NEPAL ELECTRICITY AUTHORITY

(An Undertaking of Government of Nepal)

PROJECT MANAGEMENT DIRECTORATE

Karnali Province Electrification Project

BIDDING DOCUMENT FOR

Procurement of Plant for
Design, Supply, Delivery, Installation, Testing and Commissioning of 11/0.4/0.23 kV Lines and Transformer Installation works for Network Rehabilitation and Electrification in Karnali Province

Single-Stage, Two-Envelope Bidding Procedure

Issued on:	**29 JUNE 2026**
Invitation for Bids No.:	**NEA/PMD/ETDSP/KPEP-082/083-1**
OCB No.:	**NEA/PMD/ETDSP/KPEP-082/083-1**
Employer:	**Nepal Electricity Authority**
Country:	**Nepal**

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ANNEXURE-1 OF THE SCC 1

Abbreviations

ADB	Asian Development Bank
BDF	bidding forms
BDS	bid data sheet
COF	contract forms
CON	historical contract nonperformance
ELC	eligible countries
ELI	eligibility form
ENAA	Engineering Advancement Association of Japan
EQC	evaluation and qualification criteria
ERQ	employer's requirements
EXP	experience form
EHS	Environmental, Health, and Safety
FIN	financial data form
GCC	general conditions of contract
IFB	invitation for bids
ITB	instructions to bidders
MPC	merit point criteria
OCB	open competitive bidding
SBD	standard bidding document
SCC	special conditions of contract

Section 1: Instructions to Bidders

This section specifies the procedures to be followed by Bidders when preparing and submitting their Bids. Information is also provided on the submission, opening, and evaluation of bids, and award of contract.

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A. General

1. Scope of Bid

1.1 In connection with the Invitation for Bids (IFB) indicated in the Bid Data Sheet (BDS), the Employer, as indicated in the BDS, issues this Bidding Document for the procurement of plant and services as specified in Section 6 (Employer's Requirements). The name, identification, and number of lot(s) or contract(s) of the open competitive bidding (OCB) are provided in the BDS.

1.2 Throughout this Bidding Document,

(a) the term "in writing" means communicated in written form and delivered against receipt;

(b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and

(c) "day" means calendar day.

2. Source of Funds

2.1 The Borrower or Recipient (hereinafter called "Borrower") indicated in the BDS has applied for or received financing (hereinafter called "funds") from the Asian Development Bank (hereinafter called "ADB") toward the cost of the project named in the BDS. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding Document is issued.

2.2 Payments by ADB will be made only at the request of the Borrower and upon approval by ADB in accordance with the terms and conditions of the Financing Agreement between the Borrower and ADB (hereinafter called "Financing Agreement"), and will be subject in all respects to the terms and conditions of that Financing Agreement. No party other than the Borrower shall derive any rights from the Financing Agreement or have any claim to the funds.

3. Fraud and Corruption

3.1 ADB requires Borrowers (including beneficiaries of ADB-financed activity) and their personnel, as well as firms and individuals participating in an ADB-financed activity, including but not limited to, Bidders, Suppliers, and Contractors, agents, subcontractors, subconsultants, service providers, subsuppliers, manufacturers (including their respective officers, directors, employees, and personnel) under ADB-financed contracts to observe the highest standard of ethics during the procurement and execution of such contracts in accordance with ADB's Anticorruption Policy (1998, as amended from time to time). In pursuance of this policy, ADB

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

(ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(iii) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the

party to influence improperly the actions of a party;

(iv) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

(v) "abuse" means theft, waste, or improper use of assets related to ADB-related activity, either committed intentionally or through reckless disregard; and

(vi) "integrity violation" means any act, as defined under ADB's Investigation and Enforcement Framework (as amended from time to time), which violates ADB's Anticorruption Policy, including (i) to (v) above and the following: failure to disclose and manage conflict of interest,[1] obstructive practice, violations of debarment, retaliation against whistleblowers or witnesses, and other violations of ADB's Anticorruption Policy, including failure to adhere to the highest ethical standard.

(b) will reject a proposal for award if it determines that the Bidder recommended for award or any of its officers, directors, employees, personnel, subconsultants, subcontractors, service providers, suppliers, or manufacturers has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;

(c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation, including by failing to inform ADB in a timely manner at the time they knew of the integrity violations;

(d) will impose enforcement and disclosure actions on a firm or an individual, at any time, in accordance with ADB's Anticorruption Policy and Investigation and Enforcement Framework, including declaring ineligible, either indefinitely or for a stated period of time, to participate[2] in ADB-financed, administered, or -supported activities or to benefit from an ADB-financed, -administered, or-supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices, or other integrity violations; and

(e) will have the right to require that a provision be included in the Bidding Documents and in contracts financed, administered, or supported by ADB, requiring Bidders, suppliers, and contractors, consultants, manufacturers, service providers and other third parties engaged or involved in ADB-related activities, and their respective officers, directors, employees and personnel, to permit ADB or its representative to inspect the site and their assets, accounts and records and other documents relating to the bid submission

(f) and contract performance and to have them audited by auditors appointed by ADB.

3.2 All Bidders, consultants, contractors, suppliers, manufacturers, service providers, and other third parties engaged or involved in ADB-related activities, and their respective officers,

[1] "Conflict of Interest" means any situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations.

[2] Whether as a Contractor, Subcontractor, Consultant, Manufacturer or Supplier, or Service Provides; or in any other capacity (different names are used depending on the particular Bidding Document).

directors, employees, and personnel, are required to cooperate fully in any investigation when requested by ADB to do so. As determined on a case-by-case basis by ADB, such cooperation is set out in detail in the Investigation and Enforcement Framework.

3.3 All Bidders, consultants, contractors and suppliers shall require their officers, directors, employees, personnel, agents to ensure that, in its contract with its subconsultants, subcontractors, and other third parties engaged or involved in ADB-related activities, such subconsultants, subcontractors, and other third parties similarly are required to cooperate fully in any investigation when requested by ADB to do so.

3.4 The Employer hereby puts the Bidder on notice that the Bidder or any Joint venture partner of the Bidder (if any) may not be able to receive any payments under the Contract if the Bidder or any of its Joint venture partners, as appropriate, is, or is owned (in whole or in part) by a person or entity subject to applicable sanctions.

3.5 Furthermore, Bidders shall be aware of the provision stated in GCC 6 and GCC 42.2.1(c).

4. Eligible Bidders

4.1 A Bidder may be a natural person, private entity, or government-owned enterprise subject to ITB 4.5—or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture. In the case of a Joint Venture,

(a) all partners shall be jointly and severally liable; and

(b) the Joint Venture 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 Joint Venture during the bidding process and, in the event the Joint Venture is awarded the Contract, during contract execution.

4.2 A Bidder, and all partners constituting the Bidder, shall have the nationality of an eligible country, in accordance with Section 5 (Eligible Countries). A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed Subcontractors or Suppliers for any part of the Contract, including related services.

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 be in a conflict of interest with one or more parties in this bidding process if any of, including but not limited to, the following apply:

(a) they have controlling shareholders 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 material information about or improperly influence the bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or

(e) a Bidder participates in 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 13 of the Bidding Document. This will result in the disqualification of all Bids in which it is involved. However, subject to any finding of a conflict of interest in terms of ITB 4.3(a)–(d) above, 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, Joint Venture partner, associate, parent company, or any affiliated entity participated as a consultant in the preparation of the design or technical specifications of the plant and services that are the subject of the Bid; or

(g) a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Employer or Borrower as Project Manager for the Contract; or

(h) a Bidder would be providing goods, works, or nonconsulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or

(i) a Bidder that has a financial or familial relationship with staff of the Employer including project implementing/executing agency, or of a recipient of a part of the loan who: (i) are directly or indirectly involved in the preparation of the Bidding Document or specifications of the contract, and/or the bid evaluation process of such contract ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to ADB throughout the procurement process and execution of the contract.

4.4 A firm will not be eligible to participate in any procurement activities under an ADB-financed, -administered, or -supported project while under suspension or debarment by ADB pursuant to its Anticorruption Policy (see ITB 3), whether such debarment was directly imposed by ADB, or enforced by ADB pursuant to the Agreement for Mutual Enforcement of Debarment Decisions. A bid from a temporary suspended or debarred firm will be rejected and such bid may be in breach of debarment conditions, thereby subject to further ADB's investigation.

4.5 Government-owned enterprises in the Borrower's country shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the Employer.

4.6 A Bidder shall not be under suspension from bidding by the Employer as the result of the execution of a Bid–Securing Declaration.

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

4.8 Bidders shall be excluded if, by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods from, or payments to a particular country, person, or entity in respect of goods or services originating in that country. Where the Borrower's country prohibits payments to a particular person or entity or for particular goods or services by such an act of compliance, that firm shall be excluded.

5. Eligible Plant, Materials, Equipment and Services

5.1 The plant, materials, equipment and services to be supplied under the Contract shall have their origin in Eligible source countries as defined in ITB 4.2 and all expenditures under the Contract will be limited to such plant, materials, equipment and services. At the Employer's request, Bidders may be required to provide evidence of the origin of materials, equipment, and services.

5.2 For purposes of ITB 5.1 above, "origin" means the place where the plant, materials, equipment or component parts thereof are mined, grown, produced, or manufactured, and from which the services are provided. Plant, materials and equipment components are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product result that differs substantially in its basic characteristics or in purpose or utility from its components.

B. Contents of Bidding Document

6. Sections of Bidding Document

6.1 The Bidding Document consists of Parts I, II, and III, which include all the sections indicated below, and should be read in conjunction with any addenda issued in accordance with ITB 8.

PART I Bidding Procedures

- Section 1 Instructions to Bidders (ITB)
- Section 2 Bid Data Sheet (BDS)
- Section 3 Evaluation and Qualification Criteria (EQC)
- Section 4 Bidding Forms (BDF)
- Section 5 Eligible Countries (ELC)

PART II Requirements

- Section 6 Employer's Requirements (ERQ)

PART III Conditions of Contract and Contract Forms

- Section 7 General Conditions of Contract (GCC)
- Section 8 Special Conditions of Contract (SCC) including attachments
- Section 9 Contract Forms (COF)

6.2 The IFB issued by the Employer is not part of the Bidding Document.

6.3 The Employer 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 Employer in the IFB.

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 on the Bidding Document shall contact the Employer in writing at the Employer's address indicated in the BDS or raise inquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received no later than 21 days prior to the deadline for submission of bids. The Employer'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 Employer 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 24.2.

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 design and provision of

plant and services. The cost of visiting the site shall be at the Bidder's own expense.

7.3. The Bidder and any of its personnel or agents will be granted permission by the Employer to enter its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents, will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

7.4. 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 to submit any questions in writing, to reach the Employer not later than 1 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 Employer 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

1.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Bidding Document by issuing addenda.

1.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Employer in accordance with ITB 6.3.

1.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer may, at its discretion, extend the deadline for the submission of Bids, pursuant to ITB 24.2.

C. Preparation of Bids

9. Cost of Bidding

9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

10. Language of Bid

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

11. Documents Comprising the Bid

11.1 The Bid shall comprise two envelopes submitted simultaneously, one called the Technical Bid containing the documents listed in ITB 11.2 and the other the Price Bid containing the documents listed in ITB 11.3, both envelopes enclosed together in an outer single envelope.

11.2 The Technical Bid shall comprise the following:

(a) Letter of Technical Bid;

(b) Bid Security or Bid-Securing Declaration, in accordance with ITB 21;

(c) alternative Bids, if permissible, in accordance with ITB 13;

(d) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 22.2;

(e) documentary evidence in accordance with ITB 14.1, that the plant, materials, equipment and services offered by the Bidder in its Bid or in any alternative Bid, if permitted, are eligible;

(f) documentary evidence in accordance with ITB 15, the Bidder's eligibility and qualifications to perform the contract if its Bid is accepted;

(g) Technical Proposal in accordance with ITB 17;

(h) documentary evidence in accordance with ITB 16, that the plant and services offered by the Bidder conform to the Bidding Document;

(i) list of Subcontractors, in accordance with ITB 17.2; and

(j) any other document required in the BDS.

11.3 The Price Bid shall comprise the following:

(a) Letter of Price Bid;

(b) completed schedules as required, including Price Schedules, in accordance with ITB 12 and ITB 18;

(c) alternative Price bids, at Bidder's option and if permissible, in accordance with ITB 13; and

(d) any other document required in the BDS.

11.4 In addition to the requirements under ITB 11.1, Bids submitted by a Joint Venture shall include a copy of the Joint Venture Agreement entered into by all partners. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful Bid shall be signed by all partners and submitted with the Bid, together with a copy of the proposed agreement.

12. Letter of Bid and Schedules

12.1 The Letters of Technical Bid and Price Bid and Schedules, including the appropriate Price Schedules, using the relevant forms furnished in Section 4 (Bidding Forms). The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested and as required in the BDS.

13. Alternative Bids

13.1 Unless otherwise indicated in the BDS, alternative Bids shall not be considered. If permitted, the evaluation methods will be as specified in Section 3 (Evaluation and Qualification Criteria).

13.2 Unless otherwise indicated in the BDS, alternative times for completion shall not be

considered. If permitted, the evaluation method will be as specified in Section 3 (Evaluation and Qualification Criteria).

13.3 Unless otherwise indicated in the BDS, alternative technical solutions shall not be considered. If permitted to submit alternative technical solutions for specified parts of the plant and services, such parts will be identified in the BDS and described in Section 6 (Employer's Requirements). The method for their evaluation will be stipulated in Section 3 (Evaluation and Qualification Criteria).

13.4 Except as provided under ITB 13.3 above, Bidders wishing to offer technical alternatives to the Employer's requirements as described in the Bidding Document must also provide (i) a price at which they are prepared to offer a plant meeting the Employer's requirements; and (ii) all information necessary for a complete evaluation of the alternatives by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed installation methodology and other relevant details. Only the technical alternatives, if any, of the Most Advantageous Bidder conforming to the basic technical requirements shall be considered by the Employer.

13.5 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 6 (Employer's Requirements). Technical alternatives that comply with the performance and technical criteria specified for the plant and services shall be considered by the Employer on their own merits, pursuant to ITB 38.

14. Documents Establishing the Eligibility of Plant and Services

14.1 To establish the eligibility of the plant and services in accordance with ITB 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms, included in Section 4 (Bidding Forms).

15. Documents Establishing the Qualifications of the Bidder

15.1 To establish its qualifications to perform the Contract in accordance with Section 3 (Evaluation and Qualification Criteria), the Bidder shall provide the information requested in the corresponding information sheets included in Section 4 (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 37.

16. Documents Establishing Conformity of the Plant and Services

16.1 The documentary evidence of the conformity of the plant and services to the Bidding Document may be in the form of literature, drawings, and data, and shall furnish

(a) a detailed description of the essential technical and performance characteristics of the plant and services, including the functional guarantees of the proposed plant and services, in response to the specification;

(b) a list giving full particulars, including available sources, of all spare parts, or special tools necessary for the proper and continuing functioning of the plant for the period stated in the BDS, following completion of plant and services in accordance with provisions of the contract; and

(c) a commentary on the Employer's Specifications and adequate evidence demonstrating the substantial responsiveness of the plant and services to those specifications. Bidders shall note that standards for workmanship, materials, and

equipment designated by the Employer in the Bidding Document are intended to be descriptive (establishing standards of quality and performance) only and not restrictive. The Bidder may substitute alternative standards, brand names, and/or catalog numbers in its Bid, provided that it demonstrates to the Employer's satisfaction that the substitutions are substantially equivalent or superior to the standards designated in the Specifications.

17. Technical Proposal, Subcontractors

17.1 The Bidder shall furnish a Technical Proposal, including a statement of work methods, equipment, personnel, schedule, as well as the Bidder's Environmental, Health, and Safety management plan (Bidder's EHSMP) , and other relevant Bidder's Environmental, Health, and Safety (EHS) management documents required in the BDS, commensurate with the proposed scope of works, and any other information as stipulated in Section 4 (Bidding Forms), in sufficient detail to demonstrate the adequacy of the Bidders' proposal to meet the work requirements and the completion time.

17.2 For major items of plant and services as listed by the Employer in Criterion 6 of Section 3 (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 Employer for these items. Bidders are free to list more than one Subcontractor against each item of the plant and services. 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.

17.3 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.

18. Bid Prices and Discounts

18.1 Unless otherwise specified in the BDS and/or Section 6 (Employer's Requirements), Bidders shall quote for the entire plant and 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 Employer when executed and shall be deemed to be covered by the prices for other items.

18.2 Bidders are required to quote the price for all commercial, contractual, and technical obligations outlined in the Bidding Document. The prices for all items in the Price Schedules shall be expressed in positive values. If the prices are expressed in negative values, the bid will be rejected.

18.3 Bidders shall give a breakdown of the prices in the manner and detail called for in the Price Schedules included in Section 4 (Bidding Forms). Where no different Price Schedules are included in the Bidding Document, Bidders shall present their prices in the following manner:

Separate numbered Schedules included in Section 4 (Bidding Forms) shall be used for each of the following elements. The total amount from each Schedule (Nos. 1 to 4) shall be summarized in a Grand Summary (Schedule No. 5), giving the total bid price(s) to be entered in the Letter of Price Bid. Absence of the total bid price in the Letter of Price Bid may result in the rejection of the Bid.

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

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

Schedule No. 3: Design Services

Schedule No. 4: Installation and Other Services

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

Schedule No. 6: Recommended Spare Parts

Bidders shall note that the plant and mandatory spare parts 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 and Other Services.

18.4 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):

(i) the price of the plant shall be quoted carriage and insurance paid (CIP)-named place of destination basis specified in the BDS;

(ii) all customs duties and other taxes paid or payable in the Employer's country on the plant if the contract is awarded to the Bidder; and

(iii) the total price for the plant.

(b) Plant Supplied from Within the Employer's Country (Schedule No. 2):

(i) the price of the plant shall be quoted on an EXW Incoterm basis (ex works, ex factory, ex warehouse, ex showroom, as applicable), including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of plant quoted ex works or ex factory, or on the previously imported plant of foreign origin quoted ex warehouse, ex showroom;

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

(iii) the total price for the plant.

(c) Design Services (Schedule No. 3). Rates or prices shall include all taxes, duties, levies, and charges payable in the Employer's country as of 28 days prior to the deadline for submission of Bids.

(d) Installation and Other Services (Schedule No. 4) shall be quoted separately and shall include rates or prices for local transportation, insurance, and other services incidental to delivery of the plant, all labor, contractor's equipment, temporary works, materials, consumables, and all matters and things of whatsoever nature, including operations and maintenance services, the provision of operations and maintenance manuals, training, etc., where identified in the Bidding Document, as necessary for the proper execution of the installation and other services, including all taxes, duties, levies, and charges payable in the Employer's country as of 28 days prior to the deadline for submission of bids.

(e) Recommended spare parts (Schedule No. 6) shall be quoted separately as specified in either subparagraph (a) or (b) above in accordance with the origin of the spare parts.

18.5 The current edition of Incoterms, published by the International Chamber of Commerce shall govern.

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

(a) 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 nonresponsive and rejected.

(b) In the case of Adjustable Price, prices quoted by the Bidder shall be subject to adjustment during the 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 be treated as nonresponsive and be rejected. The Bidder shall furnish the indexes (e.g., for labor and materials), their weightings and source in the Tables of Adjustment Data included in Section 4 (Bidding Forms). The Employer may require the Bidder to justify its proposed indexes and weightings. Any bid that omits indexes and weightings shall be subject to clarification with the Bidder.

18.7 If so indicated in BDS 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 Price 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.

19. Currencies of Bid and Payment

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

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

20. Period of Validity of Bids

20.1 Bids shall remain valid for the bid validity period specified in the BDS. The bid validity period starts from the date fixed for the bid submission deadline date prescribed by the Employer in accordance with ITB 24.1. A bid valid for a shorter period shall be rejected by the Employer as nonresponsive.

20.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 21, it shall also be extended 28 days beyond the deadline of the extended bid 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.

21. Bid Security/ Bid-Securing Declaration

21.1 Unless otherwise specified in the BDS, the Bidder shall furnish as part of its Bid, in original form, either a Bid-Securing Declaration or a bid security as specified in the BDS. In the case of a bid security, the amount and currency shall be as specified in the BDS.

21.2 If a Bid-Securing Declaration is required pursuant to ITB 21.1, it shall use the form included in Section 4 (Bidding Forms). The Employer will declare a Bidder ineligible to be awarded a Contract for a specified period of time, as indicated in the BDS, if a Bid-Securing Declaration is executed.

21.3 If a bid security is specified pursuant to ITB 21.1, bid security shall be, at the Bidder's option, in any of the following forms:

(a) an unconditional bank guarantee (hard copy of the bank guarantee or in the form of SWIFT message MT760), or

(b) an irrevocable letter of credit, or

(c) a cashier's or certified check,

all from a reputable source from an eligible country as described in Section 5 (Eligible Countries). In the case of a bank guarantee, the bid security shall be submitted using either the Bid Security Form included in Section 4 (Bidding Forms) or another form acceptable to the Employer. The form must include the complete name of the Bidder. The bid security shall be valid for 28 days beyond the original validity period of the Bid, or beyond any period of extension if requested under ITB 20.2.

21.4 Unless otherwise specified in the BDS, any Bid not accompanied by a substantially compliant bid security or Bid-Securing Declaration, if one is required in accordance with ITB 21.1, shall be rejected by the Employer as nonresponsive.

21.5 If a bid security is specified pursuant to ITB 21.1, the bid security of unsuccessful Bidders shall be returned promptly upon the successful Bidder's furnishing of the Performance Security pursuant to ITB 49.

21.6 If a bid security is specified pursuant to ITB 21.1, the bid security of the successful Bidder shall be returned promptly once the successful Bidder has signed the Contract and furnished the required Performance Security.

21.7 The bid security may be forfeited or the Bid-Securing Declaration executed, if

(a) notwithstanding ITB 26.3, a Bidder withdraws its Bid during the period of bid validity specified by the Bidder on the Letter of Bid, except as provided in ITB 20.2, or

(b) the successful Bidder fails to

(i) sign the Contract in accordance with ITB 48,

(ii) furnish a Performance Security in accordance with ITB 49, or

(iii) accept the arithmetical corrections of its Bid in accordance with ITB 35.

(iv) furnish a domestic preference security if so required.

21.8 If the bid security is required as per ITB 21.1, the bid security of a Joint Venture shall be in the name of the Joint Venture that submits the Bid. If the Joint Venture has not been legally constituted at the time of bidding, the bid security shall be in the name of any or all of the Joint Venture partners. If the Bid-Securing Declaration is required as per ITB 21.1, the Bid-Securing Declaration of a Joint Venture shall be in the name of the Joint Venture that submits the Bid. If the Joint Venture has not been legally constituted at the time of bidding, 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.

22. Format and Signing of Bid

22.1 The Bidder shall prepare one original set of the documents comprising the Technical Bid and one original set of the Price Bid as described in ITB 11 and clearly mark it "ORIGINAL-TECHNICAL BID" and "ORIGINAL-PRICE BID." Alternative Bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE." In addition, the Bidder shall submit copies of the Technical and Price 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.

