unless otherwise agreed by the Entity 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 Entity 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 Entity 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 Works 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 co-ordinated by the Entity in co-operation with the Contractor. The Entity 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 Entity and the Contractor.
4. The Entity 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 Entity or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Entity 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 GC Sub-Clause 46.3, the DB shall proceed in accordance with GC 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 Entity 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 Entity and the Contractor be presented to it prior to or at the hearing.
7. Except as otherwise agreed in writing by the Entity 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 Entity 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 GC Sub-Clause 46.3, or as otherwise agreed by the Entity 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 endeavour 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 Entity 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 Entity 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.

## **Section VIII. Particular Conditions**

The following Particular Conditions shall supplement the General Conditions in Section VII. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions.

**Table of Clauses**

PC 1.	Definitions
PC 5.	Law and Language
PC 7.	Scope of Facilities [Spare Parts] (GC Clause 7)
PC 8.	Time for Commencement and Completion
PC 11.	Contract Price
PC 13.	Securities
PC 22	Installation
PC 25.	Commissioning and Operational Acceptance
PC 26.	Completion Time Guarantee
PC 27.	Defect Liability
PC 30.	Limitation of Liability
PC 46.	Disputes and Arbitration

## Particular Conditions

The following Particular Conditions (PC) shall supplement the General Conditions (GC). Whenever there is a conflict, the provisions herein shall prevail over those in the GC. The clause number of the PC is the corresponding clause number of the GC.

### PC 1. Definitions

The Entity is **Da Afghanistan Breshna Shirkat**

The Project Manager is: **will be specified later**

### PC 5. Law and Language

PC 5.1 The Contract shall be interpreted in accordance with the laws of: Afghanistan.

PC 5.2 The ruling language is: **English**

PC 5.3 The language for communications is: **English**

### PC 7. Scope of Facilities [Spare Parts] (GC Clause 7)/Not Applicable

PC 7.3 The Contractor agrees to supply spare parts for a period of years:

**Sample Addition to PC 7.3**

### PC 8. Time for Commencement and Completion

PC 8.1 The Contractor shall commence work on the Facilities within **28 days** from the Effective Date for determining Time for Completion as specified in the Contract Agreement.

PC 8.2 The Time for Completion of the whole of the Facilities shall be [**Two years**] from the Effective Date as described in the Contract Agreement.

### PC 11. Contract Price

PC 11.2 The Contract Price shall be adjusted in accordance with the provisions of the Appendix to the Contract Agreement titled Adjustment Clause. Not Applicable

### PC 13. Securities

PC 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: **five (5) %** of Contract Total Value in USD or any freely convertible currency and valid for (contract Period+28 days).

PC 13.3.2 The performance security shall be in the form of unconditional Bank Guarantee attached hereto in Section IX, Contract Forms.

PC 13.3.3 The performance security shall not be reduced on the date of the Operational Acceptance.

The bid security shall be submitted in original form. Photo copies/Scanned copies will not be accepted. According to NPA circular No. NPA/PPD/NO.25/1397: the state – owned companies or bidders are waived from bid security and performance guarantee.

Note: Bid Security in the form of a bank guarantee, shall be issued either (a) by a Bank located in Afghanistan, or (b) reputed foreign bank and in case, the Bank guarantee is issued by a Bank situated outside Afghanistan then it must have correspondent financial institutions in Afghanistan for verification and confirmation. The name of the correspondent Financial Bank/Institution in such cases must be declared with full address and details like phone no., e-mail address etc.

PC 13.3.3 The performance security shall be reduced to (%) 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 PC, pursuant to GC Sub-Clause 27.10. N/A

## **PC 22 Installation**

PC 22.2.5 Working Hours

Normal working hours are: Eight hours (excluding lunch break)

PC 22.2.8 Funeral Arrangements: As per religious affiliation and nationality of the deceased, will be arranged by the contractor.

## **PC 25. Commissioning and Operational Acceptance**

PC 25.2.2 The Guarantee Test of the Facilities shall be successfully completed within (4 weeks) from the date of Completion.

## **PC 26. Completion Time Guarantee**

PC 26.2

Applicable rate for liquidated damages: **Regarding the liquidated damages for delay, Order No. (1470/326) date 9/5/1444, Supreme Leader of the Islamic Emirate of Afghanistan, is clear: "Then: You were instructed before to follow the advice of Imam Azam, and to end the penalty with the wealth." Performe according to the said order". ( Top management will decide alternative ways.)**

Maximum deduction for liquidated damages:

PC 26.3

PC 26.3 No bonus will be given for earlier Completion of the Facilities or part thereof.