22.2 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. If a Bidder submits a deficient authorization, the Bid shall not be rejected in the first instance. The Employer shall request the Bidder to submit an acceptable authorization within the number of days as specified in the BDS. Failure to provide an acceptable authorization within the period stated in the Employer's request shall cause the rejection of the Bid. If either the Letter of Technical Bid or Price Bid or Bid-Securing Declaration (if applicable) is not signed, the Bid shall be rejected.

22.3 A Bid submitted by a Joint Venture shall be signed so as to be legally binding on all partners.

22.4 Any amendments such as interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

D. Submission and Opening of Bids

23. Submission, Sealing, and Marking of Bids

23.1 Bidders shall submit their Bids as specified in the BDS. Procedures for submission, sealing, and marking are as follows:

(a) Bidders submitting Bids by mail or by hand shall enclose the original of the Technical Bid, the original of the Price Bid, and each copy of the Technical Bid and each copy of the Price Bid, including alternative Bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL-TECHNICAL BID", "ORIGINAL-PRICE BID", and "COPY NO. …- TECHNICAL BID" and "COPY NO. … - PRICE BID." These envelopes, the first containing the originals and the others containing copies shall then be enclosed in one single envelope per set. The rest of the procedure shall be in accordance with ITB 23.2 and ITB 23.3.

(b) Bidders submitting Bids electronically shall follow the electronic bid submission procedures specified in the BDS.

23.2 The inner and outer envelopes shall

(a) bear the name and address of the Bidder,

(b) be addressed to the Employer in accordance with ITB 24.1,

(c) bear the specific identification of this bidding process indicated in the BDS 1.1, and

(d) bear a warning not to open before the time and date for bid opening.

23.3 The outer envelopes and the inner envelopes containing the Technical Bid shall bear a warning not to open before the time and date for the opening of Technical Bid, in accordance with ITB 26.1.

23.4 The inner envelopes containing the Price Bid shall bear a warning not to open until advised by the Employer in accordance with ITB 27.7.

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

24. Deadline for Submission of Bids

24.1 Bids must be received by the Employer at the address and no later than the date and time

indicated in the BDS.

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

25. Late Bids

25.1 The Employer shall not consider any Bid that arrives after the deadline for submission of Bids, in accordance with ITB 24. Any Bid received by the Employer after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.

26. Withdrawal, Substitution, and Modification of Bids

26.1 A Bidder may withdraw, substitute, or modify its Technical Bid or Price 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 22.2 (except for withdrawal notices, which 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 22 and ITB 23 (except for withdrawal notices, which do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” “MODIFICATION;” and

(b) received by the Employer no later than the deadline prescribed for submission of Bids, in accordance with ITB 24.

26.2 Bids requested to be withdrawn in accordance with ITB 26.1 shall be returned unopened to the Bidders.

26.3 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 Letters of Technical Bid and Price Bid or any extension thereof.

27. Bid Opening

27.1 The Employer shall open the Technical Bids in public at the address, on the date, and time specified in the BDS in the presence of Bidders` designated representatives and anyone who choose to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 23.1, shall be as specified in the BDS. The Price Bids will remain unopened and will be held in custody of the Employer until the specified time of their opening. If the Technical Bid and the Price Bid are submitted together in one envelope, the Employer may reject the entire Bid. Alternatively, the Price Bid may be immediately resealed for later evaluation.

27.2 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.

27.3 Second, outer envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Bid being substituted. The inner envelopes containing the substituted Bid shall not be opened, but returned to the Bidder. Only the Substitution Technical Bid, if any, shall be opened, read out, and recorded. Substitution Price Bid will remain unopened in accordance with ITB 27.1. 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.

27.4 Next, outer envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Bid. No Technical Bid and/or Price Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out and recorded at the opening of technical bids. Only the Technical Bids, both Original as well as Modification, are to be opened, read out, and recorded at the opening. Price Bids, both Original as well as Modification, will remain unopened in accordance with ITB 27.1.

27.5 All other envelopes holding the Technical Bids shall be opened one at a time, and the following read out and recorded:

(a) the name of the Bidder;
(b) whether there is a modification or substitution;
(c) the presence of a bid security or Bid-Securing Declaration, if required; and
(d) any other details as the Employer may consider appropriate.

Only Technical Bids and alternative Technical Bids read out and recorded at bid opening shall be considered for evaluation. Unless otherwise specified in the BDS, all pages of the Letter of Technical Bid are to be initialed by at least three representatives of the Employer attending bid opening. No Bid shall be rejected at the opening of Technical Bids except for late bids, in accordance with ITB 24.1.

27.6 The Employer shall prepare a record of the technical bid opening, which shall include, as a minimum, the name of the Bidder and whether there is a withdrawal, substitution, or modification; alternative bids; and the presence or absence of a bid security or Bid-Securing Declaration, if one was required. 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 on time, and posted online when electronic bidding is permitted.

27.7 At the end of the evaluation of the Technical Bids, the Employer will invite bidders who have submitted substantially responsive Technical Bids and who have been determined as being qualified for award to attend the opening of the Price Bids. The date, time, and location of the opening of Price Bids will be advised in writing by the Employer. Bidders shall be given reasonable notice of the opening of Price Bids.

27.8 The Employer will notify in writing Bidders who have been rejected for submitting nonresponsive Technical Bids and return their Price Bids unopened together with their bid securities, before opening the Price Bids of the substantially responsive Bidders.

27.9 The Employer shall conduct the opening of Price Bids of all Bidders who submitted substantially responsive Technical Bids in the presence of Bidders` representatives who choose to attend at the address, on the date, and time specified by the Employer. The Bidder's representatives who are present shall be requested to sign a register evidencing their attendance.

27.10 All envelopes containing Price Bids shall be opened one at a time and the following read out and recorded:

(a) the name of the Bidder;
(b) whether there is a modification or substitution;
(c) the Bid Prices, including any discounts and alternative offers; and
(d) any other details as the Employer may consider appropriate.

Only Price Bids discounts, and alternative offers read out and recorded during the opening of Price Bids shall be considered for evaluation. Unless otherwise specified in the BDS, all pages of the Letter of Price Bid and Bill of Quantities are to be initialed by at least three representatives of the Employer attending bid opening. No Bid shall be rejected at the opening of Price Bids.

27.11 The Employer shall prepare a record of the opening of Price Bids that shall include, as a

minimum, the name of the Bidder, the Bid Price (per lot if applicable), any discounts, and alternative offers. 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 on time, and posted online when electronic bidding is permitted.

E. Evaluation and Comparison of Bid

28. Confidentiality

28.1 Information relating to the examination, evaluation, comparison and post-qualification of Bids and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with such process until the publication of Contract award.

28.2 Any attempt by a Bidder to influence the Employer in the evaluation of the Bids or Contract award decisions may result in the rejection of its Bid.

28.3 Notwithstanding ITB 28.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it should do so in writing.

29. Clarification of Bids

29.1 To assist in the examination, evaluation, and comparison of the Technical and Price Bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change in the substance of the Technical Bid or prices in the Price Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids, in accordance with ITB 35.

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

30. Qualification of the Bidder

30.1 The Employer shall determine to its satisfaction whether a Bidder meets the qualifying criteria specified in Section 3 (Evaluation and Qualification Criteria).

30.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 15.1. Unless permitted in the BDS, the determination shall not take into consideration the qualifications of other firms such as the Bidder's subsidiaries, parent entities, or affiliates.

30.3 An affirmative determination shall be a prerequisite for proceeding the next step of the evaluation process under ITB 32. The Employer reserves the right to reject the bid of any Bidder found to be in circumstances described in ITB 3.1. A negative determination shall result in disqualification of the Bid.

31. Deviations, Reservations, and Omissions

31.1 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.

32. Determination of Responsiveness

32.1 The Employer shall examine the Technical Bid to confirm that all documents and technical documentation requested in ITB 11.2 have been provided, and to determine the completeness of each document submitted.

32.2 The Employer shall confirm that the following documents and information have been provided in the Technical Bid. If any of these documents or information is missing, the offer shall be rejected.

(a) Letter of Technical Bid;
(b) written confirmation of authorization to commit the Bidder;
(c) Bid Security or Bid-Securing Declaration, if applicable; and
(d) Technical Proposal in accordance with ITB 16.

32.3 The Employer's determination of a Bid's responsiveness is to be based on the contents of the Bid itself, as defined in ITB 11.

32.4 A substantially responsive Technical 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 services specified in the Contract; or

(ii) limit in any substantial way, inconsistent with the Bidding Document, the Employer's rights, or the Bidder's obligations under the proposed Contract; or

(b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.

32.5 The Employer shall examine the technical aspects of the Bid submitted in accordance with ITB 17, Technical Proposal, in particular, to confirm that all requirements of Section 6 (Employer's Requirements) have been met without any material deviation, reservation, or omission.

32.6 If a Bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

33. Nonmaterial Nonconformities

33.1 Provided that a Bid is substantially responsive, the Employer may waive any nonconformities in the Bid that do not constitute a material deviation, reservation, or omission.

33.2 Provided that a Technical Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Technical 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.

33.3 Provided that a Technical Bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or nonconforming item or component. The adjustment shall be made using the method indicated in Section 3 (Evaluation and Qualification Criteria).

34. Correction of Arithmetical Errors

34.1 During the evaluation of Price Bids, the Employer 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 amounts given under the column for the price breakdown shall prevail and the Total Price 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 total of the amounts of Schedule Nos. 1 to 4 shall prevail and the Schedule No. 5 (Grand Summary) will be corrected accordingly;

(c) if there is a discrepancy between the grand total price given in Schedule No. 5 (Grand Summary) and the bid amount in item (c) of the Letter of Bid, the grand total price given in Schedule No. 5 (Grand Summary) will prevail and the bid amount in item (c) of the Letter of Bid will be corrected; and

(d) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetical error, in which case the amount in figures shall prevail subject to (a), (b), and (c) above.

34.2 If the Bidder that submitted the Most Advantageous Bid does not accept the correction of errors, its Bid shall be disqualified and its bid security may be forfeited, or its Bid-Securing Declaration executed.

35. Conversion to Single Currency

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

36. Domestic Preference

36.1 Unless otherwise specified in the BDS, domestic preference shall not apply.

37. Financial Evaluation

37.1 The Employer shall use the criteria and methodologies indicated in this clause. No other evaluation criteria or methodologies shall be permitted.

37.2 Provided that a Bid is substantially responsive with the technical evaluation in accordance with Section 3 (Evaluation and Qualification Criteria), the Employer will proceed with the detailed evaluation of financial aspects. The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

To evaluate a Bid, the Employer shall consider the following:

(a) the bid price, excluding provisional sums and the provision, if any, for contingencies in the Price Schedules, but including Daywork items, where priced competitively;

(b) price adjustment for correction of arithmetical errors in accordance with ITB 35.1;

(c) price adjustment due to discounts offered in accordance with ITB 18.7;

(d) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 33.3;

(e) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 36;

(f) assessment whether the bid is abnormally low in accordance with ITB 40; and

(g) the evaluation factors indicated in Section 3 (Evaluation and Qualification Criteria).

37.3 The Employer's evaluation of a Bid will exclude and not take into account,

(a) in the case of Plant and Mandatory Spare Parts (Schedule No. 1) supplied from abroad, all taxes and duties, applicable in the Employer's country and payable on the Plant and Mandatory Spare Parts if the Contract is awarded to the Bidder; and

(b) in the case of Plant and Mandatory Spare Parts (Schedule No. 2) supplied from within the Employer's country, sales and other taxes, applicable in the Employer's country and payable on the Plant and Mandatory Spare Parts if the Contract is awarded to the Bidder.

37.4 If price adjustment is allowed in accordance with ITB 18.6, 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.

37.5 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 Most Advantageous Contract combinations, including any discounts offered in the Letter of Bid, is specified in Section 3 (Evaluation and Qualification Criteria).

38. Lowest Evaluated Bid

38.1 The Employer will proceed with the comparison of the Bids prices amongst the substantially responsive bids. The Bid with the lowest price will be determined as the Most Advantageous Bid.

38.2 For the Most Advantageous bid, the capabilities of the manufacturers and subcontractors proposed in its Bid for the major items of plant and services will also be evaluated for acceptability in accordance with Section 3 (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 propose, without changing its bid price, an acceptable substitute manufacturer or subcontractor meeting the minimum technical specifications stated in Section 6 (Employer's Requirements). If a Bidder does not provide an acceptable substitute manufacturer or subcontractor by the date and time set in the Employer's request for substitution of manufacturer or subcontractor, its Bid may be rejected.

38.3 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.

39. Abnormally Low Bids

39.1 An abnormally low bid is one where the bid price, in combination with other elements of the bid, appears to be so low that it raises concerns as to the capability of the Bidder to perform the contract for the offered bid price.

39.2 When the offered bid price of the Most Advantageous Bid appears to be abnormally low, the Employer shall undertake a three-step review process as follows:

(a) identify abnormally low costs and unit rates by comparing them with the engineer's estimates, other substantially responsive bids, or recently awarded similar contracts;

(b) clarify and analyze the bidder's resource inputs and pricing, including overheads,

contingencies and profit margins; and

(c) decide whether to accept or reject the bid.

39.3 With regard to ITB 39.2 (b) above, the Employer will seek a written explanation from the bidder of the reasons for the offered bid price, including a detailed analysis of costs and unit prices, by reference to the scope, proposed methodology, schedule, and allocation of risks and responsibilities. This may also include information regarding the economy of the manufacturing process; the services to be provided, or the construction method to be used; the technical solutions to be adopted; and any exceptionally favorable conditions available to the bidder for the works, equipment or services proposed.

39.4 After examining the explanation given and the detailed price analyses presented by the bidder, the Employer may:

(a) accept the bid, if the evidence provided satisfactorily accounts for the low bid price and costs, in which case the bid is not considered abnormally low; or

(b) reject the bid if the evidence provided does not satisfactorily account for the low bid price, and make a similar determination for the next ranked bid, if required.

40. Unbalanced or Front-Loaded Bids

40.1 If the Bid, which results in the Most Advantageous Bid, is seriously unbalanced or front-loaded in the opinion of the Employer, the Employer 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 construction methods and schedule proposed, as well as the pricing and sources of materials, equipment, and labor.

40.2 After evaluation of the information and detailed price analyses presented by the Bidder, the Employer may, as appropriate:

(a) accept the Bid; or

(b) accept the Bid, but require that the total amount of the Performance Security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract subject to ITB 48.2; or

(c) reject the Bid and make a similar determination for the next ranked bid.

41. Employer's Right to Accept Any Bid and to Reject Any or All Bids

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

F. Award of Contract

42. Award Criteria

42.1 The Employer shall award the Contract to the Bidder whose offer has been determined in line with ITB 38 to ITB 40 above to be the Most Advantageous 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.

43. Notice of Intention for Award of Contract

43.1 If standstill provisions apply as specified in the BDS 46, the standstill period shall be defined in the BDS to specify the duration subsequent to notification of intention for award of contract (before making the actual contract award) within which any unsuccessful bidder can challenge the proposed award.

43.2 Prior to the expiration of the period of bid validity the Employer shall transmit the Notice of Intention for Award of Contract using the form included in Section 9 (Contract Forms) to the successful Bidder, in writing.

44. Invitation to Finalization of the Draft Contract Before Notification of Award 3

44.1 Prior to the expiration of the period of bid validity, the Employer shall invite the successful Bidder to finalize the provisions of the draft contract, before issuing the Notification of Award through issuance of the Letter of Acceptance.

44.2 Invitation for finalization of the draft contract shall be done through the issuance of the corresponding form in Section 9 (Contract Forms) to the successful Bidder, in writing.

44.3 This step must be finalized as soon as possible, but no later than 14 days.

45. Standstill Period

45.1 The purpose of a standstill period is to allow unsuccessful bidders an opportunity to challenge an intended contract award decision before the actual notification of award. If standstill provisions apply this shall be defined in the BDS to specify the duration subsequent to notification of intention for award of contract (before issuing the Notification of Award as per ITB 46) within which any unsuccessful bidder can challenge the proposed award.

45.2 If standstill period applies, unsuccessful bidders may request a debriefing request during the standstill period.

45.3 In the event there are any complaints during the standstill period, prior to issuance of the Notification of Award, it will be a condition that the Employer satisfactorily addresses the complaint. However, continuation of a complaint shall not be a ground for the Employer not to proceed in accordance with ITB 46.

45.4 If the standstill period does not apply, upon notification of award through the issuance of a Letter of Acceptance under ITB 46.1, unsuccessful Bidders may request in writing to the Employer for a debriefing seeking explanations on the grounds on which their Bids were not selected. The Employer shall promptly respond in writing and/or in a debriefing meeting to any unsuccessful Bidder who, after publication of contract award, requests a debriefing.

46. Notification of Award

46.1 Prior to the expiration of the period of bid validity; and upon satisfactorily addressing any complaints received during the standstill period, if applicable, and after finalization of the draft contract provisions, the Employer shall transmit the Notification of Award through the issuance of a Letter of Acceptance using the form included in Section 9 (Contract Forms) to the successful Bidder, in writing, that its Bid has been accepted, together with the finalized contract, and a request to submit the Beneficial Ownership Disclosure Form providing additional information on its beneficial ownership. The Beneficial Ownership Disclosure Form shall be submitted within 14 days of receiving this request.

46.2 Until a formal contract is prepared and executed by the contracting parties, the notification of award through the issuance of Letter of Acceptance shall constitute a binding Contract between the Employer and the Contractor.

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[3] The Employer may issue this Invitation to finalization of the draft contract provisions, in parallel with the notice of intention for award of contract, i.e. at the commencement of the standstill period, if applicable.

46.3 Within 2 weeks of the award of contract, the Borrower shall publish in an English language newspaper or widely known and freely accessible website the results identifying the bid and lot or package numbers, as applicable and the following information:

(a) name of each Bidder who submitted a Bid;

(b) bid prices as read out at bid opening;

(c) name and evaluated prices of each bid that was evaluated;

(d) name of Bidders whose Bids were rejected and the reasons for their rejection; and

(e) name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded.

(f) successful Bidder's Beneficial Ownership Disclosure Form.

47. Signing of Contract

47.1 The Employer shall send the successful Bidder the Contract Agreement together with or promptly after the issuance of Letter of Acceptance.

47.2 Unless agreed otherwise between the parties, within 28 days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer.

48. Performance Security

48.1 Within 28 days of the receipt of notification of award through the issuance of Letter of Acceptance from the Employer, the successful Bidder shall furnish the Performance Security in accordance with the Conditions of Contract, subject to ITB 41, using for that purpose the Performance Security Form included in Section 9 (Contract Forms), or another form acceptable to the Employer. If the bank issuing Performance Security is located outside the Employer's country, it shall be counter-guaranteed or encashable by a bank in the Employer's country.

48.2 Failure of the successful Bidder to submit the abovementioned performance security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security or execution of the Bid-Securing Declaration. In that event, the Employer may award the Contract to the next ranked Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

48.3 The above provision shall also apply to the furnishing of a domestic preference security if so required.

49. Bidding-Related Complaints

49.1 The procedures for dealing with Bidding-Related Complaints arising out of this bidding process are specified in the BDS.

Section 2: Bid Data Sheet

This section consists of provisions that are specific to each procurement and supplement the information or requirements included in Section 1 (Instructions to Bidders).

A. General

ITB 1.1	The number of the Invitation for Bids (IFB) is: **NEA/PMD/ETDSP/KPEP-082/83-1** The Employer is: Nepal Electricity Authority The name of the open competitive bidding (OCB) is**: NEA/PMD/ETDSP/KPEP-082/83-1 Design, Supply, Delivery, Installation, Testing and Commissioning of 11/0.4/0.23 kV Lines and Transformer Installation works for Network Rehabilitation and Electrification in Karnali Province** The identification number of the OCB is: **NEA/PMD/ETDSP/KPEP-082/83-1** The number and identification of lots (contracts) comprising this OCB is: **None**
ITB 2.1	The Borrower is: Government of Nepal The name of the Project is: Electricity Transmission & Distribution Strengthening Project (ETDSP) Package Name: Karnali Province Electrification Project (KPEP)
ITB 4.1(a)	Maximum number of partners in a Joint Venture (JV) shall be **03 (Three).**

B. Contents of Bidding Document

ITB 7.1	For clarification purposes only, the Employer's address is: Attention: Mr. Bimal Raj Raut Street address: Satungal-Bauthali Chowk Marga, Chandragiri Municipality-07 Floor/Room number: Ground floor City: Kathmandu ZIP code: NA Telephone: +97715164099 (Directorate Office, Kathmandu) Fax: NA E-mail: Kpep@nea.org.np, krep2025@gmail.com
ITB 7.4	A Pre-Bid meeting will take place. Date: **14 July, 2026** Time: **11:00 AM** Place: Project Office, Satungal-Bauthali Chowk Marga, Chandragiri Municipality-07 A site visit conducted by the Employer will not be organized. The Bidders are, however, advised to visit the site at their own expense to familiarize themselves with the ground conditions. The Employer will facilitate the bidder.

C. Preparation of Bids

ITB 10.1	The language of the Bid is: English
ITB 11.2(g)	The Bidder shall submit with its Technical Bid the following additional documents: Notarized copy of Business Registration Certificate of the Bidder, and of each joint venture partners in the case of a joint venture, issued by the government of the country where the bidder or each joint venture partner is registered. If the original certificate is not in English, the official notarized English translation must be attached. In case of joint venture, the Board Resolution or decision from the highest authority of each partner to form a joint venture to perform the contract shall be included along with the Joint Venture agreement.
ITB 11.3(d)	The Bidder shall submit with its Price Bid the following additional documents: None
ITB 12.1	The units and rates in figures entered into the Price Schedules should be typewritten or if written by hand, must be in print form. Price Schedules not presented accordingly may be considered nonresponsive.
ITB 13.1	Alternative Bids shall not be permitted
ITB 13.2	Alternative times for completion shall not be permitted.
ITB 13.5	Alternative technical solutions shall not be permitted.
ITB 16.1(b)	The period following completion of plant and services in accordance with provisions of the contract shall be Five (5) years.
ITB 17.1	The Bidder shall submit the following additional documents in the Technical Proposal of its Bid: • Functional Guarantee sheet • Occupational Health and Safety Plan to ensure health and safety of workers
ITB 18.1	Bidders shall quote for the entire plant and services on a single responsibility basis. The following components or services will be provided under the responsibility of the Employer: None
ITB 18.4(a)(i)	The Incoterm for quoting plants to be supplied from abroad is: 2020 (CIP project sites of Nepal Project sites: Salyan, Jajarkot, West Rukum, Kalikot, Jumla, Mugu)
ITB 18.6	The prices quoted by the Bidder shall be fixed.
ITB 19.1	The currencies of the Bid shall be as follows: (a) The prices shall be quoted either in the currency of the Bidder's home country, or in any fully convertible currency(ies). (b) A Bidder expecting to incur a portion of its expenditures in the performance of the Contract in more than one currency, and wishing to be paid accordingly, shall so indicate in the Schedule of Prices and the Letter of Bid. (c) If some of the contract expenditures related to Design, Installation, and Other Services are to be incurred in the Employer's country, such expenditures shall be quoted in either foreign and/or local currency, depending upon the currency in which the costs are to be incurred. (d) Bidders may be required by the Employer to clarify their local and foreign currency

	requirements, and to substantiate that the amounts included in the Price Schedules are reasonable and responsive to ITB 18.1 in which case a detailed breakdown of its foreign currency requirements shall be provided by the Bidder. (e) During the performance of the contract, the foreign currency portions of the outstanding balance of the Contract Price may be adjusted by agreement between the Employer and the Contractor to reflect any changes in foreign currency requirements for the contract. Any such adjustment shall be effected by comparing the amounts quoted in the bid with the amounts already used in the Facilities and the Contractor's future needs for imported items.
ITB 20.1	The bid validity period shall be One hundred fifty (150) days after the date of opening of bids (excluding the date of Bid Opening).
ITB 21.1	The Bidder shall furnish a bid security in the amount of: USD 153,000 or its Local Currency (NPR) equivalent. Bid Security issued by a bank outside Nepal must be counter guaranteed by "A" class commercial bank in Nepal.
ITB 21.2	The ineligibility period will be Not Applicable
ITB 21.4	Subject to the succeeding sentences, any bid not accompanied by an irrevocable and callable bid security shall be rejected by the Employer as nonresponsive. If a Bidder submits a bid security that (i) deviates in form, amount, and/or period of validity, or (ii) does not provide sufficient identification of the Bidder (including, without limitation, failure to indicate the name of the Joint Venture or, where the Joint Venture has not yet been constituted, the names of all future Joint Venture Partners), the Employer shall request the Bidder to submit a compliant bid security within Fourteen (14) days of receiving such a request. Failure to provide a compliant bid security within the prescribed period of receiving such a request shall cause the rejection of the Bid.
ITB 22.1	In addition to the original Bid, the number of copies is: Two (2)
ITB 22.2	The written confirmation of authorization to sign on behalf of the Bidder shall consist of An organizational document, board resolution or its equivalent, or power of attorney specifying the representative's authority to sign the Bid on behalf of, and to legally bind, the Bidder. If the Bidder is an intended or an existing Joint Venture, the power of attorney should be signed by all partners and specify the authority of the named representative of the Joint Venture to sign on behalf of, and legally bind, the intended or existing Joint Venture. If the Joint Venture has not yet been formed, also include evidence from all proposed Joint Venture partners of their intent to enter into a Joint Venture in the event of a contract award in accordance with ITB 11.2.
ITB 22.2	The Bidder shall submit an acceptable authorization within Fourteen (14) days.