## **PC 27. Defect Liability**

PC 27.1 The critical components covered under the extended defect liability are:

Defect liability period: The warranty period for the turbine generator is 8,760 hours of operation, and for other parts, it is also required to be one year after completion of the contract. The duration of effectiveness is 30 years.

**PC 30. Limitation of Liability****Sample Clause**

PC 30.1 (b) The multiplier of the Contract Price is: not applicable

**PC 46. Disputes and Arbitration**

PC 46.1 The DB shall be appointed within [28 days] after the Effective Date.

PC 46.1 The DB shall be: Three members

PC 46.2 Appointment (if not agreed) to be made by: Afghanistan Center for Commercial Dispute Resolution

PC 46.5 Procedure to settle disputes in respect of DB's decisions: In the case of a dispute between the Entity and a Contractor, the dispute shall be referred to adjudication or arbitration (Afghanistan Center for Commercial Dispute Resolution) in accordance with the applicable laws and regulations, or the disputes will be solved according to Afghanistan laws.

(b) Appointed arbitration institution: Afghanistan Center for Commercial Dispute Resolution

***Section IX. - Contract Forms*****Table of Forms****Letter of Acceptance****Contract Agreement**

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

**Performance Security Forms – Bank Guarantee****Bank Guarantee—Conditional****Bank Guarantee Form for Advance Payment**

## LETTER OF ACCEPTANCE

*[Letterhead paper of the Employer]*

Reference No: (insert the reference number of the letter here)      Date: (write the date of issue of the letter)

From: (write the name of Procuring Entity)

Address: (address of Procuring Entity)

To: (name and license number of winning bidder)

Address: (address of winning bidder)

This letter of acceptance is issued pursuant to article 23 of the law and Rule number 85 of Procurement Procedures and thereby you are informed that your offer presented on (write the date) for the procurement of (name of project or contract) with the total value of (amount in digits and words), as verified in accordance with the procedures for the bidders of the concerning bidding documents, has been accepted by this entity.

Therefore, you are requested to submit the contract performance guarantee, as indicated in concerning bidding documents and is indicated below, in line with above-stated articles of the procurement law and procedures and the provisions of article 28 of the law and Rule no. 78 of the procedures, within 10 calendar days from the date of issue of this memo. Otherwise, your bid guarantee shall not be released, according to the provisions of article 29 of the Procurement Law. For further information refer to the following table:

Procurement/Contract Specifications: (write the name and short description of procurement/contract)
Procurement No: (insert the number of related contract)
Contract Total Value: (contract price in digits and words)
Type of Contract Performance Guarantee: (type of guarantee as indicated in the bidding document)
Contract Performance Guarantee Amount: (write the amount both in digits and words)
Contract Signing Date: (write the date and time of contract signing)
Contract Signing Location: (write the location where the contract was signed)

For your further information and perusal the draft of the contract agreement is sent to you in attachment of this memo.

Full Name:

Job:

Signature<sup>14</sup> and date:

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<sup>14</sup> the offer acceptance letter shall be signed by the person who signed the bidding documents or attachments, and it should be kept as procurement notes.



## Contract Agreement

**(Will be adjusted while drafting of contract by the Entity)**

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 Entity 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 GC Clause 2)

The following documents shall constitute the Contract between the Entity 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 shall be added here

1.2 Order of Precedence (Reference GC 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 GC 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 GC Clause 11)**

The Entity 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. 4 (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 GC Clause 12)**

The terms and procedures of payment according to which the Entity will reimburse the Contractor are given in the Appendix (Terms and Procedures of Payment) hereto.

The Entity 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 1993 Revision, ICC Publication No. 600.

In the event that the amount payable under Schedule No. 1 is adjusted in accordance with GC 11.2 or with any of the other terms of the Contract, the Entity shall arrange for the documentary credit to be amended accordingly.

**Article 3. Effective Date**

**3.1 Effective Date (Reference GC 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 Entity and the Contractor;
- (b) The Contractor has submitted to the Entity the performance security and the advance payment guarantee;
- (c) The Entity 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 Entity for notice purposes, pursuant to GC 4.1 is: \_\_\_\_\_.