D. Submission and Opening of Bids

ITB 23.1	Bidders shall submit their Bids by hand. Bidders shall not have the option for submitting their Bids electronically.
ITB 23.1(b)	Electronic bidding submission procedures shall be: Not Applicable
ITB 24.1	For bid submission purposes only, the Employer's address is Attention:

	Project Manager: Mr. Bimal Raj Raut Karnali Province Electrification Project (KPEP) Street address: Bauthali Chowk, Matatirtha, Kathmandu Floor/Room number: Ground Floor City: Kathmandu ZIP code: Country: Nepal Email Address: Kpep@nea.org.np, krep2025@gmail.com The deadline for bid submission is Date: **13th August, 2026** Time: **12:00 Noon (Nepal Standard Time)**
ITB 27.1	The Technical bid opening shall take place at Street address: NEA Project Management Directorate, Matatirtha, Kathmandu, Nepal Bauthali Chowk, Matatirtha, Kathmandu Floor/Room number: Ground Floor City: Kathmandu Country: Nepal Date: **13th August, 2026** Time: **12:30 PM (Nepal Standard Time)**
ITB 27.1	Electronic bid opening procedure shall be as follows: Not Applicable
ITB 27.5	The Letter of Technical Bid shall be initialed by Three (3) representatives of the Employer attending Bid opening.
ITB 27.10	The Letter of Bid and Price Schedules shall be initialed by Three (3) representatives of the Employer attending the Bid opening.

E. Evaluation and Comparison of Bids

ITB 30.2	The qualifications of other firms such as the Bidder's subsidiaries, parent entities, or affiliates, *shall not* be permitted.
ITB 35.1	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: Nepalese Rupees (NPR). The source of the selling exchange rate shall be: Nepal Rastra Bank (Central bank of Nepal) The date for the selling exchange rate shall be: the final deadline for submission of the bids
ITB 36.1	Domestic preference shall apply.
ITB 45.1	Standstill provisions shall apply. The duration of standstill period will be seven (7) days from the date of notice of intention for award of contract. The Employer shall, at the start of the standstill period, notify in writing each bidder that submitted a bid, of its intention to award a contract to the successful bidder at the end of

	standstill period. The notification using the form included in Section 9 (Contract Forms) shall include the following information: (a) the name of each Bidder who submitted a Bid; (b) the bid prices as read out at bid opening; (c) the name and evaluated prices of each Bid that was evaluated; (d) the name of bidders whose bids were rejected and the reasons for their rejection; (e) the name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded; and (f) a statement of the reason(s) the bid of the unsuccessful bidder to whom the notification is addressed was unsuccessful, unless the price information under (e) of this paragraph already reveals the reason.

F. Award of Contract

ITB 49.1	The procedures for Bidding-Related Complaints are referenced in the Procurement Directive for ADB Borrowers. The Bidder should submit its complaint following these procedures, in writing, to: For the attention: Managing Director, NEA through the Project Manager Title/position: Nepal Electricity Authority, Durbar Marg, Kathmandu Employer: NEA, PMD E-mail address: neamd@nea.org.np Fax number:

Section 3: Evaluation and Qualification Criteria

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1. Qualification

1.1 Eligibility

Criteria		Compliance Requirements			Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	

1.1.1 Nationality

Nationality in accordance with ITB 4.2.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Forms ELI – 1; ELI – 2 with attachments

1.1.2 Conflict of Interest

No conflicts of interest in accordance with ITB 4.3.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Bid

1.1.3 ADB Eligibility

Not having been declared ineligible by ADB, as described in ITB 4.4.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Bid

1.1.4 Government-Owned Enterprise

Bidder required to meet conditions of ITB 4.5.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Forms ELI – 1; ELI – 2 with attachments

1.1.5 United Nations Eligibility

Not having been excluded by an act of compliance with a United Nations Security Council resolution in accordance with ITB 4.8.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Bid

1.2 Historical Contract Nonperformance

1.2.1 History of Nonperforming Contracts

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Nonperformance of a contract[a] did not occur as a result of contractor default since **1 January 2021**.	Must meet requirement	Must meet requirement	Must meet requirement[b]	Not applicable	Form CON – 1

1.2.2 Suspension Based on Execution of Bid-Securing Declaration

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Not under suspension based on execution of a Bid-Securing Declaration pursuant to ITB 4.6.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Bid

1.2.3 Pending Litigation and Arbitration

Pending litigation and arbitration criterion shall apply.

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
All pending litigation, arbitration or other material events impacting the net worth and/or liquidity of the bidder, if any, shall be treated as resolved against the Bidder and so shall in total not represent more than **50 (Fifty) percent** of the Bidder's net worth calculated as the difference between total assets and total liabilities.	Must meet requirement	Not applicable	Must meet requirement	Not applicable	Form CON – 1

1.3 Financial Situation

1.3.1 Historical Financial Performance

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Submission of audited financial statements or, if not required by the law of the Bidder's country, other financial statements acceptable to the Employer, for the last **Three (3)** years to demonstrate the current soundness of the Bidder's financial position. As a minimum, the Bidder's net worth for the last year calculated as the difference between total assets and total liabilities should be positive.	Must meet requirement	Not applicable	Must meet requirement	Not applicable	Form FIN – 1 with attachments

1.3.2 Average Annual Turnover

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Minimum average annual turnover of **$ (USD) 7.8 million (Seven million eight hundred thousand**) calculated as total certified payments received for contracts in progress or completed, within the last 3 (Three) years.	Must meet requirement	Must meet requirement	Must meet 25% (Twenty Five percent) of the requirement	Must meet 40% (Forty percent) of the requirement	Form FIN – 2

1.3.3 Financial Resources[4]

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
For Single Entities The Bidder must demonstrate that its financial resources defined in FIN – 3, less its financial obligations for its major contract commitments as defined in FIN – 4, meet or exceed the total requirement for the Subject Contract of **$ (USD) 1.4 million**	Must meet requirement	Not applicable	Not applicable	Not applicable	Form FIN – 3 and Form FIN – 4
For Joint Ventures 1. One partner must demonstrate that its financial resources defined in FIN – 3, less its financial obligations for its own major contract commitments as defined in FIN – 4, meet or exceed its required share of **$ (USD) 0.6 million** from the total requirement for the Subject Contract. AND	Not applicable	Not applicable	Not applicable	Must meet requirement	Form FIN – 3 and Form FIN – 4
2. Each partner must demonstrate that its financial resources defined in FIN – 3, less its financial obligations for its own major contract commitments as defined in FIN –4, meet or exceed its required share of **$ (USD) 0.40 million** from the total requirement for the Subject Contract. AND	Not applicable	Not applicable	Must meet requirement	Not applicable	Form FIN – 3 and Form FIN – 4
(1) 3. The Joint Venture must demonstrate that the combined financial resources of all partners defined in FIN – 3, less all the partners' total financial obligations for the major contract commitments as defined in FIN – 4, meet or exceed the total requirement for the Subject Contract of **$ (USD) 1.4 million.**	Not applicable	Must meet requirement	Not applicable	Not applicable	Form FIN – 3 and Form FIN – 4

1.4 Bidder's Experience

1.4.1 Contracts of Similar Size and Nature[5]

(a) **Similar Size – Must be complied with by the Bidder[a]**

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Participation as a contractor, Joint Venture partner, or Subcontractor, in the following contracts that have been satisfactorily completed[b] between **1st January 2016** and bid submission deadline: **1(One) of contract, each of minimum 12.5 million USD.**	Must meet requirement	Must meet requirement	Not applicable	Not applicable	Form EXP-1

The requirement of "satisfactorily completed contract" shall meet the following submission requirements:

1. Signed Contract Agreement, and
2. Taking-Over Certificate or Contract Completion Certificate or Performance Certificate

(b) **Similar Nature – Must be complied with by the Bidder[d]**

Participation and successful implementation, as a contractor, Joint Venture partner, or Subcontractor, in the following technical requirements, within the last **10 (Ten)** years 1. Design, Supply, Installation, Testing and commissioning of 375 circuit-km line length of 11 kv distribution line. 2. Supply, Installation, Testing and commissioning of **200 number of 11/0.4kv Distribution Transformers.**	Must meet requirement	Must meet requirement	Not applicable	Not applicable	Form EXP-1

Note:

i) The requirements under 1.4.1 (b) can be met under separate contracts and it is not a requirement to have completed all requirements under a single contract.

ii) Each technical requirement must have been completed under a "single" contract.

iii) The Bidder shall submit evidence that the relevant technical requirement (e.g. Interim payment certificate, approval by the Engineer, etc.) has been satisfactorily completed. It is not a requirement that the particular contract within

which the technical requirement has been implemented must have been substantially and/or satisfactorily completed yet.

1.4.2 Experience in Specialized Key Activities which may be met by the Bidder or Specialist Subcontractors (optional)[6]- Not Applicable

The Employer accepts any of the following activities to be subcontracted. They may be complied with by the Bidder itself or by its proposed Specialist Subcontractor(s).

If any of the below technical requirements under 1.4.2 is/are to be undertaken by a Specialist Subcontractor, the Employer shall require evidence of the subcontracting agreement from the Bidder. The experience of Specialist Subcontractors shall be considered only for the following stipulated technical requirements and other aspects of qualification criteria (e.g. value of contracts under 1.4.1 (a) and (b) above, and their financial resources, etc.) shall not be added to and cannot be combined with those of the Bidder for purposes of qualification of the Bidder.

Criteria	**Compliance Requirements**		**Documents**
Requirement	Single Entity or Its Specialist Subcontractors	Joint Venture or Its Specialist Subcontractors	Submission Requirements
For the above or other contracts executed during the period stipulated in 1.4.1, a minimum construction experience is required in the following key activities:[a]	Must meet requirement	Must meet requirement	Form EXP – 2[b]
4 [Technical Requirement 4]			
5 [Technical Requirement 5]			
6 [Technical Requirement 6]			

1.5 Subcontractors

Subcontractors or Manufacturers for the following major items of plant and services must meet the following minimum qualification criteria, herein listed for a Subcontractor for that item. Failure to comply with this requirement will result in rejection of the Subcontractor but not the Bidder.

Item No.	Description of Item	Minimum Criteria to be met[a]	Documents Submission Requirements
1	Steel Tubular Poles	**(a)** Must have manufacturing experience of at least **10(Ten) years.** (b) In case the Bidder is not a manufacturer of the Goods offered; the Bidder shall submit Manufacturer's Certificate authorizing the Bidde to supply the manufacturer's Goods. This certificate shall bear details of the Goods that the manufacturer will be supplying under the authorization. The authorization shall be on the manufacturer's original letterhead with seal/stamp of the manufacturer. (c) The manufacturer of Goods to be supplied under this Bid shall hold valid ISO 9001:2000 (including design in scope of registration)	Form EXP – 3

		certificates as required by the specifications and a copy of ISO certificate shall be included in the Bid. (d) The Bidder shall submit the type test report of the offered item carried out by independent internationally accredited testing laboratory conducted within last **10(Ten)** years as on originally scheduled date of bid submission. (e) Must have manufactured and supplied at least twice the bid quantity of Steel Tubular Pole as a main supplier over last **seven (7)** year's period as on originally scheduled date of bid submission. Out of supplied quantity, a minimum of half the bid quantity for each item offered shall have been in operation satisfactorily to the end user fo at least **One (1)** year within the above period. This must be substantiated by end user certificate issued by the clients.	
2	XLPE AAAC Covered Conductor	**(a)** Must have manufacturing experience of at least **10(Ten) years.** (b) In case the Bidder is not a manufacturer of the Goods offered; the Bidder shall submit Manufacturer's Certificate authorizing the Bidde to supply the manufacturer's Goods. This certificate shall bear details of the Goods that the manufacturer will be supplying under the authorization. The authorization shall be on the manufacturer's original letterhead with seal/stamp of the manufacturer. (c) The manufacturer of Goods to be supplied under this Bid shall hold valid ISO 9001:2000 (including design in scope of registration) certificates as required by the specifications and a copy of ISO certificate shall be included in the Bid. (d) The Bidder shall submit the type test report of the offered item carried out by independent internationally accredited testing laboratory conducted within last **10(Ten) years** as on originally scheduled date of bid submission. (e) Must have manufactured and supplied at least twice the bid quantity of XLPE AAAC Covered Conductor as a main supplier over last **seven (7)** year's period as on originally scheduled date of bid submission. Out of supplied quantity, a minimum of half the bid quantity for each item offered shall have been in operation satisfactorily to the end user for at least **One (1)** year within the above period. This must be substantiated by end user certificate issued by the clients.	
3	LV AB Cables	**(a)** Must have manufacturing experience of at least **10(Ten) years.** (b) In case the Bidder is not a manufacturer of the Goods offered; the Bidder shall submit Manufacturer's Certificate authorizing the Bidder to supply the manufacturer's Goods. This certificate shall bear details of the Goods that the manufacturer will be supplying under the authorization. The authorization shall be on the manufacturer's original letterhead with seal/stamp of the manufacturer. (c) The manufacturer of Goods to be supplied under this Bid shall hold valid ISO 9001:2000 (including design in scope of registration) certificates as required by the specifications and a copy of ISO certificate shall be included in the Bid.	

		(f) The Bidder shall submit the type test report of the offered item carried out by independent internationally accredited testing laboratory conducted within last **10(Ten) years** as on originally scheduled date of bid submission. (g) Must have manufactured and supplied at least twice the bid quantity of LV ABC Cable as a main supplier over last **seven (7)** years period as on originally scheduled date of bid submission. Out of supplied quantity, a minimum of half the bid quantity for each item offered shall have been in operation satisfactorily to the end user for at least One (1) year within the above period. This must be substantiated by end user certificate issued by the clients.	
4	11 kV Disc and Pin Insulator & Hardware	**(a)** Must have manufacturing experience of at least **10(Ten) years.** (b) In case the Bidder is not a manufacturer of the Goods offered, the Bidder shall submit Manufacturer's Certificate authorizing the Bidde to supply the manufacturer's Goods. This certificate shall bear details of the Goods that the manufacturer will be supplying under the authorization. The authorization shall be on the manufacturer's original letterhead with seal/stamp of the manufacturer. (c) The manufacturer of Goods to be supplied under this Bid shall hold valid ISO 9001:2000 (including design in scope of registration) certificates as required by the specifications and a copy of ISO certificate shall be included in the Bid. (d) The Bidder shall submit the type test report of the offered item carried out by independent internationally accredited testing laboratory conducted within last **10(Ten)** years as on originally scheduled date of bid submission. (e) Must have manufactured and supplied at least twice the bid quantity of Hardware and Insulators for covered conductor as a main supplier over last **seven (7)** years period as on originally scheduled date of bid submission. Out of supplied quantity, a minimum of half the bid quantity for each item offered shall have been in operation satisfactorily to the end user for at least One (1) year within the above period. This must be substantiated by end user certificate issued by the clients.	
5	ABC Cable Hardware	**(a)** Must have manufacturing experience of at least **10(Ten) years.** (b) In case the Bidder is not a manufacturer of the Goods offered; the Bidder shall submit Manufacturer's Certificate authorizing the Bidde to supply the manufacturer's Goods. This certificate shall bear details of the Goods that the manufacturer will be supplying under the authorization. The authorization shall be on the manufacturer's original letterhead with seal/stamp of the manufacturer. (c) The manufacturer of Goods to be supplied under this Bid shall hold valid ISO 9001:2000 (including design in scope of registration) certificates as required by the specifications and a copy of ISO certificate shall be included in the Bid.	

		(d) The Bidder shall submit the type test report of the offered item carried out by independent internationally accredited testing laboratory conducted within last **10(Ten)** years as on originally scheduled date of bid submission. (e) Must have manufactured and supplied at least twice the bid quantity of ABC cable hardware as a main supplier over last **seven (7)** year's period as on originally scheduled date of bid submission. Out of supplied quantity, a minimum of half the bid quantity for each item offered shall have been in operation satisfactorily to the end user for at least **One (1)** year within the above period. This must be substantiated by end user certificate issued by the clients.	
6	Distribution Transformers	**(a)** Must have manufacturing experience of at least **10 (Ten) years.** (b) In case the Bidder is not a manufacturer of the Goods offered; the Bidder shall submit Manufacturer's Certificate authorizing the Bidder to supply the manufacturer's Goods. This certificate shall bear details of the Goods that the manufacturer will be supplying under the authorization. The authorization shall be on the manufacturer's original letterhead with seal/stamp of the manufacturer. (c) The manufacturer of Goods to be supplied under this Bid shall hold valid ISO 9001:2000 (including design in scope of registration) certificates as required by the specifications and a copy of ISO certificate shall be included in the Bid. (d) The Bidder shall submit the type test report of the offered item carried out by independent internationally accredited testing laboratory conducted within last **10 (Ten)** years as on originally scheduled date of bid submission. (e) Must have manufactured and supplied at least twice the bid quantity of 11/0.4 kV, 25 kVA or above sized Distribution Transformers as a main supplier over last Seven (7) years period as on originally scheduled date of bid submission. Out of supplied quantity, a minimum of half the bid quantity for each item offered shall have been in operation satisfactorily to the end user for at least One (1) year within the above period. This must be substantiated by end user certificate issued by the clients.	

In the case of a Bidder who offers to supply and install major items of plant under the contract, which the Bidder did not manufacture or otherwise produce, the Bidder shall provide the Manufacturer's authorization, using the form provided in Section 4 (Bidding Forms), showing that the Bidder has been duly authorized by the Manufacturer or producer of the related plant and equipment or component to supply and install that item in the Employer's country. Failure to submit the Manufacturer's authorization at the first instance is considered a minor, nonmaterial omission and shall be subject to clarification. However, failure of the Bidder to submit the omitted authorization shall lead to rejection of the Subcontractor or Manufacturer of the item under evaluation in accordance with ITB 37.2.

If the bidder submits the type test report of higher rated equipment, the bidder must provide the commitment that the type test of the rated or offered equipment will be performed without any extra cost to employer, if the Contract is awarded.

NOTE: To substantiate the above qualification, Bidder(s) must submit all the necessary documents required to prove the above specified legal status, Valid ISO Certificate, experience certificate, authorization certificates, eligibility requirements (substantiated by end users' certificate) and type test report. The bidder is required to submit the notarized translation of the copy, if the document submitted is in language other than the language used in the bidding document.

2. Evaluation

The evaluation methodology shall be to determine the Most Advantageous Bid. The Most Advantageous bid is the one that:

(i) is substantially responsive to the bidding document, and

(ii) has the lowest evaluated cost.

2.1 Technical Evaluation

2.1.1 Determination of Substantial Responsiveness

Prior to scoring the technical factors and/or sub-factors of the technical proposal, a determination of responsiveness shall be carried out in accordance with ITB 30 and ITB 31. This determination may include the verification of the following criteria:

Criteria	Compliance	Documents
Requirement	Single Entity or Joint Venture	Submission Requirements
Compliance with the requirement for a defined completion time (when no alternative completion time is allowed).	Must meet requirement without material deviation, reservation, or omission	Technical Proposal
Responsiveness of the bidder's Environmental, Health, and Safety Management Plan (EHSMP) to the requirements of the project Environmental Management Plan (EMP).	Must meet requirement without material deviation, reservation, or omission	Technical Proposal
Responsiveness of the bidder's proposal demonstrating bidder's approach to fulfilling the 50% local labor requirement	Must meet requirement without material deviation, reservation, or omission	Technical Proposal
Compliance with other sustainable procurement, if applicable.	Must meet requirement without material deviation, reservation, or omission	Technical Proposal
Loss criteria of the distribution transformers	Must meet requirement without material deviation, reservation, or omission	Technical Proposal
Other compliance requirements indicated in the Bidding Document.	Must meet requirement without material deviation, reservation, or omission	Technical Proposal

If the technical proposal is declared not substantially responsive to the requirements of the Bidding Document, the Bid shall be rejected, and it shall not be evaluated further. However, noncompliance with equipment requirements described in Section 6 (Employer's Requirements) shall not normally be a ground for bid rejection, and such noncompliance will be subject to clarification during bid

evaluation and rectification prior to contract award.

2.1.2 Completion Time

Time to complete the plant and services from the effective date specified in Article 3 of the Contract Agreement for determining the time for completion of pre-commissioning activities is:

1095 days

No credit will be given for earlier completion.

Alternative times for completion shall not be permitted.

2.1.3 Alternative Technical Solutions

Alternative technical solutions shall not be permitted.

2.2 Financial Evaluation

2.2.1 Detailed Financial Evaluation

Prior to financial scoring, it is necessary to conduct a detailed price comparison on the following criteria described below in addition to the criteria listed in ITB 37.2 (a–f), the evaluated bid price shall be determined using the following method:

Adjustments in price that result from the procedures outlined below shall be added, for purposes of comparative evaluation only, to arrive at an "Evaluated Bid Price." Bid prices quoted by Bidders shall remain unaltered.

2.2.1.1 Quantifiable Nonconformities and Omissions

Subject to ITB 18.3 and ITB 37.2, the evaluated cost of quantifiable nonconformities including omissions, is determined as follows:

Quantifiable Deviations and Omissions from the contractual obligations: the evaluation shall be based on the evaluated cost of fulfilling the contract in compliance with all contractual obligations under this Bidding Document.

Pursuant to ITB 32.3, the cost of all quantifiable nonmaterial nonconformities or omissions from the contractual and commercial conditions shall be evaluated. The Employer will make its own assessment of the cost of any nonmaterial nonconformities and omissions for the purpose of ensuring fair comparison of Bids

2.2.1.2 Domestic Preference

Domestic preference will be granted to eligible domestically produced Plant and Equipment in accordance with the following provisions:

(a) The preference margin shall not be applied to the whole facility but only to the eligible domestically produced Plant and Equipment within the contract.

(b) Plant and Mandatory Spare Parts supplied from abroad shall be quoted CIP. Plant and Mandatory Spare Parts supplied from within the Employer's country shall be quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off- the- shelf, as applicable) free of sales and similar taxes .

(c) All other cost components for services and works, such as costs for design, local handling, transportation, storage, installation, and commissioning, shall be quoted separately.

(d) In the comparison of Bids, only the CIP price component of each Bid for the Plant and Equipment offered from outside the Employer's country shall be increased by Fifteen percent (15%).

(e) No domestic preference shall be applied to any of the services or works included in the contract.

(f) Bidders shall not be permitted or required to modify the mix of local and foreign Plant and Equipment after bid opening.

2.2.1.3 Life Cycle Costs

Life cycle costing shall not apply.

2.2.1.4 Time Schedule

Time to complete the plant and services from the effective date specified in Article 3 of the Contract Agreement for determining the Time for Completion of recommissioning activities is:
1095 days. No credit will be given for earlier completion. Bids offering a completion date beyond **1095 days** shall be rejected.

2.2.1.5 Functional Guarantees of the Facilities

The minimum and/or maximum requirements stated in the Specification for functional guarantees required in the Specification are:

- **Loss Capitalization**

When evaluating the individual bid received from various Bidders, the loss of power/auto transformer and station transformer shall be evaluated for the cost of transformer loss values (no-load losses and load losses) based on the following loss capitalization formula:

$P_E = P_b + K_L L_L + K_{NL}L_{NL}$ Where,
P_E = Evaluated Price
P_b = Bid Price
K_L = Value of Load Loss
L_L = Guaranteed load losses at rated current
K_{NL} = Value of no-load Loss
L_{NL} = Guaranteed no-load losses at rated voltage and frequency

The transformer losses shall be capitalized as follows for Bid evaluation purpose:

(i) Value of No-Load Loss = US$ 5670 per KW
(ii) Value of Load Loss = US$ 2210 per KW

The Bidder shall furnish guaranteed no load and full load loss value at rated (voltage, full load current, frequency) of the transformers along with the for-distribution transformers (in the "Form FUNC." attached in Section - 4 "Bidding Forms"). *Failure*

to submit or furnish the Loss figures may result in rejection of the bid

- **Guaranteed Values Not Reached**

  If the individual losses of a transformer as measured during test exceeds the values guaranteed in the Bid, then for each kilowatt of losses in excess of the losses guaranteed, an amount at the rates of twice the rates specified above for no-load losses and load losses shall be deducted from the Contract Price of the successful bidder.

  However, in case of Distribution Transformers, any bid with the proposed functional guarantees exceeding the No Load Loss and Load Loss as specified below shall be rejected. The acceptable maximum losses for the Distribution Transformers are mentioned below:

S.N.	Rating	No Load Loss (Watts)	Load Loss (Watts)
1	25 kVA, 3-ph	75	460
2	50 kVA, 3-ph	120	750
3	100 kVA, 3-ph	220	1210
4	200 kVA, 3-ph	365	2100

- **Performance Guarantee**

The performance figures quoted on Functional Guarantee of the Proposed Facilities-Form FUNC shall be guaranteed and shall become a part of the successful Bidder's Contract. In case of loss capitalization, no tolerance shall be permitted for the guaranteed value. The transformer will be rejected, if component loss (individual no load and load loss) exceeds the guaranteed value by over 15% or the total losses (no load loss plus load loss) exceeds by over 10%.

2.2.1.6 Work, Services, Facilities, etc., to Be Provided by the Employer

None

Employer will not provide any Work, Services, Facilities, etc. in excess of the provisions allowed for in the Bidding Document.

2.2.1.7 Specific Additional Criteria

The following additional criteria will be used in the evaluation:

2.2.1.7.1 Environmental, Health and Safety Management Plan (EHSMP)

Bidder is required to submit an outline Environmental, Health and Safety Management Plan in the Technical Proposal as indicated in Section-4. This may include a statement of bidder's proposed approach and activities towards fulfilling Environmental Health and Safety obligations during implementation of the Contract. This may also include an outline of proposal towards meeting EHS requirements with respect to;

(a) Policies, directives and guidelines of the Ministry of Forests and Environment of Nepal
(b) Policies, directives and guidelines of the Ministry of Labour, Employment and Social Security of Nepal

(c) The Environment Management Plan (EMP) provided in this bid documents
(d) EHS management requirements specified in Section 6 of the bid document.

The outline EHSMP submitted by the bidder shall form basis for preparing detailed EHSMP, that is required to be submitted by the successful bidder. The outline EHSMP will be evaluated with respect to responsiveness on pass / fail basis.

Any bid not accompanied by the EHSMP may be rejected by the Employer as non-responsive. If a Bidder submits a EHSMP that is not commensurate with the risks and impacts of the proposed works and activities in the Bidding Documents, the Employer shall issue a request for clarification to request for further information from the Bidder. The Bidder must submit the requested information within **14 (Fourteen) days** of receiving such a request. Failure to provide a satisfactory response to the request for further information within the prescribed period of receiving such a request may cause the rejection of the Bid.

2.2.1.7.2 Sustainable Procurement

The following sustainable procurement technical requirements will be evaluated on a pass/fail basis. Failure to meet any of the following requirements will result in mandatory rejection of the bid.

i) Bidders' agreement for obtaining necessary statutory clearances, permits and approvals (including but not limited to temporary camp construction, labor work permit and vehicle permit etc.) for execution of works from the concerned statutory authorities and comply with applicable terms and conditions set out therein. Bidder's confirmation in this respect shall be indicated in the technical proposal (method statement).
ii) Bidder's key personnel assigned to the project shall include dedicated specialized staffs for EHS management of implementation works as per clause 2.4.1 of section 3 and the Environment Management Plan (EMP) provided in the bid document. Bidders' compliance in this respect will be evaluated based on Form PER - 1 and PER – 2 submitted by the Bidder.

2.3 Multiple Contracts

Not Applicable

Section 4: Bidding Forms

This section contains the forms to be completed by the Bidder and submitted as part of its Bid.

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Letter of Technical Bid

NOTE

The Bidder must accomplish the Letter of Technical Bid on its letterhead clearly showing the Bidder's complete name and address.

Date: .....
OCB No.: .....
Invitation for Bid No.: .....

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

We, the undersigned, declare that:

(a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB) 8.

(b) We acknowledge that we have read and understand ADB's Anticorruption Policy (1998) and Investigation and Enforcement Framework, 2024, both as amended from time to time.

(c) We offer to design, manufacture, test, deliver, install, pre-commission, and commission in conformity with the Bidding Document the following Plant and Services: [*insert narrative*]

(d) Our Bid consisting of the Technical Bid and the Price Bid shall be valid for a period of *[insert bid validity period as specified in ITB 19.1 of the BDS]* days starts from the date fixed for the bid submission deadline in accordance with ITB 23.1, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

(e) If our Bid is accepted, we commit to obtain performance security in accordance with the Bidding Document.

(f) Our firm, including any Subcontractors or Manufacturers for any part of the Contract, has nationalities from eligible countries in accordance with ITB 4.2.

(g) Our firm, Joint Venture partners, and Subcontractors or Suppliers, for any part of the contract, who are named in the Bid, do not have any conflict of interest in accordance with ITB 4.3.

If there is any conflict of interest, please state details:

(i) Parties involved in the conflict of interest: _____

(ii) Details about the conflict of interest: _____

(h) We are not participating, as a Bidder, either individually or as partner in a Joint Venture, in more than one Bid in this bidding process in accordance with ITB 4.3(e), other than alternative offers submitted in accordance with ITB 13.

(i) Our firm, Joint Venture partners, members of our respective management and supervisory boards of directors, proposed personnel, parent company, Subcontractors or Suppliers for any part of the contract who are named in the bid, consultants, manufacturers, and service providers, are not subject to, or not controlled by any entity or individual that is subject to, a suspension or a debarment imposed by the Asian Development Bank or a debarment imposed by the Asian Development Bank in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the Asian Development Bank and other development banks.[7]

[7] These institutions include African Development Bank, European Bank for Reconstruction and Development (EBRD), Inter- American Development Bank (IADB), and the World Bank Group. According to para. 9 of the Agreement, other international financial institutions may join upon the consent of all Participating Institutions and signature of a Letter

(j) We have checked all the parties mentioned in the declaration above against ADB's Publicly Disclosed Debarment of Suspension Subregister accessed via https://sanctions.adb.org/

(k) Our firm, Joint Venture partners, members of our respective management and supervisory boards of directors, proposed personnel, parent company, Subcontractors or Suppliers for any part of the contract who are named in the bid, consultants, manufacturers, and service providers, are not suspended, debarred, declared ineligible, or subject to any international sanctions by any international organization, multilateral development bank and other donor agency.

If applicable, please state details:

(l) Our firm, Joint Venture partners, members of our respective management and supervisory boards of directors, proposed personnel, and parent company, in the last 10 years preceding the date of this letter of bid, have never been convicted of any criminal offense, or been subjected to any criminal, civil, or administrative orders, monitorship or enforcement actions, involving any integrity violation or on grounds comparable to any integrity violation.

If applicable, please state details:

(m) Our firm, Joint Venture partners, members of our respective management and supervisory boards of directors, proposed personnel, parent company, Subcontractors or Suppliers for any part of the contract who are named in the bid, consultants, manufacturers, and service providers, can make and receive payments through the international banking system or otherwise discharge the Employer's obligation upon initiation of wire transfer.

If unable to make or receive funds through the international banking system or otherwise discharge the Employer's obligation upon initiation of wire transfer, please state the details:

(i) Nature of the restriction:_____

(ii) Jurisdiction of the restriction:_____

(iii) Other relevant details:_____

(n) Our firm, Joint Venture partners, members of our respective management and supervisory boards of directors, proposed personnel, parent company, Subcontractors or Suppliers for any part of the contract who are named in the bid, consultants, manufacturers, and service providers, are not from a country which is prohibited to export goods or services to, or receive any payments from the Employer's country and/or are not prohibited to receive payments for particular goods or services by the Employer's country 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.

(o) We understand that it is our obligation to notify the Employer of any changes in connection with the matters described in paragraphs (i), (k), (l), (m), (n), (o), (p) and (t) of this Letter of Bid.

(p) *[We are not a government-owned enterprise]/[We are a government-owned enterprise but meet the requirements of ITB 4.5].*[8]

(q) We have not been suspended nor declared ineligible by the Employer based on execution of a Bid- Securing Declaration in accordance with ITB 4.6.

(r) At any time following submission of our Bid, we shall permit, and shall cause our Joint Venture partners, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract to permit ADB or its representative to inspect our sites, assets, accounts and records and other documents relating to the bid submission and

of Adherence by the international financial institution substantially in the form provided (Annex B to the Agreement). Upon adherence, such international financial institution shall become a Participating Institution for purposes of the Agreement. Bidders are advised to check www.adb.org/ integrity for updates.

[8] Use one of the two options as appropriate.

to have them audited by auditors appointed by ADB. We understand that failure of this obligation may constitute obstructive practice that may result in debarment and/or contract termination.

(s) Regardless of whether the contract will be awarded to us, we shall preserve all accounts, records, and other documents related to bid submission for at least 5 years from the date of submission of the bid or the period prescribed in applicable law, whichever is longer.

(t) If we are awarded the contract, we shall preserve all accounts, records and other documents related to the procurement and execution of the contract for at least 3 years after the completing the works contemplated in the relevant contracts or the period prescribed in applicable law, whichever is longer.

(u) If our Bid is accepted, we commit to mobilizing key equipment and personnel in accordance with the requirements set forth in Section 6 (Employer's Requirements) and our technical proposal, or as otherwise agreed with the Employer.

(v) We certify on behalf of the Bidder, that the information provided in the bid has been fully reviewed, given in good faith, and to the best of our knowledge is true and complete. We understand that it is our obligation to inform the Employer of any changes to the information as and when it becomes known to us. We understand that any misrepresentation that knowingly or recklessly misleads, or attempts to mislead may lead to the automatic rejection of the Bid or cancellation of the contract, if awarded, and may result in remedial actions, in accordance with ADB's Anticorruption Policy and Investigation and Enforcement Framework both, as amended from time to time.

Name: [*insert complete name of person signing the bid*]

In the capacity of [*insert legal capacity of person signing the bid*]

Signed: [*insert signature of person whose name and capacity are shown above*]

Duly authorized to sign the Bid for and on behalf of [*insert complete name of the Bidder*]

Date: [*insert date of signing*]

Letter of Price Bid

NOTE

The Bidder must accomplish the Letter of Price Bid on its letterhead clearly showing the Bidder's complete name and address.

Date: .....

OCB No.: .....

Invitation for Bid No.: .....

To: [insert complete name of the Employer]

We, the undersigned, declare that:

(a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB) 8.

(b) We acknowledge that we have read and understand ADB's Anticorruption Policy (1998) and Investigation and Enforcement Framework, both as amended from time to time.

(c) We offer to execute in conformity with the Bidding Documents and the Technical Bid submitted for the following Works. [insert narrative]

(d) The total price of our Bid, excluding any discounts offered in item (d) below is:

[amount of foreign currency in words], [amount in figures], and [amount of local currency in words], [amount in figures]

The total bid price from the Grand Summary (Schedule No. 5) should be entered by the Bidder inside this box. Absence of the total bid price in the Letter of Price Bid may result in the rejection of the bid.

(e) The discounts offered and the methodology for their application are: [insert discounts and methodology for their application if any]

(f) Our Bid shall be valid for a period of *[insert bid validity period as specified in ITB 20.1 of the BDS]* days starts from the date fixed for the bid submission deadline in accordance with ITB 24.1, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

(g) If our Bid is accepted, we commit to obtain performance security in accordance with the Bidding Document.

(h) We understand that this bid, together with your written acceptance thereof included in your notification of award through the issuance of Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed.

(i) We understand that you are not bound to accept the first-ranked bid or any other bid that you may receive.

(j) At any time following submission of our Bid, we shall permit, and shall cause our Joint Venture partners, directors, key officers, key personnel, associates, parent company, affiliates or subsidiaries, including any Subcontractors, consultants, subconsultants, manufacturers, service providers or Suppliers for any part of the contract to permit ADB or its representative to inspect our site, assets, accounts, and records and other documents relating to the bid submission and to have them audited by auditors appointed by ADB. We understand that failure of this obligation may constitute obstructive practice that may result in debarment and/or contract termination.

(k) Regardless of whether the contract will be awarded to us, we shall preserve all accounts, records, and other documents related to bid submission for at least 5 years from the date of submission of the bid or the period prescribed in applicable law, whichever is longer.

(l) If we are awarded the contract, we shall preserve all accounts, records, and other documents related to the procurement and execution of the contract for at least 3 years after completing the works contemplated in the relevant contracts or the period prescribed in applicable law, whichever is longer.

(m) We confirm and stand by our commitments and other declarations made in connection with the submission of our Letter of Technical Bid.

(n) We certify on behalf of the Bidder, that the information provided in the bid has been fully reviewed, given in good faith, and to the best of our knowledge is true and complete. We understand that it is our obligation to inform the Employer of any changes to the information as and when it becomes known to us. We understand that any misrepresentation that knowingly or recklessly misleads, or attempts to mislead may lead to the automatic rejection of the Bid or cancellation of the contract, if awarded; and may result in enforcement and disclosure actions, in accordance with ADB's Anticorruption Policy and Investigation and Enforcement Framework (both as amended from time to time).

Name: *[insert complete name of person signing the bid]*

In the capacity of *[insert legal capacity of person signing the bid]*

Signed: *[insert signature of person whose name and capacity are shown above]*

Duly authorized to sign the Bid for and on behalf of *[insert complete name of the Bidder]*

Date: *[insert date of signing]*

Price Schedules
Provided Separately in Volume-3 Bidding Document

PREAMBLE

General

1. The Price Schedules are divided into separate Schedules as follows:

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

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

   Schedule No. 3: Design Services

   Schedule No. 4: Installation and Other Services

   Schedule No. 5: Grand Summary

   Schedule No. 6: Recommended Spare Parts

2. The Schedules do not generally give a full description of the plant to be supplied and the services to be performed under each item. Bidders shall be deemed to have read the Employer's Requirements and other sections of the Bidding Document and reviewed the Drawings to ascertain the full scope of the requirements included in each item prior to filling in the rates and prices. The entered rates and prices shall be deemed to cover the full scope as aforesaid, including overheads and profit.

3. If Bidders are unclear or uncertain as to the scope of any item, they shall seek clarification in accordance with ITB 7 prior to submitting their bid.

Pricing

4. The units and rates in figures entered into the Price Schedules should be typewritten or if written by hand, must be in print form. Price Schedules not presented accordingly may be considered nonresponsive. Any alterations necessary due to errors, etc., shall be initialed by the Bidder.

   As specified in the Bid Data Sheet and Special Conditions of Contract, prices shall be fixed and firm for the duration of the Contract, or prices shall be subject to adjustment in accordance with the corresponding Appendix (Price Adjustment) to the Contract Agreement.

5. Bid prices shall be quoted in the manner indicated and in the currencies specified in the Instructions to Bidders in the Bidding Document.

   For each item, Bidders shall complete each appropriate column in the respective Schedules, giving the price breakdown as indicated in the Schedules.

   Prices given in the Schedules against each item shall be for the scope covered by that item as detailed in Section 6 (Employer's Requirements) or elsewhere in the Bidding Document.

6. Payments will be made to the Contractor in the currency or currencies indicated under each respective item.

7. When requested by the Employer for the purposes of making payments or partial payments,

valuing variations or evaluating claims, or for such other purposes as the Employer may reasonably require, the Contractor shall provide the Employer with a breakdown of any composite or lump sum items included in the Schedules.

Schedules of Rates and Prices

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

Item	Description	Country of Origin	Quantity	Unit Price[a]		Total Price[a]	Taxes and Duties
				Foreign Currency	CIP	Foreign Currency	Local Currency
1	2	3	4	5	6	7 = 4 x 6	8
TOTAL Column 7 to be carried forward to Schedule No. 5: Grand Summary							

[a] Specify currencies in accordance with ITB 19.1 of the BDS. Create additional columns for foreign currencies if so required.

Name of Bidder .....

Signature of Bidder .....

Country of Origin Declaration Form

Item	Description	Country

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

Item	Description	Quantity	Unit Price[a]		Total EXW Price[a]	Sales and other taxes
			Local Currency	EXW Price[b]		
1	2	3	4	5	6 = 3 x 5	7
TOTAL Column 6 to be carried forward to Schedule No. 5: Grand Summary						

[a] Specify currency in accordance with ITB 19.1 of the BDS.

[b] Column 5, EXW Price shall include all customs duties and sales and other taxes already paid or payable on the components and raw materials used in the manufacture or assembly of the item or the customs duties and sales and other taxes already paid on previously imported items.

Name of Bidder .....

Signature of Bidder .....

Schedule No. 3: Design Services

Item	Description	Quantity	Unit Price[a]		Total Price[a]	
			Local Currency Portion	Foreign Currency Portion	Local Currency Portion	Foreign Currency Portion
1	2	3	4	5	6 = 3 x 4	7 = 3 x 5
TOTAL Columns 6 and 7 to be carried forward to Schedule No. 5: Grand Summary						

[a] Specify currency in accordance with ITB 19.1 of the BDS.

Name of Bidder .....

Signature of Bidder .....

Schedule No. 4: Installation and Other Services

Item	Description	Quantity	Unit Price[a]		Total Price[a]	
			Local Currency Portion	Foreign Currency Portion	Local Currency Portion	Foreign Currency Portion
1	2	3	4	5	6 = 3 x 4	7 = 3 x 5
1	. . . . .					
2	. . . . .					
3	. . . . .					
4	. . . . .					
5	. . . . .					
6	STI/STD and HIV/AIDS alleviation program[b]					
etc.	. . . . .					
TOTAL Columns 6 and 7 to be carried forward to Schedule No. 5: Grand Summary						

[a] Specify currency in accordance with ITB 19.1 of the BDS.

[b] As described in SCC 22.2.7.

Name of Bidder .....

Signature of Bidder .....

Schedule No. 5: Grand Summary

Schedule No.	Title	Total Price[a]	
		Foreign	Local
1	Plant and Mandatory Spare Parts Supplied from Abroad[b]		
2	Plant and Mandatory Spare Parts Supplied from Within the Employer's Country[b]		
3	Design Services		
4	Installation and Other Services		
Grand Total to be carried forward to Letter of Bid			

[a] Specify currency in accordance with ITB 19.1 of the BDS. Create additional columns for foreign currencies if so required.

[b] Taxes and/or duties from Schedules 1 and 2 may be added to the contract price in accordance with GCC 14 (Taxes and Duties) but are excluded from bid evaluation in accordance with ITB 38.2.

Name of Bidder .....

Signature of Bidder .....

Schedule No. 6: Recommended Spare Parts

Item	Description	Quantity	Unit Price[a]		Total Price[a]	
			EXW Local Parts Local Currency	CIP Imported Parts Foreign Currency	Local Currency Portion	Foreign Currency Portion
1	2	3	4	5	6 = 3 x 4	7 = 3 x 5
				TOTAL		

[a] Specify currency in accordance with ITB 19.1 of the BDS.

Name of Bidder .....

Signature of Bidder .....

Tables of Adjustment Data (Not Applicable)

Table A: Local Currency Payment

To be entered by the Employer

Index Code	Index Description	Source of Index	Base Value and Date	Bidder's Proposed Weighting
L: Labor E: Equipment M1: Material 1 M2: Material 2 [*add as needed*	Nonadjustable	—	—	a: 0.15 b: _____ c: _____ d: _____ e: _____
			Total	**1.00**

To be entered by the Bidder. (Employer shall prescribe the range of weighting)

Table B: Foreign Currency Payment

Name of Currency: [*Insert name of currency. If the bidder wishes to quote in more than one foreign currency, this table should be repeated for each foreign currency such as #1, #2, and #3*]

To be entered by the Bidder

Index Code	Index Description	Source of Index	Base Value and Date	Bidder's Proposed Weighting
L: Labor E: Equipment M1: Material 1 M2: Material 2 [*add as needed*]	Nonadjustable	—	—	a: 0.15 b: _____ c: _____ d: _____ e: _____
			Total	**1.00**

To be entered by the Bidder. (Employer shall prescribe the range of weighing)

NOTE

The base date shall be the date 28 days prior to the deadline for submission of the bid.
Tables of Adjustment Data shall only be included if prices are to be quoted as adjustable prices in accordance with ITB 18.6.
This table [Table of Adjustment Data] should be evaluated for accuracy during bid evaluation and, if adjustments are necessary, after necessary corrections, should be made part of the Contract with the successful Bidder.

Bid Security[9]

Bank Guarantee

[*Bank's name, and address of issuing branch or office*][10]

Beneficiary: ..... [*name and address of the Employer*] .....

Date: .....

Bid Security No.: .....