4.2 The address of the Contractor for notice purposes, pursuant to GC 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 Entity 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**

The Client will 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 USD currency or agreed between the Parties. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

### **TERMS OF PAYMENT**

Payments will be made in five installments, with each payment issued upon the completion of 20% of the work volume after approval by the relevant authority. The warranty period for the turbine generator is required to be 8,760 hours of operation, and for other parts, it is one year. Seven percent (7%) of the contract price will be withheld as a retention money and held in a specific government account until the end of the warranty period. If the contractor fails to fulfill their obligations and responsibilities during this period, the security deposit will be processed in accordance with the provisions of the law and procurement regulations.

It should be noted that if the warranty period for the parts expires while the turbine warranty is still ongoing, Da Afghanistan Breshna Sherkat will return the security deposit for the other parts, while the deposit for the turbine will be held until the warranty period is completed. After the warranty period ends, the remaining security deposit will be returned to the contractor.

### **PAYMENT PROCEDURES**

The procedures to be followed in applying for certification and making payments shall be as follows: the contractor will provide the following documents:

- Invoice;
- Monthly Work progress report;
- Documents shows the delivery of plant and equipment to the final destination;
- Factory Acceptance Test document
- Any other documents as per request by the Client.

Payment will be done in following manner after approval of relevant authority within 30 days:

A. for Domestic Companies: through Bank Account inside Afghanistan.

B. for Foreign Companies: several alternatives are predicted; the payment will be through one of this possible option:

1. Unconfirmed Irrevocable Letter of Credit. LC will include the net amount of payment without tax. The bank charges of LC is the responsibility of the contractor.
2. Foreign companies can open an account in one of the domestic banks in Afghanistan.
3. Foreign companies can participate in the bidding with at least one domestic partner in the form of JV and can use the partner's bank account.
4. Foreign companies can introduce/designate their local representative bank account for the payments.

## Appendix 2. Price Adjustment/Not Applicable

Where the Contract Period (excluding the Defects Liability Period) exceeds twelve (12) 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 documents shall include in this Appendix 2 a formula of the following general type, pursuant to GC 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

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:

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

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 and the base date indices in its bid.

Item	Source of Indices Used	Base Date Indices
------	------------------------	-------------------

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:

- No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Entity under the terms of the Contract. No price increase will be allowed for periods of delay for which the Contractor is responsible. The Entity will, however, be entitled to any price decrease occurring during such periods of delay.
- 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 correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.
- 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 GC 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>
---------------	--------------------------	------------------------	-------------	-----------

The Employer or relevant other authorized Entity will specify the insurance according to relevant applicable laws and procedures.

(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>
---------------	--------------------------	------------------------	-------------	-----------

The Employer or relevant other authorized Entity will specify the insurance according to relevant applicable laws and procedures.

(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>
---------------	--------------------------	------------------------	-------------	-----------

The Employer or relevant other authorized Entity will specify the insurance according to relevant applicable laws and procedures.

(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 or relevant other authorized Entity will specify the insurance according to relevant applicable laws and procedures.

The Entity shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC 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 GC 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/ Not Applicable**

The Entity shall at its expense take out and maintain in effect during the performance of the Contract the following insurances.

Details:

<u>Amount</u>	<u>Deductible limits</u>	<u>Parties insured</u>	<u>From</u>	<u>To</u>
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**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 Entity of its choice in good time prior to appointing any selected Subcontractor. In accordance with GC 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 Entity 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**

The following personnel, facilities, works and supplies will be provided/supplied by the Employer, and the provisions of GC Clauses 10, 21 and 24 shall apply as appropriate.

All personnel, facilities, works and supplies will be provided by the Entity in good time so as not to delay the performance of the Contractor, in accordance with the approved Time Schedule and Program of Performance pursuant to GC Sub-Clause 18.2.

Unless otherwise indicated, all personnel, facilities, works and supplies will be provided free of charge to the Contractor.

Personnel

Charge to Contractor (if any)

Facilities

Charge to Contractor (if any)

Works

Charge to Contractor (if any)

Supplies

Charge to Contractor (if any)

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## **Appendix 7. List of Documents for Approval or Review**

Pursuant to GC 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 GC 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 GC 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 GC 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 Entity in lieu of making changes, modifications and/or additions to the Facilities, pursuant to GC 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 GC 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 Entity in lieu of making changes, modifications and/or additions to the Facilities pursuant to GC 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 GC 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 (Unconditional)*

*[The bank, as requested by the successful Bidder, shall fill in this Form in accordance with the instructions indicated.]*