We have been informed that [*name of the Bidder*] (hereinafter called "the Bidder") has submitted to you its bid dated [*please specify*] (hereinafter called "the Bid") for the execution of [*insert name of contract*] under Invitation for Bids No. [*please specify*] ("the IFB").

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

At the request of the Bidder, we [*name of bank*] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [*amount in words*] [*amount in figures*] upon receipt by us of your first demand in writing accompanied by a written statement, stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder

(a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Letter of Bid; or

(b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB"); or

(c) having been notified of the acceptance of its Bid by the Employer during the period of bid validity, (i) fails or refuses to execute the Contract Agreement, or (ii) fails or refuses to furnish the Performance Security, in accordance with the ITB, or (iii) fails or refuses to furnish a domestic preference security, if required.

This guarantee will expire (a) if the Bidder is the successful Bidder, upon our receipt of copies of the Contract Agreement signed by the Bidder and the Performance Security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder of the name of the successful Bidder, or (ii) 28 days after the expiration of the Bidder's bid.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.[11]

.....

[*Authorized signature(s) and bank's seal (where appropriate)*]

Bid-Securing Declaration[12](Not Applicable)

Date: [*insert date (as day, month and year)*]

Bid No.: [*insert number of bidding process*]

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

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

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 Borrower for the period of time of [*insert number of years indicated in ITB 21.2 of the BDS*] years starting on the date that we receive a notification from the Employer, 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) do not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB"); or

(c) having been notified of the acceptance of our Bid by the Employer during the period of bid validity, (i) fail or refuse to execute the Contract, if required; or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB or (iii) fails or refuses to furnish a domestic preference security, if required.

We understand that 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) 28 days after the expiration of our Bid.

Signed: [*insert signature of person whose name and capacity are shown*]

In the capacity of [*insert legal capacity of person signing the Bid-Securing Declaration*]

Name: [*insert complete name of person signing the Bid-Securing Declaration*]

Duly authorized to sign the bid for and on behalf of [*insert complete name of the Bidder*]

Dated on _____ day of _____, _____ [*insert date of signing*] Corporate Seal [*where appropriate*]

Technical Proposal

NOTE

The Employer may substitute, delete, or add other information specifying the activities that the Bidders shall describe in their Bid. For each of the forms hereinafter, the Employer may consider specifying a maximum page limit.

The technical proposal is expected to include as a minimum information described in the following forms:

i. Design Methodology;
ii. Construction Management Strategy;
iii. Construction Methods for Key Components;
iv. Design and Construction Schedule;
v. Quality Assurance and Quality Control;
vi. Environmental, Health, and Safety Management Plan;
vii. Environmental, Health and Safety Code of Conduct
viii. Anticipated Risks Evaluation;
ix. Personnel and Organizational Chart;
x. Personnel;
xi. Equipment; and
xii. List of Subcontractors.
xiii. Local Participation Plan
xiv. Manufacturer's Authorization
xv. Functional Guarantee of the Proposed Facilities
xvi. Affiliate Company Guarantee

(i) Design Methodology

The Bidder shall submit a design methodology that addresses as a minimum the following:

a. organizational arrangements for the design, including: team structure, roles and responsibilities, interface arrangements, design review and approval procedures, and quality assurance arrangements;

b. proposed design deliverables
   - Route and Survey along with the type of pole structures
   - Conductor and Insulator Design
   - Electrical Clearances and Safety
   - Material and Technical Specifications
   - Construction and Installation Drawings
   - Environmental and Social
   - Project Documentation and Contractual
   - Standards and Codes Compliance

c. design statement setting out how the Employers Requirements will be achieved;

d. any added value the Bidder will bring, including examples of innovative aspects of the design;

e. details of how the Environmental, Health, and Safety (EHS) requirements, and any proposal to enhance Environmental, Health, and Safety outcomes, will be incorporated into all design stages, and how the implications for the construction phase has been considered; and

f. modifying or including any other relevant information, as appropriate.

(ii) Construction Management Strategy

The Bidder shall submit a construction management strategy that addresses as a minimum:

a. organizational arrangements for the construction management, including: team structure, roles and responsibilities, interface arrangements, approval procedures, and quality assurance arrangements;

b. subcontractor selection and management;

c. obtaining and managing consents, permits, and approvals;

d. site setup, including access, accommodation, welfare facilities, arrangement for plant and material storage;

e. construction phasing proposals, including sequence of work and management of conflicting activities;

f. ensuring that geotechnical investigations or other advance works meet the environmental, health, and safety requirements; and

g. sustainability aspects demonstrating the Bidder's approach and commitment to sustainable construction practices (e.g., energy efficiency, reduction of wastage, material reduction, sources of materials, and others).

(iii) Construction Methods for Key Components

Bidders shall provide typical method statements for the following key activities. Each method statement shall describe the proposed approach to the construction activity, the level of staffing and experience, the safe system of work, and the construction equipment to be used.

Bidders may indicate the key activities methods for construction depending on the final design, or may designate some of the activities using temporary methods until the definitive designs are completed.

1. Transformer Installation

2. Installation of poles and stringing

3. testing and Commissioning

(iv) Design and Construction Schedule

Bidders shall set out a work program for the design and construction of the Works to be undertaken, including the mobilization phase, showing identification of major milestones, and critical path. Detailed timetables may be submitted (as appropriate) for the following aspects:

a. Design of the Works, including the submission of the design deliverables, review, and approval of the design by the Project Manager;

b. Processes and deliverables needed to commence the Works;

c. Execution of the Works within the Time for Completion, highlighting activities imposing constraints on the construction sequence;

d. Testing, commissioning, and handing over of the completed Works;

e. SEAH orientation conference; and

Work programs shall be submitted in paper (hard copy) and in a PDF format compatible with known computer programs, such as for example, PRIMAVERA, TILOS, CAD, or MS Project (GANTT graphics), or similar programs.

Programs must include milestones, when they are applicable, and the specific personnel designation and/or labor outlines, planned for the fulfillment of each program and phase or program activity:

f. General work program with an outline of designated personnel and tables of theoretical duration of tasks or activities. Graphic displays of the work progress in flowcharts to show daily production for each activity and the critical path.

g. Detailed work program to develop the design to include a personnel allotment outline, equipment, and other resources anticipated, indicating quantity, type, and capacity. Graphic displays such as GANTT Graphics, including milestones and required periods for the Project Manager to verify and approve. Minimum unit of time: 1 week.

(v) Quality Assurance and Quality Control

Bidders shall have to submit their approach and resources for the quality assurance procedure and quality control process in connection with works and services to be executed under the Contract.

A draft quality management plan should be submitted as supporting documentation.

(vi) Environmental, Health, and Safety Management Plan (EHSMP)[13]

The Bidder shall submit an outline Environmental, Health, and Safety Management Plan (EHSMP) commensurate with the risks and impacts of the proposed works and activities as described in the EMP. These strategies and plans shall describe in detail the actions, materials, equipment, management processes, and others that will be implemented by the Contractor, and its subcontractors to avoid, minimize, and/or mitigate environmental, health, and safety risks associated with implementing the projects activities throughout the project cycle.

In developing these strategies and plans, the Bidder shall have regard to the EHS provisions of the contract and EHS risks, including those as may be more fully described in Section 6 (Works' Requirements).

The proposal shall also include details in relation to in-house policies and procedures acceptable to the Employer for EHS management such as:

- Availability of the valid International Organization for Standardization (ISO) certification or internationally recognized equivalent (equivalency to be demonstrated by the Bidder), and applicable to the worksite:
  [*such as*], Quality management certificate ISO 9001, Environmental management certificate ISO 14001, Health and safety management certificate ISO 45001
- Grievance management for both contractor staff and any issues arising between contractor staff and nearby community members
- Performance monitoring system for contractor staff/ subcontractors/ suppliers/suppliers
- Existence of an Ethics Charter.
- Existence of a system for monitoring compliance with EHS commitments for the Bidder's Subcontractors and all its partners.
- Existence of official company procedures for the management of the following relevant points:
  - EHS resources and facilities and EHS monitoring system;
  - Project Areas management information (base camps, quarries, burrow pits, storage areas);
  - Health and Safety on worksites policy and related guidance;
  - Labor Management System;
  - Local recruitment and EHS training of local staff, subcontractors, and/or local partners;
  - Community stakeholder engagement practice;
  - Traffic management practice;
  - Hazardous products management practice;
  - Waste management practice;
  - Protection of water resources;
  - Biodiversity protection practices;
  - Site rehabilitation and revegetation practice;
  - Local cultural heritage protection practice;
  - Erosion and sedimentation practices; and
  - Control of infectious and communicable diseases (HIV/AIDS, malaria, COVID-19, and others)
- Personnel management system: HR policies and procedures, including documented worker grievance mechanisms and evidence of effective implementation (e.g., records of grievances received and resolved).
- System that executes and manages labor management policies and procedures day-to-day

- Evidence of compliance reports to demonstrate implementation of the EMP, audit report in past projects
- Documented HSMP plans, fatalities-free record or evidence of corrective actions in past projects

(viii) Anticipated Risks Evaluation

The Bidder should submit a risk register identifying the hazards anticipated during the implementation of the contract (e.g., geotechnical and subsurface risks).

For the key hazards ranked by impact, the risk register shall include a description of the hazard, an assessment of the potential impact on EHS, cost, program or other, and the proposed mitigation strategy for each hazard.

(ix) Personnel and Organizational Chart

The Bidder shall describe the organization of its personnel (an organizational chart shall be provided) specifying the number and specialties of each class of personnel.

For each key personnel, the Bidder shall specify the time periods and number of working days to perform each activity under the design and works implementation phases.

Likewise, for each specialty, the Bidder shall describe the number of personnel and will show their input over the time periods under the design and the implementation of the Works.

(x) Personnel

Form PER – 1: Proposed Personnel

Bidders should provide the details of proposed personnel and their experience record in the relevant Information Forms below for each of the candidate.

1.	Title of position
	Name
2.	Title of position
	Name
3.	Title of position
	Name
4.	Title of position
	Name
5.	Title of position
	Name
6.	Title of position
	Name
[as needed]	Title of position
	Name

Note: All titles of positions will be as listed in Section 6 (Employer's Requirements).

Form PER – 2: Resumé of Proposed Personnel

The Bidder shall provide all the information requested below. Use one form for each position.

Position		
Personnel information	Full Legal Name	Date of Birth
	Known as	Place of Birth
	Nationality	Citizenship
	Type of government ID Attach a copy of ID to this form	ID number
	Professional qualifications	
Present employment	Name of Employer	
	Address of Employer	
	Telephone	Contact (manager or personnel officer)
	Fax	E-mail
	Job Title	Years with Present Employer

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	To	Company/Project/Position/Relevant Technical and Management Experience

Declaration

I, the undersigned, certify that to the best of my knowledge and belief, the information contained in this Form PER – 2 correctly describes myself, my qualifications, and my experience.

I confirm that I am available throughout the expected time schedule for this position as provided in the Bid.

I understand that any misrepresentation or omission in this Form may:

a. be taken into consideration during Bid evaluation;
b. result in my disqualification from participating in the Bid;
c. result in my dismissal from the Contract.

Name of Key Personnel: _____ [*insert name*] _____

Signature: _____

Date (day month year): _____

Countersignature of authorized representative of the Bidder:

Name of authorized representative: _____

Signature: _____
Date: (day month year): _____

(x) Plant and Equipment

Form EQU: Plant and Equipment

The Bidder shall provide adequate information and details to demonstrate clearly that it has the capability to meet the equipment requirements indicated in Section 6 (Employer's Requirements), using the Forms below. 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 □ Owned □ Rented □ Leased □ Specially manufactured	

Omit the following information for equipment owned by the Bidder.

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

(xi) List of Subcontractors

(Proposed Subcontractors and/or Manufacturer for Major Items of Plant and Services)

The following Subcontractors and/or Manufacturers are proposed for carrying out the item of the facilities indicated based on Criterion 1.6 of Section 3 (Evaluation and Qualification Criteria). Bidders are free to propose more than one for each item.

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

(xii) Local Participation Plan

Bidders are required to submit a Local Participation Plan demonstrating their commitment to employing the minimum required local labor. This plan must include a narrative addressing the following areas, along with supporting data submitted using the provided forms:

1. **Execution and Sourcing Plan**
   - Description of the proposed approach to engage local labor across various project phases.
   - Indicative sourcing plan showing potential sources of local labor (e.g., local communities and employment agencies).
   - Labor deployment plan *(bidder may append a filled table following template provided below [Form LP1] along with any relevant supporting attachments)*
   - (others)

2. **Stakeholder Roles and Responsibilities**
   - Identification of key stakeholders involved in implementing local participation (contractor, subcontractors, and suppliers).
   - Clear delineation of roles, responsibilities, and communication mechanisms among those stakeholders to support effective coordination and monitoring.
   - (others)

3. **Risk and Contingency Planning**
   - Identification of potential risks (e.g., shortage of skilled labor, migration, or conflict with agricultural seasons for example).
   - Mitigation measures and contingency actions to ensure uninterrupted achievement of participation targets.
   - (others)

4. **Organizational Arrangements**
   - Linkages to the bidder's project organization chart, highlighting key positions to be filled by local personnel.
   - Designation of a responsible focal person or team for managing and reporting on local participation.
   - (others)

5. **Local Job Creation**
   - Other local job creation proposals addressing the technical criteria; such as labor exceeding mandatory requirements (e.g., 50%), gender-sensitive hiring, and increased usage of skilled labor.
   - Proposal for implementation *(bidder may append a table including details using template Form LP2).*
   - (others)

6. **Skills Development**
   - On-the-job training programs.
   - Structured training programs and workshops.
   - Knowledge transfer.
   - (others)

7. **Monitoring and Reporting Mechanism**
   - Description of how progress toward local participation targets will be tracked, verified, and reported during implementation.
   - Use of standard forms and periodic reporting consistent with contract requirements.

- (others)

Form LP1*

Category of Labor	Estimated Number of Local Labor (person-days)	Estimated Total Labor (person-days)	Percentage of Local Labor	Remarks
Skilled Labor				
Semi-skilled Labor				
Unskilled Labor				
Total				

** Bidders may further attach a labor histogram or labor deployment schedule to support the data (see below). The labor count should be limited to personnel deployed during construction activities, and should not include any estimates pertaining to the defects notification period.*
The bidder may further provide details of the labor engaged from the subcontractors and suppliers if required.

Labor Histogram Template (Attachment to Form LP1)

Month	Skilled (Local)*	Skilled (Foreign)*	Semi-skilled (Local)*	Semi-skilled (Foreign)*	Unskilled (Local)*	Unskilled (Foreign)*	Total Labor*	% Local
Month 1								
Month 2								
Month 3								
Month 4								
…								
…								
Average/ Total								

** Stated in person-days*

Labor Deployment Schedule Template (Attachment to Form LP1)

Position	Nationality	No. of Personnel	Start Month	End Month	Duration (months)	% Local Labor	Remarks
Project Manager	Foreign						Key staff
Site Engineer	Local						Supervision
Foreman	Local						…
Skilled Labor (Mason)	Local						…
Skilled Labor (Carpenter)	Local						…
Semi-skilled Labor	Local						…
Unskilled Labor	Local						…
Equipment Operator	Foreign						…
…	…	…	…	…	…	…	…
…	…	…	…	…	…	…	…
Total	…	…	…	…	…	**≥50 Local**	…

[following tables are used if the relevant merit point criteria is used]

Bidders shall use the form below to provide information demonstrating their commitment to achieving the additional local job creation measures.

Form LP2

Type of Activity	Estimated Number	Indicative Description of Activities
Example: Local labor above 50% target		
Total local labor force (person-days)		
Percentage		
Additional labor force above 50% (person-days)		
Percentage above mandatory requirement		

Example: Gender-sensitive hiring		
Total local labor force (person-days)		
Female (person-days)		
Male (person-days)		
Percentage of female labor		
Example: Increased usage of skilled labor		
Total local labor force (person-days)		
Skilled labor		
Semi-skilled labor		
Unskilled labor		
Percentage of skilled labor		

Bidders shall use the form below to provide information demonstrating their commitment to implementing skills development activities.

Form LP3

Type of Activity	Estimated Number of events	Indicative Description of Activities
Skills development programs		e.g., On-the-job training for laborers
Local partnerships for knowledge transfer		e.g., Collaboration with local universities, apprenticeship programs
Technology transfer initiatives		e.g., Use of local materials or adaptation of techniques
Community-based training		e.g., Health and safety awareness, site operations basics
Additional activities (if any)		

Manufacturer's Authorization

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

OCB No.: [*insert number of bidding process*]

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

WHEREAS

We [*insert complete name of the manufacturer or manufacturer's authorized agent*], who are official Manufacturers or agent authorized by the Manufacturer of [*insert type of goods manufactured*], having factories at [*insert full address of manufacturer's factories*], do hereby authorize [*insert complete name of the Bidder*] to submit a bid the purpose of which is to provide the following goods, manufactured by us [*insert name and/or brief description of the goods*], 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 of Contract, with respect to the goods offered by the above firm.

Signed: [*insert signature(s) of authorized representative(s) of the manufacturer*]

Name: [*insert complete name(s) of authorized representative(s) of the manufacturer*]

Title: [*insert title*]

Duly authorized to sign this Authorization on behalf of [*insert complete name of the manufacturer*]

Dated on _____ day of _____, _____ [*insert date of signing*]

NOTE

The Bidder shall require the manufacturer to fill out this form in accordance with the instructions indicated. This letter of authorization should be signed by a person with the proper authority to sign documents that are binding on the manufacturer. The Bidder shall include it in its bid, if so indicated in the BDS.

Affiliate Company Guarantee (Not Applicable)

Name of Contract/Contract No.:
……
Name and address of Employer:
……
[*together with successors and assigns*].
We have been informed that [*name of Contractor]* (hereinafter called the "Contractor") is submitting an offer for the above-referenced Contract in response to your invitation, and that the conditions of your invitation require its offer to be supported by an affiliate company guarantee.

In consideration of you, the Employer, awarding the Contract to the Contractor, we [*name of affiliated company*] irrevocably and unconditionally guarantee to you, as a primary obligation, that (i) throughout the duration of the Contract, we will make available to the Contractor our financial, technical capacity, expertise and resources required for the Contractor's satisfactory performance of the Contract; and (ii) we are fully committed, along with the Contractor, to ensuring a satisfactory performance of the Contract.

If the Contractor fails to so perform its obligations and liabilities and comply with the Contract, we will indemnify the Employer against and from all damages, losses and expenses (including legal fees and expenses) which arise from any such failure for which the Contractor is liable to the Employer under the Contract.

This guarantee shall come into full force and effect when the Contract comes into full force and effect. If the Contract does not come into full force and effect within a year of the date of this guarantee, or if you demonstrate that you do not intend to enter into the Contract with the Contractor, this guarantee shall be void and ineffective. This guarantee shall continue in full force and effect until all the Contractor's obligations and liabilities under the Contract have been discharged, when this guarantee shall expire and shall be returned to us, and our liability hereunder shall be discharged absolutely.

This guarantee shall apply and be supplemental to the Contract as amended or varied by the Employer and the Contractor from time to time. We hereby authorize them to agree on any such amendment or variation, the due performance of which and compliance with which by the Contractor are likewise guaranteed hereunder. Our obligations and liabilities under this guarantee shall not be discharged by any allowance of time or other indulgence whatsoever by the Employer to the Contractor, or by any variation or suspension of the works to be executed under the Contract, or by any amendments to the Contract or to the constitution of the Contractor or the Employer, or by any other matters, whether with or without our knowledge or consent.

This guarantee shall be governed by the law of the same country (or other jurisdiction) that governs the Contract and any dispute under this guarantee shall be finally settled under the [*Rules or Arbitration provided in the Contract*]. We confirm that the benefit of this guarantee may be assigned subject only to the provisions for assignment of the Contract.

Signed by:.....
..(*signature*)
……
(*name*)

……
(*position in parent/subsidiary company*)…

Signed by: .....
(*signature*)
……
(*name*)

……
(*position in parent/subsidiary company*)

Date:.....

NOTE

If permitted in accordance with ITB 38.2 of the BDS, the Bidder shall provide the Affiliate Company Guarantee Form filled out and signed by each subsidiary, parent entity, or affiliate that the Bidder submits for consideration of the Employer in determining its qualifications.

Time Schedule

To be used by Bidder when alternative Time for Completion is invited in ITB 13.2.

Functional Guarantee of the Proposed Facilities

Form FUNC

The Bidder shall copy on the left column of the table below, the identification of each functional guarantee required in the Specification and stated by the Employer in EQC 1.3.4 of Section 3 (Evaluation and Qualification Criteria), and on the right column, provide the corresponding value for each functional guarantee of the proposed plant and equipment.

Functional Guarantee [as required by the Employer in Section 3]	**Functional Guarantee Value Offered by the Bidder**
1.	
2.	
3.	
...	

Bidder's Qualification

To establish its qualifications to perform the contract in accordance with Section 3 (Evaluation and Qualification Criteria), the Bidder shall provide the following information requested in the corresponding Information Sheets.

Form ELI – 1: Bidder's Information Sheet

Bidder's Information			
		Information of the Bidder	If the Bidder is a subsidiary or branch, information of any parent company/companies
Name	Full Legal Name		
	Full Trading Name(s) (if any)		
Addresses	Registered address(es)		
	Trading address(es)		
	Postal address(es) (if different from trading address)		
Type of organization			
Country of constitution, incorporation or registration			
Year of constitution, incorporation, or registration			
Corporate or registration number			
In case of a Joint Venture, legal name of each partner			
Bidder's authorized representative (name, address, telephone number(s), fax number(s), and e-mail address)			

Attached are copies of the following documents:

1. In case of a single entity, articles of incorporation or constitution and company incorporation/registration of the legal entity named above, in accordance with ITB 4.1 and ITB 4.2.
2. Authorization to represent the firm or Joint Venture named above, in accordance with ITB 22.2.
3. In case of a Joint venture, a letter of intent to form a Joint venture or Joint Venture agreement, in accordance with ITB 4.1.
4. In case of a government-owned enterprise, any additional documents not covered under 1 above required to comply with ITB 4.5.
5. Organizational chart and a list of Board of Directors. The successful Bidder shall provide additional information on beneficial ownership, using the Beneficial Ownership Disclosure Form.

Form ELI – 2: Joint Venture Information Sheet

Each partner of the Joint Venture and Specialist Subcontractor must fill out this form separately.

Joint Venture/Specialist Subcontractor Information			
Bidder's legal name			
		Information of Joint Venture Partner or Specialist Subcontractor	If any Joint Venture Partner or Specialist Subcontractor is a subsidiary or branch, information of any parent company/companies
Names	Full legal name(s)		
	Full trading name(s) (if any)		
Addresses	Registered address(es)		
	Trading address(es)		
	Postal address (es) (if different from trading address)		
Type of organization			
Country of constitution, incorporation or registration			
Year of constitution, incorporation or registration			
Corporate or registration number			
Joint Venture Partner's or Specialist Subcontractor's authorized representative information (name, address, telephone number(s), fax number(s), and e-mail address)			
Attached are copies of the following documents: 1. Articles of incorporation or constitution and company incorporation/registration of the legal entity named above, in accordance with ITB 4.1 and ITB 4.2. 2. Authorization to represent the firm named above, in accordance with ITB 22.2. 3. In the case of a government-owned enterprise, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.5. 4. Organizational chart and a list of Board of Directors. The successful Bidder shall provide additional information on beneficial ownership, using the Beneficial Ownership Disclosure Form.			

Subcontractors are those listed in Technical Proposal – Proposed Subcontractors and/or Manufacturers for Major Items of Plant and Services.

Form CON – 1: Historical Contract Nonperformance

Each Bidder must fill out this form in accordance with Criteria 1.2.1 and 1.2.3 of Section 3 (Evaluation and Qualification Criteria) to describe any history of nonperforming contracts and pending litigation or arbitration formally commenced against it.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: _____

Table 1: History of Nonperforming Contracts

Choose one of the following:

□ No nonperforming contracts.

□ Below is a description of nonperforming contracts involving the Bidder (or each Joint Venture partner if Bidder is a Joint Venture).

Year	Description	Amount of Nonperformed Portion of Contract ($ equivalent)	Total Contract Amount ($ equivalent)
[*insert year*]	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*]	[*insert amount*]

Table 2: Pending Litigation and Arbitration

Choose one of the following:

□ No pending litigation, arbitration or any other material events impacting the net worth and/or liquidity of the bidder.

□ Below is a description of all pending litigation , arbitration involving the Bidder or any material events impacting the net worth and/or liquidity of the bidder (or each Joint Venture partner if Bidder is a Joint Venture).

Year	Matter in Dispute	Value of Pending Claim ($ Equivalent)	Value of Pending Claim as a Percentage of Net Worth
[*insert year*]	Contract Identification, as applicable: [*indicate complete contract name/ number, and any other identification*] Name of Employer, parties involved in the material events impacting the net worth and/or liquidity of the bidder: [*insert full name*] Address of Employer, parties involved in the	[*insert amount*]	[*insert amount*]

	material events impacting the net worth and/or liquidity of the bidder: [*insert street/city/ country*] Matter of Dispute: [*indicate full description of dispute*] Party who initiated the dispute: [*indicate "Employer" or "Contractor"*] Status: [*indicate status of dispute*]		

NOTE

Table 2 of this form shall only be included if Criterion 1.2.3 of Section 3 (Evaluation and Qualification Criteria) is applicable.

Form FIN – 1: Historical Financial Performance

Each Bidder must fill out this form.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: _____

	Financial Data for Previous 3 Years[a] [$ Equivalent]		
	Year 1:	Year 2:	Year 3:
Information from Balance Sheet			
Total Assets (TA)			
Total Liabilities (TL)			
Net Worth = TA – TL			
Current Assets (CA)			
Current Liabilities (CL)			
Working Capital = CA – CL			
Most Recent Working Capital		To be obtained for most recent year and carried forward to FIN – 3 Line 1; in case of Joint Ventures, to the corresponding Joint Venture Partner's FIN – 3.	
Information from Income Statement			
Total Revenues			
Profits Before Taxes			
Profits After Taxes			

□ Attached are copies of financial statements (balance sheets including all related notes, and income statements) for the last 3 years,[b] as indicated above, complying with the following conditions:

1. Unless otherwise required by Section 3 of the Bidding Documents, all such documents reflect the financial situation of the legal entity or entities comprising the Bidder and not the Bidder's parent companies, subsidiaries, or affiliates.[c]
2. Historical financial statements must be audited by a certified accountant.
3. Historical financial statements must be complete, including all notes to the financial statements.
4. Historical financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

[a] If the time period indicated under Criterion 1.3.1 of Section 3 (Evaluation and Qualification Criteria) is either 4 or 5 years, then the table columns above should be expanded accordingly.

[b] The time period stated here should be the same as the time period indicated under Criterion 1.3.1 of Section 3 (Evaluation and Qualification Criteria).

[c] When financial qualifications of Bidder's parent companies, subsidiaries, or affiliates are permitted in accordance with ITB 30.2 of Section 2, replace the text of condition 1 with "As required by Section 3 of the Bidding Documents, all such documents reflect the financial situation of the legal entity or entities comprising the Bidder, as well as financial situation of such Bidder's parent companies, subsidiaries, or affiliates which are proposed by the Bidder for Criteria 1.3 Financial Situation in Section 3 for consideration of the Employer in determining its qualifications."

Form FIN – 2: Average Annual Turnover

Each Bidder must fill out this form.

The information supplied should be the Annual Turnover of the Bidder or each partner of a Joint Venture for the total certified payments received from the clients for contracts in progress or completed, converted to US dollars at the rate of exchange at the end of the period reported.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: _____

Annual Turnover Data for the Last…Years[a]			
Year	**Amount Currency**	**Exchange Rate**	**$ Equivalent**
		Average Annual Turnover[b]	

Form FIN – 3: Availability of Financial Resources

Bidders must demonstrate sufficient financial resources, usually comprising of Working Capital supplemented by credit line statements or overdraft facilities and others to meet the Bidder's financial requirements for its major contract commitments as defined in FIN-4, and the subject contract.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: _____

Financial Resources		
No.	**Source of Financing**	**Amount** ($ equivalent)
1	Working Capital (to be taken from FIN – 1)	
2	Credit Line[a]	
3	Other Financial Resources[b]	
	Total Available Financial Resources	

[a] A credit line is an unconditional and legally binding loan extended to a Bidder by a financial institution. The credit line must be free from any pledge, encumbrance, or commitment to a third party or other transactions. Credit lines should be substantiated by a letter from the bank issuing the line of credit.

[b] Other financial resources are financial assets not considered in the Working Capital. They are noncurrent assets (i.e., with a maturity beyond a 12-month period) such as a loan and/or trade receivables, bank deposits, debt, or equity instruments (provided they are classified as "available for sale" in the financial statements), and are free from any pledge or commitment to a third party and get their value from contractual rights or ownership.

NOTE

Employer may require the Bidder to provide the most recent unutilized balance (i.e., the amount currently available to the bidder) of the credit line accompanied by a supporting letter from the issuing financial institution. Further details on credit line requirements may be discussed and agreed upon during preparation of the Bidding Document stage.

Form FIN – 4: Financial Requirements for Major Contract Commitments

Bidders (or each Joint Venture partner) should provide information on their commitments on all major contracts[14] that have been awarded [15] after the deadline of the latest financial year for which the financial statements were submitted under Form FIN – 1.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: _____

Major Contract Commitments						
No.	**Name of Contract**	**Employer's Contact** (Address, Tel, Fax)	**Contract Completion Date**	**Contract Value** (X)[a]	**Contract Period in Months** (Y)[b]	**Monthly Financial Resources Requirement** (X / Y)
1						
2						
3						
4						
Total Monthly Financial Requirement for Major Contract Commitments						$ . . . . .

[a] Values to be calculated from the letter of intent or letter of acceptance or the contract agreement ($ equivalent based on the foreign exchange rate as of the Base Dates of the respective contracts).

[b] Construction periods (Time for Completion) as defined in the respective contracts.

[14] Major contracts mean contracts with a construction duration that is longer than 12 months

[15] For the purposes of this criterion, "awarded" shall mean: either letter of intent or letter of acceptance has been received, or contract was signed

Form FIN – 5: Self-Assessment Tool for Bidder's Compliance to Financial Resources (Criterion 1.3.3 of Section 3)

This form requires the same information submitted in Forms FIN – 3 and FIN – 4. All conditions of "Available Financial Resources Net of CCC ≥ Requirement for the Subject Contract" must be satisfied to qualify.

Form FIN – 5A: For Single Entities

For Single Entities: (A)	**Total Available Financial Resources from FIN – 3** (B)	**Total Monthly Financial Requirement for Major Contract Commitments from FIN – 4** (C)	**Available Financial Resources Net of Major Contract Commitments** D = (B - C)	**Requirement for the Subject Contract** (E)	**Results: Yes or No [*D must be greater than or equal to* E]** (F)
_____ [*Name of Bidder*]				. .....[a]	

Form FIN – 5B: For Joint Ventures

For Joint Ventures: (A)	**Total Available Financial Resources from FIN – 3** (B)	**Total Monthly Financial Requirement for Major Contract Commitments from FIN – 4** (C)	**Available Financial Resources Net of Major Contract Commitments** D = (B - C)	**Requirement for the Subject Contract** (E)	**Results: Yes or No [*D must be greater than or equal to E*]** (F)
One Partner:					
[*Name of Partner*]				. .....[b]	
Each Partner					
[*Name of Partner 1*]				. .....[c]	
[*Name of Partner 2*]				. .....[c]	
[*Name of Partner 3*]				. .....[c]	
All partners combined	D = Sum of available financial resources net of major contract commitments for all partners		D = _____	. .....[a]	

[a] *The Employer should insert here the total requirement for the Subject Contract (for both single entity and all partners combined) as defined in Criterion 1.3.3 of Section 3.*

[b] *The Employer should insert here the required share for one partner as defined in Criterion 1.3.3 of Section 3.*

[c] *The Employer should insert here the required share for each partner as defined in Criterion 1.3.3 of Section 3.*

NOTE

Form FIN – 5 is made available for use by the Bidder as a self-assessment tool, and by the Employer as an evaluation work sheet, to determine compliance with the financial resources requirement as stated in 1.3.3. Failure to submit Form FIN – 5 by the Bidder shall not lead to bid rejection.

Form EXP – 1: Contracts of Similar Size 1.4.1.(a) and Nature 1.4.1(b)

Fill out one (1) form per contract. Each contract shall be supported by documents such as Signed Contract Agreement, Taking-Over Certificate, Contract Completion Certificate, or Performance Certificate.

The exchange rate to be used to calculate the value of the contract for conversion to a specific currency shall be the selling rate of the Borrower's Central bank on the date of the contract.

Contract of Similar Size and Nature[a]					
Contract No……of…..	Contract Identification				
Award Date		Completion Date			
Role in Contract	☐ Contractor	☐	Management Contractor	☐	Subcontractor
Total Contract Amount	$				
If partner in a Joint Venture or Subcontractor, specify participation of total contract amount	Percent of Total	Amount			
Employer's name Address Telephone number Fax number E-mail					
Description of the Similarity in Accordance with Criterion 1.4.1 of Section 3 (Evaluation and Qualification Criteria)					

[a] *Bidder can submit separate forms corresponding to Similar Size (1.4.1 (a)) and Nature (1.4.1(b)) (if relevant)*

Form EXP – 2: Experience in Key Activities

Fill out one (1) form per contract. Each contract shall be supported by documents such as Signed Contract Agreement, Taking-Over Certificate or Contract Completion Certificate.

Each Bidder must fill out this form.

If complied by Specialist Subcontractors, each Specialist Subcontractor must fill out this form and provide the Specialist Subcontractor's name:

Specialist Subcontractor: _____

Contract with Similar Key Activities					
Contract No……of…..	Contract Identification				
Award Date		Completion Date			
Role in Contract	☐ Contractor	☐	Management Contractor	☐	Subcontractor
Total Contract Amount	$				
If partner in a Joint Venture or Subcontractor, specify participation of total contract amount	Percent of Total	Amount			
Employer's name Address Telephone number Fax number E-mail					
Description of the Key Activities in Accordance with Criterion 1.4.2 of Section 3 (Evaluation and Qualification Criteria)					

Form EXP – 3: Subcontractors

Fill out one (1) form per contract.

Contract for the Major Items					
Contract No. . . . . of	Contract Identification				
Award Date		Completion Date			
Role in Contract	☐ Contractor	☐	Management Contractor	☐	Subcontractor
Total Contract Amount	$				
If partner in a Joint Venture or Subcontractor, specify participation of total contract amount	Percent of Total	Amount			
Employer's name Address Telephone number Fax number E-mail					
Description of the Major Items in Accordance with Criterion 1.5 of Section 3 (Evaluation and Qualification Criteria)					
NOTE *The Employer should insert here the highly specialized construction activities listed under Criterion 1.4.2 of Section 3 against which the Bidder demonstrates similarity in the box on the right-hand side.*					

Section 5: Eligible Countries

There is no country restriction other than any restriction arising from ITB 4.8. and universal procurement will apply.

Section 6: Employer's Requirements

This section contains the Scope, the Specifications, the Drawings, and Supplementary Information that describe the Facilities and Forms to be used during the implementation of the contract, as well as the Contract Management Plan, and the Personnel, Equipment, Project Signage and Environmental, Health, and Safety (EHS) requirements. This section should not contain commercial or contract conditions that are stipulated in other parts of the Bidding Document.

In a design, supply, and installation approach, the design is to be done by the Contractor. No detailed technical specification as normally practiced is developed at the pre-bid stage. However, the Employer does and must know what it wants and must communicate its needs to the Bidders. Hence, this section on Employer's Requirements replaces the usual Technical Specifications of a more traditional approach.

To enable Bidders to submit responsive bids and, subsequently, for the bids received to be evaluated in an equitable manner, the Employer must make its requirements clear and precise. The Employer's requirements must therefore, specify the exact requirements of the completed Facilities. Where the performance of the completed Facilities could be measured in quantitative terms, such as production output of a manufacturing plant or maximum generating capacity of a power station, the Employer's Requirements should not only clearly specify the desired output and/or capacity but also the upper and lower acceptable limits of deviation from the desired capacity and how such deviations (if any) will be evaluated. It will also be necessary to specify the tests to be carried out upon completion of the Facilities to verify compliance with the specified requirements. The Employer's Requirements should also clearly list the associated or incidental services and goods that must be supplied by the Contractor. For example, the Contractor may be required to train the Employer's personnel and to supply consumable or spare parts as listed in a schedule.

While this section of the Bidding Document should endeavor to define the Employer's Requirements as precisely as possible, care must be taken to avoid over specifying details to the extent that the flexibility and potential benefits associated with a design, supply, and installation contract are seriously eroded or threatened. This section on Employer's Requirements should, therefore, be carefully prepared on behalf of the Employer by suitably qualified engineers who are familiar with the requirements and with the technical aspect of the required Facilities.

For an ADB-financed design, supply, and installation contract to be procured through open competitive bidding procedures, the Employer's Requirements must be drawn up to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials, and performance of the Facilities. Only if this is done will the objectives of economy and efficiency, fairness, and transparency in procurement be realized, responsiveness of bids be ensured, and the subsequent task of bid evaluation facilitated. The Employer's Requirements should stipulate that all goods and materials to be incorporated in the Facilities are new, unused, of the most recent or current models, and should incorporate the latest improvements in design and materials.

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1. Project Signage Requirements

1. The Contractor is responsible for the design, supply and installation of the project information signage. The signage shall provide relevant information to the public about the project, including the proper designation of the project, the Employer, the Contractor and the Bank.

2. For this purpose, one or several sign boards shall be installed at the Site as soon as practicable after the Commencement Date and shall remain in place at all times until taking-over of the Works. If sign board(s) is(are) damaged or becomes unreadable during this period, it shall be promptly replaced by the Contractor at the Contractor's cost.

3. The sign board design shall be submitted by the Contractor to the Project Manager for Review in accordance with Sub-Clause 4.4.6 [*Sign Board Design*]. Unless otherwise required under the applicable Laws, the sign board design should comply with the following:

    a) General
        - The number and locations of sign board(s)

    b) Content
        - Borrowing Country's flag and/or logo
        - Project and Contract title
        - Accepted Contract Amount
        - Time for Completion
        - Bank's name and logo (in accordance with Branding Tool Kit – Visual Identity guidelines of the Asian Development Bank and, as the case may be, the other financiers' requirements)
        - Employer's name
        - Contractor's name
        - Project Manager's name
        - Complaint handling contact information (email and/ or phone number)

    c) Design
        - The General layout including sample colors: to be proposed by the Contractor
        - Dimensions: minimum of 2.5 Meters X 2.5 Meters
        - Font size and type: they should be such as to ensure that the content shall be visible from a distance.
        - Language of the signage: national and/or local language and English
        - Material: the sign board(s) shall be made of a material that shall be weatherproof and appropriate to withstand the whole execution period until taking-over of the Works

4. No other signage is allowed except with the approval of the Project Manager. The Contractor shall not post nor display any sign or item that could provide misleading information about the project. No national symbols or flags other than those of the Country may be displayed without the express approval of the Project Manager.

2. Environmental, Health, and Safety Management Requirements

The Contractor shall comply with all the applicable environment and social regulations of the Government of Nepal and shall obtain all necessary environmental and social permits and clearances (including but not limited to temporary camp construction, labor work permit, and vehicle permit etc.) prior to commencement of work.

The Contractor shall comply with ADB's environmental and social safeguard requirements [ADB's Safeguard Policy Statement (2009)], the International Finance Corporation's Environmental Health and Safety General Guidelines and the guidelines on Electric Power Transmission and Distribution, and the International Labor Organization's Safety and Health in Construction guidelines.

It is the responsibility of the Contractor to ensure that all Contractor's Personnel, Subcontractors and any other contractor involved in the Project adhere to the requirements presented in this section. The Employer may at any time:

- remove any person who, in the Employer's opinion, fails to adopt and/or comply with the requirements;
- suspend any activities that, in the Employer's opinion, presents or is likely to present an inappropriate level of risk to persons, public or the environment in accordance with clause 41 of Section 7 (Suspension of Work);
- May terminate the Contract where, in the Employer's opinion, the Contractor (or a Subcontractor) fail to comply with the EMP requirements, even-after repeated instructions of the Employer, in accordance with clause 42.2 of Section 7 (Termination on Contractor Default).

Any costs as a result of removal of persons or suspension of activities pursuant to the previous bullet point shall be borne by the Contractor.

The Employer shall be entitled to regularly review the Contractor's Environmental, Social and Health and Safety management arrangements to ensure the Contractor continues to manage the HSE risks associated with its work activities. In the event that any gaps or non-conformities are identified, the Contractor shall rectify such in an appropriate timescale.

The Contractor shall comply with and implement the mitigation measures and carry out the monitoring requirements set forth in the Initial Environment Examination (IEE) and the Environmental Management Plan (EMP) and any subsequent update to it, as disclosed on the Employer's project financier's [ADB] website. During project implementation, the EMP may need to be further updated to reflect any unanticipated impacts which the Contractor will be required to comply with. The Contractor is required to allocate the staff and budget required to ensure that all EMP requirements are met. More particularly, the Contractor will undertake site visits, environmental surveys, and consultations during the design phase and complete all pre-construction requirements for submission to the Employer for approval before starting any works including site establishment and site clearance work. The Contractor shall ensure mitigation measures in the EMP are implemented at the construction site, at material and waste storage areas, workshops offices, and other related facilities as well as at any workers camps or accommodation provided by them or their subcontractors.
The Contractor shall not commence any "Physical Works" including site establishment, tree and/or vegetation clearance until (i) written confirmation is received from the Employer that all ADB clearances have been obtained, (ii) the Contractor has undertaken and reported to the Employer on the findings of all applicable pre-construction environmental survey work and baseline environmental monitoring requirements; (iii) the Contractor has incorporated all

the applicable requirements of the EMP into their detailed designs as approved by the Employer; (iv) all required environment, health and safety (labor) permits or licenses have been obtained, and (v) all plans required by the EMP including the Construction Site-Specific Environmental Management Plan (CSEMP) and its sub-plans have been submitted and received written confirmation from the Employer of their approval.

Based on the approved EIA/ESMMP, the Contractor shall develop the CESMP including site specific plans/ sub-plans corresponding to the measures indicated in the ESMP viz. Health and Safety Plan, Emergency Preparedness and Control Plan, Traffic Management Plan, Erosion Control and Site Restoration Plan, Biodiversity Management Plan, Labor Management Plan, Air Quality Plan, Noise and Vibration Plan, Wastes Management Plan, Grievance Redressal Plan etc. The Contractor shall prepare and submit for Employer's approval the Contractor's Environmental and Social Management Plans within 28 days of the commencement of construction activities.

The implementation of the CESMP(s) will be subject to supervision and monitoring by the Employer. The Contractor will also be responsible for ensuring compliance of all EHS measures by their sub-contractor(s) including EHS induction prior to starting work, a work-site orientation and on-the-job or formal training prior to being assigned a job. The Contractor shall apply Good Industry Practice (GIP) and international standards for occupational health & safety with regard to use of personal protective equipments, work procedures, permit system and equipment selection/movement. The Contractor shall make available a budget for all such environmental and social measures relevant to the contractor and shall also employ qualified personnel for overseeing the implementation and monitoring during construction.

The Contractor shall submit monthly E&S Performance Reports, including occupational health and safety, any unanticipated environmental, resettlement or indigenous people risks or impacts as well as any corrective actions necessary due to monitoring results. Reporting should include documenting progress and compliance on the mitigation measures and monitoring activities carried out, issues encountered including statistics and details of all near misses and incidents, grievances received, and follow-up actions that were taken (or will be taken) to correct any issues. The Employer may withhold payment if monthly reports are not submitted within 5 working days of month end or in the event corrective actions required by the Employer have not been addressed by the Contractor within 30 days. The Contractor will be required to implement any corrective actions set out in safeguard monitoring reports that the Employer will prepare from time to time to report on implementation of the program to ADB. The Contractor shall cover the cost of corrective action required in response to non-compliance with the contract clauses, the definitive version of the EMP, or property damage caused by the Contractor, subcontractors and third parties employed by them.

The Contractor shall not commence operation of the substation until: (i) written confirmation is received from the Employer that all pre-operation ADB clearances have been obtained, (ii) there are no outstanding pre-construction and construction requirements to be complied with, including site restoration, and a construction stage EMP completion report has been submitted for acceptance by the Employer; (iii) all required environment, health and safety (labor) permits or licenses have been obtained, and (iv) all sub-plans required by the EMP including the Operation Site-Specific Environmental Management Plan (OSEMP) and its sub-plans have been submitted and received written confirmation from the Employer of their approval.

3. Specifications

(Refer Volume II)

Scope of Supply of Plant and Services

(Refer Volume II)

4. Drawings

(Refer Volume II)

5. Supplementary Information

(Refer Volume II)

6. Certificates

7.1 Form of Completion Certificate

Contract: [*insert name of contract and contract identification details*]

Date: .....

Certificate No.: .....

To: [*insert name and address of contractor*]

Dear Ladies and/or Gentlemen,

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

1. Description of the Facilities or part thereof: [*description*]

2. Date of Completion: [*date*]

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,

[*Signature*]

Project Manager

7.2 Form of Operational Acceptance Certificate

Contract: [*insert name of contract and contract identification details*]

Date: .....

Certificate No.: .....

To: [*insert name and address of contractor*]

Pursuant to GCC Subclause 25.3 (Operational Acceptance) of the General Conditions of the Contract entered into between yourselves and the Employer dated [*date*], relating to the [*brief description of the facilities*], 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: [*description*]
2. Date of Operational Acceptance: [*date*]

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,

[*Signature*]

Project Manager

7. Change Orders

8.1 Change Order Procedure

(a) General

(b) Change Order Log

(c) References for Changes

8.2 Change Order Forms

(a) Request for Change Proposal

(b) Estimate for Change Proposal

(c) Acceptance of Estimate

(d) Change Proposal

(e) Change Order

(f) Pending Agreement Change Order

(g) Application for Change Proposal

8.1 Change Order Procedure

8.1.1 General

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

8.1.2 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. 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.

8.1.3 References for Changes

(1) Request for Change as referred to in GCC Clause 39 shall be serially numbered CR-X-nnn.

(2) Estimate for Change Proposal as referred to in GCC Clause 39 shall be serially numbered CN-X-nnn.