Date: *[Insert the date (as day/month/year) of Bid Submission]*

IFB No. and Title: *[Insert the number and title of bidding process]*

Bank's Branch or Office: *[Insert complete name of Guarantor]*

**BENEFICIARY:** *[Insert the complete name of the Purchaser]*

**PERFORMANCE GUARANTEE NO.:** *[Insert Performance Guarantee number]*

We have been informed that *[Insert complete name of Supplier]*, hereinafter called "THE SUPPLIER" has entered into Contract No. *[Insert the contract number]* dated *[Insert day, month and year]* with you, for the supply of *[Insert a brief description of Non-consultancy services]*, 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 Supplier, we hereby irrevocably undertake to pay you any sum(s) not exceeding *[Insert amount(s)]*<sup>15</sup> *in figures and words* upon receipt by us of your first demand in writing declaring the Supplier to be in default under the Contract, without cavil or argument, neither you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the *[Insert a number]* day of *[Insert month]* *[Insert year]*<sup>16</sup>, and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, except that subparagraph (ii) of Sub-article 20 (a) is hereby excluded.

*[Insert the signatures, names and designation of authorized representatives of the bank and the Supplier]*

*[Corporate seal]*

*/Supplier's Seal/*

<sup>15</sup> The Bank shall insert the amount(s) specified in the PCC and denominated, as specified in the PCC, either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Purchaser.

<sup>16</sup> Dates established in accordance with Clause of the General Conditions of Contract ("GCC"), taking into account any warranty obligations of the Supplier under Clause of the GCC intended to be secured by a partial Performance Guarantee. **The Purchaser should note that in the event of an extension of the time to perform the Contract, the Purchaser would need to request an extension of this Guarantee from the Bank.** Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Purchaser might consider adding the following text to the Form, at the end of the penultimate paragraph: "WE AGREE TO A ONE-TIME EXTENSION OF THIS GUARANTEE FOR A PERIOD NOT TO EXCEED [SIX MONTHS] [ONE YEAR], IN RESPONSE TO THE PURCHASER'S WRITTEN REQUEST FOR SUCH EXTENSION, SUCH REQUEST TO BE PRESENTED TO US BEFORE THE EXPIRY OF THE GUARANTEE."

# Performance Security Form- Conditional Bank Guarantee

## Not Applicable

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,

---

Authorized Signature

## Bank Guarantee Form for Advance Payment (Not Applicable)

*[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated.]*

Date: *[Insert the date (as day/month/year) of Bid Submission]*

IFB No. and Title: *[Insert the number and title of bidding process]*

*[Use the bank's letterhead]*

**BENEFICIARY:** *[Insert the complete name of the Purchaser]*

**ADVANCE PAYMENT GUARANTEE NO.:** *[Insert Advance Payment Guarantee number]*

We, *[Insert Legal Name and Address of Bank]*, have been informed that *[Insert the complete Name and Address of the Supplier]*, hereinafter called "THE SUPPLIER", has entered into Contract No. *[Insert the contract number]* dated *[Insert the date of the Agreement, as day, month, year]* with you, for the supply of *[Insert types of Non-consultancy services to be delivered]*, hereinafter called "THE CONTRACT".

Furthermore, we understand that, according to the conditions of the Contract, an advance is to be made against an advance payment guarantee.

At the request of the Supplier, we hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[Insert the amount(s)]<sup>17</sup> in figures and words* upon receipt by us of your first demand in writing declaring that the Supplier is in breach of its obligation under the Contract because the Supplier used the advance payment for purposes other than toward delivery of the Goods.

It is a condition for any claim and payment under this Guarantee to be made that the advance payment referred to above must have been received by the Supplier on its account *[Insert the number and domicile of the account]*.

This Guarantee shall remain valid and in full effect from the date of the advance payment received by the Supplier under the Contract until *[Insert a date]<sup>18</sup>*.

This Guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

*[Insert the signature(s) of authorized representative(s) of the bank.]*

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<sup>17</sup> The bank shall insert the amount(s) specified in the PCC and denominated, as specified in the PCC, either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Purchaser.

<sup>18</sup> Insert the Delivery date stipulated in the Contract. **The Purchaser should note that in the event of an extension of the time to perform the Contract, the Purchaser would need to request an extension of this Guarantee from the bank.** Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Purchaser might consider adding the following text to the Form, at the end of the penultimate paragraph: "WE AGREE TO A ONE-TIME EXTENSION OF THIS GUARANTEE FOR A PERIOD NOT TO EXCEED [SIX MONTHS] OR [ONE YEAR], IN RESPONSE TO THE PURCHASER'S WRITTEN REQUEST FOR SUCH EXTENSION, SUCH REQUEST TO BE PRESENTED TO US BEFORE THE EXPIRY OF THE GUARANTEE."