(3) Acceptance of Estimate as referred to in GCC Clause 39 shall be serially numbered CA-X-nnn.

(4) Change Proposal as referred to in GCC Clause 39 shall be serially numbered CP-X-nnn.

(5) Change Order as referred to in GCC Clause 39 shall be serially numbered CO-X-nnn. Note:

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

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

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

8.2 Change Order Forms

8.2.1 Request for Change Proposal Form

[*Employer's letterhead*]

To: [*Contractor's name and address*] Date:
.....

Attention: [*Name and title*]

Contract Name: [*Contract name*]
Contract Number: [*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 [*number*] days of the date of this letter [or on or before (*date*)].

1. Title of Change: [*Title*]
2. Change Request No./Rev.: [*Number*]
3. Originator of Change:
   Employer: [*Name*]
   Contractor: (*by Application for Change Proposal No.* [*Number Refer to Annex 6.2.7*])
4. Brief Description of Change: [*Description*]
5. Facilities and/or Item No. of equipment related to the requested Change: [*Description*]
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: [*Description*]
8. General Terms and Conditions:
   (a) Please submit your estimate 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 completing the requested Change.
   (c) If you have any opinion that is critical 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 in your proposal of revised provisions.
   (d) Any increase or decrease in the work of the Contractor relating to the services of its personnel shall be calculated.
   (e) You shall not proceed with the execution of the work for the requested Change until we have accepted and confirmed the amount and nature in writing.

[*Employer's Name*]

[*Signature*]
[*Name of signatory*]
[*Title of signatory*]

8.2.2 Estimate for Change Proposal Form

[*Contractor's letterhead*]

Date: .....

To: [*Employer's name and address*]

Attention: [*Name and title*]

Contract Name: [*Contract name*]
Contract Number: [*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 to prepare the below-referenced Change Proposal in accordance with GCC Subclause 39.2.1 of the General Conditions. We acknowledge that your agreement to the cost of preparing the Change Proposal, in accordance with GCC Subclause 39.2.2, is required before estimating the cost for change work.

1. Title of Change: [*Title*]
2. Change Request No./Rev.: [*Number*]
3. Brief Description of Change: [*Description*]
4. Scheduled Impact of Change: [*Description*]
5. Cost for Preparation of Change Proposal: [*insert costs, which shall be in the currencies of the contract*]

(a)	Engineering		(Amount)
	(i) Engineer	____hours (hrs) x____ rate/hr	= _____
	(ii) Draftsperson	____ hrs x ____rate/hr	= _____
	Subtotal	____ hrs	= _____
	Total Engineering Cost		= _____
(b)	Other Cost		= _____
	Total Cost (a) + (b)		= _____

[*Contractor's name*]
[*Signature*]
[*Name of signatory*]
[*Title of signatory*]

8.2.3 Acceptance of Estimate Form

[*Employer's letterhead*]

To: [*Contractor's name and address*] Date:
.....

Attention: [*Name and title*]

Contract Name: [*Contract name*]

Contract Number: [*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: [*Title*]
2. Change Request No./Rev.: [*Request number/revision*]
3. Estimate for Change Proposal No./Rev.: [*Proposal number/revision*]
4. Acceptance of Estimate No./Rev.: [*Estimate number/revision*]
5. Brief Description of Change: [*Description*]
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 preparing the Change Proposal described in your Estimate for Change Proposal mentioned in para. 3 above in accordance with GCC Clause 39 of the General Conditions.

[*Employer's Name*]

[*Signature*]

[*Name of signatory*]

[*Title of signatory*]

8.2.4 Change Proposal Form

[*Contractor's letterhead*]

To: [*Employer's name and address*] Date:

Attention: [*Name and title*]

Contract Name: [*Contract name*] Contract Number: [*Contract number*]
Dear Ladies and/or Gentlemen:

In response to your Request for Change Proposal No. [*Number*], we hereby submit our proposal as follows:

1. Title of Change: [*Name*]
2. Change Proposal No./Rev.: [*Proposal number/revision*]
3. Originator of Change: Employer: [*Name*]/Contractor: [*Name*]
4. Brief Description of Change: [*Description*]
5. Reasons for Change: [*Reason*]
6. Facilities and/or Item No. of Equipment related to the requested Change: [*Facilities*]
7. Reference drawings and/or technical documents for the requested Change: [*Drawing/Document No./Description*]
8. Estimate of increase/decrease to the Contract Price resulting from the Change Proposal:

		Amount [*insert amounts in the currencies of the Contract*]
(a)	Direct material	……
(b)	Major construction equipment	……
(c)	Direct field labor (Total hrs)	……
(d)	Subcontracts	……
(e)	Indirect material and labor	……
(f)	Site supervision	……
(g)	Head office technical staff salaries	

Process engineer _____ hrs @ _____ rate/hr
……
Project engineer _____ hrs @ _ rate/hr
……
Equipment engineer _____ hrs @ _____ rate/hr
……
Procurement _____ hrs @ _____ rate/hr
……
Draftsperson _____ hrs @ _____ rate/hr
……
Total _____ hrs

(h) Extraordinary costs (computer, travel, etc.)
……

(i) Fee for general administration, % of Items
……

(j) Taxes and customs duties
……

Total lump sum cost of Change Proposal [*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 [*Number*] 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: [*insert amount. This cost shall be reimbursed by the employer in case of employer's withdrawal or rejection of this Change Proposal without default of the contractor in accordance with GCC Clause 39 of the General Conditions.*]

[*Contractor's name*]
[*Signature*]
[*Name of signatory*]
[*Title of signatory*]

8.2.5 Change Order Form

[*Employer's letterhead*]

To: [*Contractor's name and address*] Date:

Attention: [*Name and title*]

Contract Name: [*Contract name*] Contract Number: [*Contract number*]

Dear Ladies and/or Gentlemen:

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

1. Title of Change: [*Name*]
2. Change Request No./Rev.: [*Request number/revision*]
3. Change Order No./Rev.: [*Order number/revision*]
4. Originator of Change: Employer: [*Name*]/Contractor: [*Name*]
5. Authorized Price: Ref. No.: [*Number*] Date: [*Date*]
   Foreign currency portion [*Amount*] plus Local currency portion [*Amount*]
6. Adjustment of Time for Completion:
   None Increase [*Number*] days Decrease [*Number*] days
7. Other effects, if any:

Authorized by: _____ Date: _____
Employer

Accepted by: _____ Date: _____
Contractor

8.2.6 Pending Agreement Change Order Form

[*Employer's letterhead*]

To: [*Contractor's name and address*] Date:

Attention: [*Name and title*]

Contract Name: [*Contract name*]
Contract Number: [*Contract number*]

Dear Ladies and/or Gentlemen:

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

1. Title of Change: [*Name*]
2. Employer's Request for Change Proposal No./Rev.: [*number/revision*] Dated [*Date*]
3. Contractor's Change Proposal No./Rev.: [*number/revision*] Dated [*Date*]
4. Brief Description of Change: [*Description*]
5. Facilities and/or Item No. of equipment related to the requested Change: [*Facilities*]
6. Reference Drawings and/or technical documents for the requested Change: [*Drawing/Document No./Description*]
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*]

8.2.7 Application for Change Proposal Form

[*Contractor's letterhead*]

To: [*Employer's name and address*] Date:

Attention: [*Name and title*]

Contract Name: [*Contract name*]
Contract Number: [*Contract number*]

Dear Ladies and/or Gentlemen:

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

1. Title of Change: [*Name*]
2. Application for Change Proposal No./Rev.: [*Number / revision*] Dated [*Date*]
3. Brief Description of Change: [*Description*]
4. Reasons for Change:
5. Order of Magnitude Estimation (amount in the currencies of the Contract): [*Amount*]
6. Scheduled Impact of Change:
7. Effect on Functional Guarantees, if any:
8. Appendix:

[*Contractor's name*]
[*Signature*]
[*Name of signatory*]
[*Title of signatory*]

8. Personnel Requirements

Using Form PER – 1 and PER – 2 in Section 4 (Bidding Forms), the Bidder must demonstrate that it has personnel who meet the following requirements. The list of key personnel should be consistent with Section 3 (Evaluation and Qualification Criteria):

S.N.	Key Personnel	Nos.	Minimum Qualification and Experience	Stay Duration
1	Contractor's Representative (As per GCC Clause: 17.2.1)	1	10 years of project management experience in Distribution Lines and Distribution substations with graduation/ bachelor's in engineering.	Commencement to the Completion Period of the Project
2	Distribution System Engineer-Line Design	1	5 years' experience in the field of Design of Distribution Lines with minimum Graduate/bachelor's in engineering or science in relevant field of electrical design.	During Survey and Design Period
3	GIS Mapping Expert	1	2 years of experience in GIS Mapping with Degree in relevant field.	During Survey and Design Period
4	Electrical Engineer-Line Construction	2	3 years of experience in Distribution Lines Construction with Bachelor's Degree in Electrical Engineering.	Commencement to the Completion Period of the Project
5	Electrical Supervisor	6	5 years of experience in Distribution Lines Construction with Degree in Electrical Engineering.	Commencement to the Completion Period of the Project

The Bidder must demonstrate that it has EHS personnel who meet the following requirements: Key Personnel as Determined by the Environmental, Health, and Safety Management Plan and Other EHS Assessment and Management Documents

No.	Position/ Specialization	Relevant Academic Qualifications	Minimum Years of Relevant Work Experience	Minimum Time On-Site (% FTE)
1	Environment and Social Manager	Refer EMP	Refer EMP	Refer EMP
2	Ecologist	Refer EMP	Refer EMP	Refer EMP
3	Health and safety specialist	Refer EMP	Refer EMP	Refer EMP
4	Labor officer	Refer EMP	Refer EMP	Refer EMP
5	Social and community liaison officer	Refer EMP	Refer EMP	Refer EMP
6	Environment, health and safety supervisors	Refer EMP	Refer EMP	Refer EMP

FTE = full-time employee.

EMP= Environment management Plan

Note:

- The Bidder shall submit the evidence of possession of the proposed personnel for the project duration along with their Academic Qualification and Professional Experience Certificate issued from the Academic Institutions and the Employers' respectively. The Bidder shall also submit their organization chart to be used for project execution.
- All Other requirements related to EHS, Social and community liaison related to personnel requirements must satisfy according to the EMP, Volume II.

.

9. Equipment Requirements

Using Form EQU in Section 4 (Bidding Forms), the Bidder must demonstrate that it has the key equipment listed below:

No.	Equipment Type and Characteristics	Minimum Number Required
1	Megger (2500V)	4
2	Max or Rachet Puller for XLPE Covered Conductor	5
3	Max or Rachet Puller for ABC	5
4	Conductor Pulling or Conductor Laying Equipment	6
5	XLPE Covered Conductor Joining Kit	5

10. Contract Management Plan

The Contractor shall prepare the monthly progress report as per the format defined hereinafter, also referred to as the Contract Management Plan, in line with the requirements stipulated in Sub-Clause 18.3 [*Progress Reports*] and in Part A of the Particular Conditions [*Environmental, Health, and Safety (EHS), Metrics for Progress Reports].*

The detailed monthly reporting requirements are presented in the Contract Management Plan (CMP) template, presented below.

The Contractor, the Project Manager and Supervision Consultant will use a dedicated web-based dashboard (PMD) system for monthly reporting, which will be based on the CMP structure. The PMD will be supplied free of charge by the employer & training on how to use the system will also be provided.

Section 7: General Conditions of Contract

These General Conditions of Contract (GCC) are derived from the former Standard Bidding Document for Supply and Installation of Plant and Equipment of the World Bank, which were based on the Model Form of International Contract for Process Plant Construction published by the Engineering Advancement Association of Japan (ENAA). The multilateral development banks participating in the procurement harmonization process gratefully acknowledge the contribution of ENAA to the advancement of good contracting practices by its borrowers. The GCC contain general clauses to be applied on all contracts. The GCC in this section, read in conjunction with the Special Conditions of Contract in Section 8 and other documents listed therein, should be a complete document expressing all the rights and obligations of the contracting parties. The General Conditions herein shall not be altered.

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A. Contract and Interpretation

1. Definitions

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

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

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

(c) "GCC" means the General Conditions of Contract.

(d) "SCC" means the Special Conditions of Contract.

(e) "day" means calendar day.

(f) "year" means 365 days.

(g) "month" means calendar month.

(h) "Party" means the Employer or the Contractor, as the context requires.

(i) "Employer" means the person named as such in the SCC and includes the legal successors or permitted assigns of the Employer.

(j) "Project Manager" means the person appointed by the Employer in the manner provided in GCC Subclause 17.1 (Project Manager) hereof and named as such in the SCC to perform the duties delegated by the Employer.

(k) "Contractor" means the person(s) named as Contractor in the Contract Agreement, and includes the legal successors or permitted assigns of the Contractor.

(l) "Contractor's Representative" means any person nominated by the Contractor and approved by the Employer in the manner provided in GCC Subclause 17.2 (Contractor's Representative and Construction Manager) hereof to perform the duties delegated by the Contractor.

(m) "Construction Manager" means the person appointed by the Contractor's Representative in the manner provided in GCC Subclause 17.2.4.

(n) "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 subcontracted directly or indirectly by the Contractor, and includes its legal successors or permitted assigns.

(o) "Dispute Board" means the person or persons named as such in the SCC appointed by agreement between the Employer and the Contractor to make a decision on or to settle any dispute or difference between the Employer and the Contractor referred to him or her by the parties pursuant to GCC Subclause 45.1 (Dispute Board) hereof.

(p) "The Bank" means the financing institution named in the SCC.

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

(r) "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.

(s) "Plant" means permanent plant, equipment, machinery, apparatus, articles, and things of all kinds to be provided and incorporated in the Facilities by the Contractor

under the Contract (including the spare parts to be supplied by the Contractor under GCC Subclause 7.3 hereof), but does not include Contractor's Equipment.

(t) "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, pre-commissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc. as the case may require.

(u) "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.

(v) "Country of Origin" means the countries and territories eligible under the rules of the Bank as further elaborated in the SCC.

(w) "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.

(x) "Effective Date" means the date of fulfillment of all conditions stated in Article 3 (Effective Date) of the Contract Agreement, upon which the period until the Time for Completion shall be counted from.

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

(z) "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 Pre-commissioning of the Facilities or such specific part thereof has been completed, and that the Facilities or specific part thereof are ready for Commissioning as provided in GCC Clause 24 (Completion) hereof.

(aa) "Pre-commissioning" means the testing, checking, and other requirements specified in the Employer's Requirements that are to be carried out by the Contractor in preparation for Commissioning as provided in GCC Clause 24 (Completion) hereof.

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

(cc) "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 (Functional Guarantees) to the Contract Agreement in accordance with the provisions of GCC Subclause 25.2 (Guarantee Test) hereof.

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

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

2. Contract Documents

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

3. Interpretation

3.1 In the Contract, except where the context requires otherwise,

(a) words indicating one gender include all genders;

(b) words indicating the singular also include the plural and words indicating the plural also include the singular;

(c) provisions including the word "agree," "agreed," or "agreement" require the agreement to be record 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 handwritten, typewritten, printed or electronically made, and resulting in a permanent record.

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

3.2 **Incoterms**

Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.

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

3.3 **Entire Agreement**

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

3.4 **Amendment**

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

3.5 **Independent Contractor**

The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture, or other joint relationship between the parties hereto. Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives, or Subcontractors engaged by the Contractor in connection with the

performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Employer, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives, or Subcontractors and the Employer.

3.6 **Non-Waiver**

3.6.1 Subject to GCC Subclause 3.6.2 below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

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

3.7 **Severability**

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

3.8 **Country of Origin**

"Origin" means the place where the plant and component parts thereof are mined, grown, produced, or manufactured, and from which the services are provided. Plant components are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs 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 country specified in the SCC.

5.2 The ruling language of the Contract shall be that stated in the SCC.

5.3 The language for communications shall be the ruling language unless otherwise stated in the SCC.

6. Fraud and Corruption

6.1 ADB requires Borrowers (including beneficiaries of ADB-financed activity) and their personnel, as well as firms and individuals participating in an ADB-financed activity, including but not limited to, Bidders, Suppliers, and Contractors, agents, subcontractors, subconsultants, service providers, subsuppliers, manufacturers (including their respective officers, directors, employees and personnel) under ADB-financed contracts to observe the highest standard of ethics during the procurement and execution of such contracts in accordance with ADB's Anticorruption Policy (1998, as amended from time to time). In pursuance of this policy, ADB

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

(ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(iii) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(iv) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

(v) "abuse" means theft, waste, or improper use of assets related to ADB-related activity, either committed intentionally or through reckless disregard; and

(vi) "integrity violation" is any act, as defined under ADB's Investigation and Enforcement Framework (as amended from time to time), which violates ADB's Anticorruption Policy, including (i) to (v) above and the following: failure to disclose and manage conflict of interest[16], obstructive practice, violations of debarment, retaliation against whistleblowers or witnesses, and other violations of ADB's Anticorruption Policy, including failure to adhere to the highest ethical standard.

(b) will reject a proposal for award if it determines that the Bidder recommended for award or any of its officers, directors, employees, personnel, subconsultants, subcontractors, service providers, suppliers, or manufacturers has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;

(c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of the ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation, including by failing to inform ADB in a timely manner at the time they knew of the integrity violations;

(d) will impose enforcement and disclosure actions on a firm or an individual, at any time, in accordance with ADB's Anticorruption Policy and Investigation and Enforcement Framework, including declaring ineligible, either indefinitely or for a stated period of time,

[16] "Conflict of Interest" means any situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations.

to participate[17] in ADB-financed,-administered, or -supported activities or to benefit from an ADB-financed, -administered, or -supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations; and

(e) will have the right to require that a provision be included in the Bidding Documents and in contracts financed, administered, or supported by ADB, requiring Bidders, suppliers and contractors, consultants, manufacturers, service providers and other third parties engaged or involved in ADB-related activities, and their respective officers, directors, employees and personnel, to permit ADB or its representative to inspect the site and their assets, accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB.

6.2 All Bidders, consultants, contractors, suppliers, manufacturers, service providers, and other third parties engaged or involved in ADB-related activities and their respective officers, directors, employees and personnel, are required to cooperate fully in any investigation when requested by ADB to do so. As determined on a case-by-case basis by ADB, such cooperation is set out in detail in the Investigation and Enforcement Framework.

6.3 All Bidders, consultants, contractors and suppliers shall require their officers, directors, employees, personnel, and agents to ensure that, in its contracts with its sub-consultants, subcontractors, and other third parties engaged or involved in ADB-related activities, such sub-consultants, subcontractors, and other third parties similarly are required to cooperate fully in any investigation when requested by ADB to do so.

B. Subject Matter of Contract

7. Scope of Facilities

7.1 Unless otherwise expressly limited in the Employer's Requirements, the Contractor's obligations cover the provision of all Plant and the performance of all Installation Services required for the design, the manufacture (including procurement, quality assurance, construction, installation, associated civil works, precommissioning, and delivery) of the Plant and the installation, completion, and commissioning of the Facilities in accordance with the plans, procedures, specifications, drawings, codes, and any other documents as specified in the section Employer's Requirements. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labor, materials, equipment, spare parts (as specified in GCC Subclause 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 (Scope of Works and Supply by the Employer) to the Contract Agreement.

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

[17] Whether as a Contractor, Subcontractor, Consultant, Manufacturer or Supplier, or Service Provider; or in any other capacity (different names are used depending on the particular Bidding Document)

the period specified in the SCC and the provisions, if any, specified in the SCC. However, the identity, specifications, and quantities of such spare parts and the terms and conditions relating to the supply thereof are to be agreed between the Employer and the Contractor, and the price of such spare parts shall be that given in Price Schedule No. 6, which shall be added to the Contract Price. The price of such spare parts shall include the purchase price therefore and other costs and expenses (including the Contractor's fees) relating to the supply of spare parts.

8. Time for Commencement and Completion

8.1 The Contractor shall commence work on the Facilities within the period specified in the SCC and without prejudice to GCC Subclause 26.2 hereof, the Contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in the Appendix 4 (Time Schedule) to the Contract Agreement.

8.2 The Contractor shall attain Completion of the Facilities or of a part where a separate time for Completion of such part is specified in the Contract, within the time stated in the SCC or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.

9. Contractor's Responsibilities

9.1 The Contractor shall design, manufacture, including associated purchases and/or subcontracting, install, and complete the Facilities in accordance with the Contract. When completed, the Facilities should be fit for the purposes for which they are intended as defined in the Contract.

9.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities, including any data as to boring tests provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site if access thereto was available and of other data readily available to it relating to the Facilities as of the date 28 days prior to bid submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.

9.3 The Contractor shall acquire and pay for all permits, approvals, and/or licenses from all local, state, or national government authorities or public service undertakings in the country where the Site is located, which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Employer under GCC Subclause 10.3 hereof and that are necessary for the performance of the Contract.

9.4 The Contractor shall comply with all laws in force in the country where the Facilities are to be implemented. The laws will include all local, state, national, or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties, and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Subclause 10.1 hereof.

9.5 Any plant and services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under GCC Clause 1 (Country of Origin). Any subcontractors retained by the Contractor shall be from a country as specified in GCC Clause

1 (Country of Origin).

9.6 The Contractor shall permit ADB or its representative to inspect the Contractor's site, assets, accounts and records, and other documents relating to the bid submission and contract performance of the Contractor and to have them audited by auditors appointed by ADB, if so required by ADB.

9.7 If the Contractor is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfillment of the provisions of the Contract and shall designate one of such persons to act as a leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Employer.

9.8 Protection of the Environment

(a) The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise, and other results of his operations.

(b) The Contractor shall ensure that emissions, surface discharges, and effluent from the Contractor's activities shall not exceed the values stated in the Specification or prescribed by applicable Laws.

10. Employer's Responsibilities

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

10.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in that Appendix.

10.3 The Employer shall acquire and pay for all permits, approvals, and/or licenses from all local, state, or national government authorities, or public service undertakings in the country where the Site is located which (a) such authorities or undertakings require the Employer to obtain in the Employer's name, (b) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract, and (c) are specified in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement.

10.4 If requested by the Contractor, the Employer shall use its best endeavors to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals, and/or licenses necessary for the execution of the Contract from all local, state, or national government authorities, or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.

10.5 Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials, and facilities; and shall perform all work and services of whatsoever nature, including those required by the Contractor to properly carry out Pre-commissioning, Commissioning, and Guarantee Tests, all in accordance with the provisions of the Appendix (Scope of Works and Supply by the Employer) to the Contract

Agreement at or before the time specified in the program furnished by the Contractor under GCC Subclause 18.2 hereof and in the manner thereupon specified or as otherwise agreed upon by the Employer and the Contractor.

10.6 The Employer shall be responsible for the continued operation of the Facilities after Completion, in accordance with GCC Subclause 24.8, and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with GCC Subclause 25.2.

10.7 All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Employer, except those incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GCC Subclause 25.2.

10.8 In the event that the Employer shall be in breach of any of his obligations imposed by the Contract, then the additional cost reasonably incurred by the Contractor in consequence thereof shall be added to the Contract Price.

C. Payment

11. Contract Price

11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.

11.2 Unless an adjustment clause is provided for in the SCC, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise provided in the Contract.

11.3 Subject to GCC Subclauses 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 (Terms and Procedures of Payment) to the Contract Agreement, which also outlines the procedures to be followed in making application for and processing payments.

12.2 No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Facilities or any part(s) thereof.

12.3 In the event that the Employer fails to make any payment by its respective due date or within the period set forth in the Contract, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate(s) shown in the Appendix (Terms and Procedures of Payment) to the Contract Agreement for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award.

12.4 The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in the Appendix (Terms and Procedures of Payment) to the Contract Agreement, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contractor's bid.

13. Securities

13.1 **Issuance of Securities**

The Contractor shall provide the securities specified below in favor of the Employer at the times, and in the amount, manner, and form specified below.

13.2 **Advance Payment Security**

13.2.1 The Contractor shall, within 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 (Terms and Procedures of Payment) to the Contract Agreement, 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 28 days of the notification of contract award, provide a security for the due performance of the Contract in the amount specified in the SCC

13.3.2 The 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 one of the forms of bank guarantees provided in the Bidding Documents, as stipulated by the Employer in the SCC, or in another form acceptable to the Employer.

13.3.3 Unless otherwise specified in the SCC, 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, 540 days after Completion of the Facilities or 365 days after Operational Acceptance of the Facilities, whichever occurs first; provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC Subclause 27.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the Contractor immediately after its expiration, provided, however, that if the Contractor, pursuant to GCC Subclause 27.10, is liable for an extended defect liability obligation, the performance security shall be extended for the period and up to the amount specified in the SCC.

14. Taxes and Duties

14.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies, and charges assessed on the Contractor, its Subcontractors, or their employees by all municipal, state, or national government authorities in connection with the Facilities in and outside of the country where the Site is located.

14.2 Notwithstanding GCC Subclause 14.1 above, the Employer shall bear and promptly pay all customs and import duties as well as other local taxes like, e.g., a value-added tax (VAT), imposed by the law of the country where the Site is located on the Plant specified in Price Schedule No. 1 and that are to be incorporated into the Facilities.

14.3 If any tax exemptions, reductions, allowances, or privileges may be available to the Contractor in the country where the Site is located, the Employer shall use its best endeavors to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.

14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes,

duties, levies, and charges prevailing at the date 28 days prior to the date of bid submission in the country where the Site is located (hereinafter called "Tax" in this GCC Subclause 14.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Contractor, Subcontractors, or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GCC Clause 36 hereof.

D. Intellectual Property

15. License/Use of Technical Information

15.1 For the operation and maintenance of the Plant, the Contractor hereby grants a non-exclusive and nontransferable license (without the right to sublicense) to the Employer under the patents, utility models, or other industrial property rights owned by the Contractor or by a third party from whom the Contractor has received the right to grant licenses thereunder, and shall also grant to the Employer a nonexclusive and nontransferable right (without the right to sublicense) to use the know-how and other technical information disclosed to the Employer under the Contract. Nothing contained herein shall be construed as transferring ownership of any patent, utility model, trademark, design, copyright, know-how, or other intellectual property right from the Contractor or any third party to the Employer.

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

16. Confidential Information

16.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during, or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data, and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GCC Clause 16.

16.2 The Employer shall not use such documents, data, and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the Contractor shall not use such documents, data, and other information received from the Employer for any purpose other than the design, procurement of Plant, construction, or such other work and services as are required for the performance of the Contract.

16.3 The obligation of a party under GCC Subclauses 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; and

(c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

16.4 The above provisions of this GCC Clause 16 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.

16.5 The provisions of this GCC Clause 16 shall survive termination, for whatever reason, of the Contract.

E. Execution of the Facilities

17. Representatives

17.1 **Project Manager**

If the Project Manager is not named in the Contract, then within 14 days of the Effective Date, the Employer shall appoint and notify the Contractor in writing of the name of the Project Manager. The Employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Employer at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals, and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.

All notices, instructions, information, and other communications given by the Contractor to the Employer under the Contract shall be given to the Project Manager, except as herein otherwise provided.

17.2 **Contractor's Representative and Construction Manager**

17.2.1 If the Contractor's Representative is not named in the Contract, then within 14 days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Employer in writing to approve the person so appointed. If the Employer makes no objection to the appointment within 14 days, the Contractor's Representative shall be deemed to have been approved. If the Employer objects to the appointment within 14 days, giving the reason therefor, then the Contractor shall appoint a replacement within 14 days of such objection, and the foregoing provisions of this GCC Subclause 17.2.1 shall apply thereto.

17.2.2 The Contractor's Representative shall represent and act for the Contractor at all times during the performance of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information, and all other communications under the Contract.

All notices, instructions, information, and all other communications given by the Employer or the Project Manager to the Contractor under the Contract shall be given to the Contractor's Representative or, in its absence, its deputy, except as herein otherwise provided.

The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent, which shall not be unreasonably

withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC Subclause 17.2.1.

17.2.3 The Contractor's Representative may, subject to the approval of the Employer, which shall not be unreasonably withheld, at any time delegate to any person any of the powers, functions, and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions, and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Project Manager.

Any act or exercise by any person of powers, functions, and authorities so delegated to him or her in accordance with this GCC Subclause 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, the Contractor's Representative or the Construction Manager shall appoint a suitable person to act as the Construction Manager's deputy.

17.2.5 The Employer 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 GCC Subclause 22.4 or a breah of the EHS Code of Conduct for Contractor's Personnel. The Employer 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 GCC Subclause 17.2.5, the Contractor shall, where required, promptly appoint a replacement.

18. Work Program

18.1 Contractor's Organization

The Contractor shall supply to the Employer and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out work on the Facilities within 21 days of the Effective Date. The chart shall include the identities of the key personnel, and the curricula vitae of such key personnel to be employed shall be supplied together with the chart. The Contractor shall promptly inform the Employer and the Project Manager in writing of any revision or alteration of such an organization chart.

18.2 Program of Performance

Within 28 days after the Effective Date, the Contractor shall submit to the Project Manager a detailed program of performance of the Contract, made in a form acceptable to the Project Manager and showing the sequence in which it proposes to design, manufacture, transport, assemble, install, and precommission the Facilities, as well as the date by which the Contractor reasonably requires that the Employer shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve Completion, Commissioning, and Acceptance of the Facilities in

accordance with the Contract. The program so submitted by the Contractor shall accord with the Time Schedule included in the Appendix (Time Schedule) to the Contract Agreement 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 given in the SCC and any extension granted in accordance with GCC Clause 40, and shall submit all such revisions to the Project Manager.

18.3 Progress Report

The Contractor shall monitor progress of all the activities specified in the program referred to in GCC Subclause 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; (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken; and, (c) status of compliance with the EIA, EMP, LMP and other Environmental, Health, and Safety (EHS) assessment and management documents following the EHS Metrics for Progress Reports attached as an annex to this General Conditions of Contract.

18.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the program referred to in GCC Subclause 18.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Employer or the Project Manager, prepare and submit to the Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under GCC Subclause 8.2, any extension thereof entitled under GCC Subclause 40.1, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.

18.5 Procedures

The Contract shall be executed in accordance with the Contract Documents, including the procedures given in the Forms and Procedures of the Employer's Requirements.

The Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract.

19. Subcontracting

19.1 The Appendix 5 (List of Major Items of Plant and Services and List of Approved Subcontractors) to the Contract Agreement specifies major items of plant and services and a list of approved Subcontractors against each item, including manufacturers. Insofar as no Subcontractors are listed against any such item, the Contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The Contractor may from time to time propose any addition to or deletion from any such list. The Contractor shall submit any such list or any modification thereto to the Employer for its approval in sufficient time so as not to impede the progress of work on the Facilities. When requesting such a prior approval, the Contractor shall submit, in addition to any other required document, an undertaking from each proposed Subcontractor to confirm that they have read, understand, and shall comply with the EHS obligations set out in Sub-Clause 9.9 [Environmental, Health, and Safety Code of Conduct]. Such approval by the Employer for any of the Subcontractors shall not relieve the Contractor from any of its obligations, duties, or responsibilities under the Contract.

19.2 The Contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GCC Subclause 19.1.

19.3 For items or parts of the Facilities not specified in the Appendix (List of Major Items of Plant and Services and List of Approved Subcontractors for Major Items) to the Contract Agreement, the Contractor may employ such Subcontractors as it may select, at its discretion.

19.4 Each subcontract shall include provisions which would entitle the Employer to require the subcontract to be assigned to the Employer under GCC 19.5 (if and when applicable), or in event of termination by the Employer under GCC 42.2.

19.5 If a Subcontractor's obligations extend beyond the expiry date of the relevant Defects Liability Period, and the Project Manager, prior to that date, instructs the Contractor to assign the benefits of such obligations to the Employer, then the Contractor shall do so.

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 28 days prior to date of bid submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied subject to approval by the Employer and shall be treated in accordance with GCC Clause 39.

20.3 Approval/Review of Technical Documents by Project Manager

20.3.1 The Contractor shall prepare or cause its Subcontractors to prepare and furnish to the Project Manager the documents listed in the Appendix (List of Documents for Approval or Review) to the Contract Agreement for its approval or review as specified and in accordance with the requirements of GCC Subclause 18.2 (Program of Performance).

Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.

GCC Subclauses 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 14 days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Subclause 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 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. If the Project Manager disapproves a document, he shall specify the reasons for his decision.

20.3.4 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Subclause 20.3.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.

20.3.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the parties within a reasonable period, then such dispute or difference may be referred to an Dispute Board for determination in accordance with GCC Subclause 45.3 hereof. If such dispute or difference is referred to a Dispute Board, the Project Manager shall give instructions as to whether and, if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Dispute Board upholds the Contractor's view on the dispute and if the Employer has not given notice under Subclause 45.3 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Dispute Board shall decide, and the Time for Completion shall be extended accordingly.

20.3.6 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.

20.3.7 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GCC Subclause 20.3.

If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 39 shall apply to such request.

21. Procurement

21.1 Materials

Subject to GCC Subclause 14.2, the Contractor shall procure and transport all materials in an expeditious and orderly manner to the Site.

21.2 Employer-Supplied Materials

If the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement provides that the Employer shall furnish any specific items to the Contractor, the following provisions shall apply:

21.2.1 The Employer shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the parties and make such item available to the Contractor at the time specified in the program furnished by the Contractor, pursuant to GCC Subclause 18.2, unless otherwise mutually agreed.

21.2.2 Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect, or default. The Employer shall immediately remedy any shortage, defect, or default, or the Contractor shall, if practicable and possible, at the request of the Employer, remedy such shortage, defect, or default at the Employer's cost and expense. After inspection, such item shall fall under the care, custody, and control of the Contractor. The provision of this GCC Subclause

21.2.2 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items that have been repaired.

21.2.3 The foregoing responsibilities of the Contractor and its obligations of care, custody, and control shall not relieve the Employer of liability for any undetected shortage, defect, or default, nor place the Contractor under any liability for any such shortage, defect, or default whether under GCC Clause 27 or under any other provision of Contract.

21.3 Transportation

21.3.1 The Contractor shall at its own risk and expense transport all the materials and the Contractor's Equipment to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances.

21.3.2 Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the materials and the Contractor's Equipment.

21.3.3 Upon dispatch of each shipment of materials and the Contractor's Equipment, the Contractor shall notify the Employer by telex, cable, facsimile, or electronic means, of the description of the materials and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Contractor shall furnish the Employer with relevant shipping documents to be agreed upon between the parties.

21.3.4 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the materials and the Contractor's Equipment to the Site. The Employer shall use its best endeavors in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any claim for damage to roads, bridges, or any other traffic facilities that may be caused by the transport of the materials and the Contractor's Equipment to the Site.

21.4 Customs Clearance

The Contractor shall, at its own expense, handle all imported materials and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Employer's obligations under GCC Subclause 14.2, provided that if applicable laws or regulations require any application or act to be made by or in the name of the Employer, the Employer shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance that are not the fault of the Contractor, the Contractor shall be entitled to an extension in the Time for Completion, pursuant to GCC Clause 40.

22. Installation

22.1 Setting Out/Supervision

22.1.1 Benchmark

(a) The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to benchmarks, reference marks, and lines provided to it in writing by or on behalf of the Employer.

(b) 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

(a) 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.

(b) 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.

(c) The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labor and personnel to be employed on the Site into the country where the Site is located. The Employer will, if requested by the Contractor, use his best endeavors in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national, or government permission required for bringing in the Contractor's personnel.

(d) The Contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to the place where they were recruited or to their domicile. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Employer may provide the same to such personnel and recover the cost of doing so from the Contractor.

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**

(a) 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.

(b) 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.

(c) 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**

(a) 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.

(b) 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**

(a) No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours stated in the SCC, unless

(i) otherwise stated in the Contract;

(ii) the Project Manager gives consent; or

(iii) 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.

(b) 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.

(c) This Subclause shall not apply to any work which is customarily carried out by rotary or double shifts.

22.2.6 **Facilities for Staff and Labor**

(a) 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.

(b) 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**

(a) 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 Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

(b) 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.

(c) 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 Project Manager may reasonably require.

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 SCC.

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, gender, 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 Foodstuff**

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 and its Subcontractors 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 and includes any kind of involuntary or compulsory labor, such as indentured labor, bonded labor or similar labor-contracting arrangements.

The Contractor shall not employ persons who have been subject to trafficking. Trafficking in persons is defined as the recruitment, transportation, transfer, harboring, or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.

The Contractor shall ensure that its Subcontractors and suppliers comply with all the obligations under this Sub-Clause.

If forced labor/trafficking cases are identified, the Contractor will promptly take corrective actions to eliminate such practices from the project and shall take measures to require the suppliers to take appropriate steps to remedy them. Where the supplier does not remedy the situation, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to manage such risks.

22.2.16 **Prohibition of Child Labor**

The Contractor, and its Subcontractors, shall not employ a child under the age of completion of compulsory schooling, and in any case not under the minimum age of 15 in connection with a project, unless the Laws specify a higher age.

The Contractor, and its Subcontractors shall not employ or engage a child between the minimum age and the age of 18 in a manner 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.

The Contractor and its Subcontractors shall not employ or engage children between the minimum age and the age of 18 after an appropriate risk assessment has been conducted by the Contractor with the Project Manager's consent. The Contractor shall be subject to regular monitoring by the Project Manager that includes monitoring of health, working conditions, and hours of work.

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

(a) with exposure to physical, psychological, or sexual abuse or harassment;

(b) underground, underwater, or working at heights or in confined spaces;

(c) with dangerous machinery, equipment, or tools, or involving handling or transport of heavy loads;

(d) in unhealthy environments exposing them to hazardous substances, agents, or processes, or to temperatures, noise, or vibration damaging to their health; or

(e) under difficult conditions such as working for long hours, during the night, or in confinement on the premises of the employer.

Regardless of age, the Contractor shall take appropriate measures to prevent and address any form of violence and harassment, bullying, intimidation, and/or exploitation, including any form of SEAH and ensure access to appropriate grievance mechanism. The Contractor shall ensure that its Subcontractors and suppliers comply with all the obligations under this Sub-Clause.

The Contractor shall take measures to require its suppliers (other than Subcontractors) not to employ or engage child labor as described in this clause. If child labor cases are identified, the Contractor shall take measures to require the suppliers to take appropriate steps to remedy them. Where the supplier does not remedy the situation, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to manage such risks.

22.3 **Contractor's Equipment**

22.3.1 All Contractor's Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Contract.

22.3.2 Unless otherwise specified in the Contract, upon completion of the Facilities, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.

22.3.3 The Employer will, if requested, use its best endeavors to assist the Contractor in obtaining any local, state, or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.

22.4 **Site Regulations and Safety**

The Employer and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Employer, with a copy to the Project Manager, proposed Site regulations for the Employer's approval, which approval shall not be unreasonably withheld.

Such Site regulations shall include, but shall not be limited to, 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 Employer or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors

employed by the Employer on or near the Site.

22.5.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services.

22.5.3 The Contractor shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of the Employer in regard to their work.

22.5.4 The Contractor shall notify the Project Manager promptly of any defects in the other Contractors' work that come to its notice, and that could affect the Contractor's work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the Facilities. Decisions made by the Project Manager shall be binding on the Contractor.

22.6 Emergency Work

If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Facilities, the Contractor shall immediately carry out such work.

If the Contractor is unable or unwilling to do such work immediately, the Employer may do or cause such work to be done as the Employer may determine is necessary in order to prevent damage to the Facilities. In such event, the Employer shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefore. If the work done or caused to be done by the Employer is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Employer in connection therewith shall be paid by the Contractor to the Employer. Otherwise, the cost of such remedial work shall be borne by the Employer.

22.7 Site Clearance

22.7.1 Site Clearance in Course of Performance

In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store, or remove any surplus materials, clear away any wreckage, rubbish, or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of the Contract.

22.7.2 Clearance of Site after Completion

After Completion of all parts of the Facilities, the Contractor shall clear away and remove all wreckage, rubbish, and debris of any kind from the Site, and shall leave the Site and Facilities in a clean and safe condition.

22.8 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 Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

23.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Employer and the Project Manager or their designated representatives to attend the test and/or inspection.

23.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.

If the Employer or Project Manager or their designated representatives fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.

23.5 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.

23.6 If any Plant or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC Subclause 23.3.

23.7 If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Plant or part of the Facilities that cannot be settled between the parties within a reasonable period of time, it may be referred to an Dispute Board for determination in accordance with GCC Subclause 45.3.

23.8 The Contractor shall afford the Employer and the Project Manager, at the Employer's expense, access at any reasonable time to any place where the Plant are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice.

23.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant or any part of the Facilities, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GCC Subclause 23.4, shall release the Contractor from any other responsibilities under the Contract.

23.10 No part of the Facilities or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Project Manager whenever any such parts of the Facilities or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.

23.11 The Contractor shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.

If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GCC Subclause 23.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

24. Completion of the Facilities

24.1 As soon as the Facilities or any part thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Employer's Requirements, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Employer in writing.

24.2 Within 7 days after receipt of the notice from the Contractor under GCC Subclause 24.1, the Employer shall supply the operating and maintenance personnel specified in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement for Pre-commissioning of the Facilities or any part thereof.

Pursuant to the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement, the Employer shall also provide, within the said 7-day period, the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services, and other matters required for Pre-commissioning of the Facilities or any part thereof.

24.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Employer and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services, and other matters have been provided by the Employer in accordance with GCC Subclause 24.2, the Contractor shall commence Pre-commissioning of the Facilities or the relevant part thereof in preparation for Commissioning, subject to GCC Subclause 25.5.

24.4 As soon as all works in respect of Pre-commissioning 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 14 days after receipt of the Contractor's notice under GCC Subclause 24.4, either issue a Completion Certificate in the form specified in the Employer's Requirements (Forms and Procedures), stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's notice under GCC Subclause 24.4, or notify the Contractor in writing of any defects and/or deficiencies.

If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure described in GCC Subclause 24.4.

If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within 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 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 14 days after receipt of the Contractor's notice under GCC Subclause 24.4 or within 7 days after receipt of the Contractor's repeated notice under GCC Subclause 24.5, or if the Employer makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the Contractor's notice or repeated notice, or as of the Employer's use of the Facilities, as the case may be.

24.7 As soon as possible after Completion, the Contractor shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the Employer will undertake such completion and deduct the costs thereof from any monies owing to the Contractor.

24.8 Upon Completion, the Employer shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.

25. Commissioning and Operational Acceptance

25.1 Commissioning

25.1.1 Commissioning of the Facilities or any part thereof shall be commenced by the Contractor immediately after issue of the Completion Certificate by the Project Manager, pursuant to GCC Subclause 24.5, or immediately after the date of the deemed Completion, under GCC Subclause 24.6.

25.1.2 The Employer shall supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services, and other matters required for Commissioning.

25.1.3 In accordance with the requirements of the Contract, the Contractor's and Project Manager's advisory personnel shall attend the Commissioning, including the Guarantee Test, and shall advise and assist the Employer.

25.2 Guarantee Test

25.2.1 Subject to GCC Subclause 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 (Functional Guarantees) to the Contract Agreement. The Employer shall promptly provide the Contractor with such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test and any repeats thereof.

25.2.2 If for reasons not attributable to the Contractor, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period from the date of Completion specified in the SCC or any other period agreed upon by the Employer and the Contractor, the Contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and GCC Subclauses 28.2 and 28.3 shall not apply.

25.3 Operational Acceptance

25.3.1 Subject to GCC Subclause 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 SCC, or any other agreed upon period as specified in GCC Subclause 25.2.2 above; or

(c) the Contractor has paid the liquidated damages specified in GCC Subclause 28.3 hereof; and

(d) any minor items mentioned in GCC Subclause 24.7 hereof relevant to the Facilities or that part thereof have been completed.

25.3.2 At any time after any of the events set out in GCC Subclause 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 7 days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.

25.3.4 If within 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 Subclause 24.3, or with the Guarantee Test pursuant to Subclause 25.2, for reasons attributable to the Employer either on account of nonavailability of other facilities under the responsibilities of other contractor(s), or for reasons beyond the Employer's control, the provisions leading to "deemed" completion of activities such as Completion, pursuant to GCC Subclause 24.6, and Operational Acceptance, pursuant to GCC Subclause 25.3.4, and Contractor's obligations regarding Defect Liability Period, pursuant to GCC Subclause 27.2, Functional Guarantee, pursuant to GCC Clause 28, and Care of Facilities, pursuant to GCC Clause 32, and GCC Clause 41.1, Suspension, shall not apply. In this case, the following provisions shall apply.

25.5.2 When the Contractor is notified by the Project Manager that he will be unable to proceed with the activities and obligations pursuant to above Subclause 25.5.1, the Contractor shall be entitled to the following:

(a) the Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GCC Subclause 26.2;

(b) payments due to the Contractor in accordance with the provision specified in the Appendix (Terms and Procedures of Payment) to the Contract

Agreement, which would not have been payable in normal circumstances due to noncompletion 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 Subclause 25.5.3 below;

(c) the expenses towards the above security and extension of other securities under the contract, of which validity needs to be extended, shall be reimbursed to the Contractor by the Employer;

(d) the additional charges towards the care of the Facilities pursuant to GCC Subclause 32.1 shall be reimbursed to the Contractor by the Employer for the period between the notification mentioned above and the notification mentioned in Subclause 25.5.4 below. The provision of GCC Subclause 33.2 shall apply to the Facilities during the same period.

25.5.3 In the event that the period of suspension under above Subclause 25.5.1 actually exceeds 180 days, the Employer and Contractor shall mutually agree to any additional compensation payable to the Contractor.

25.5.4 When the Contractor is notified by the Project Manager that the plant is ready for Pre-commissioning, the Contractor shall proceed without delay in performing all the specified activities and obligations under the contract.

F. Guarantees and Liabilities

26. Completion Time Guarantee

26.1 The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified) within the Time for Completion specified in the SCC pursuant to GCC Subclause 8.2, or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.

26.2 If the Contractor fails to attain Completion of the Facilities or any part thereof within the Time for Completion or any extension thereof under GCC Clause 40, the Contractor shall pay to the Employer liquidated damages in the amount specified in the SCC 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 SCC as a percentage rate of the Contract Price. Once the “Maximum” is reached, the Employer may consider termination of the Contract, pursuant to GCC Subclause 42.2.2.

Such payment shall completely satisfy the Contractor’s obligation to attain Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension thereof under GCC Clause 40. The Contractor shall have no further liability whatsoever to the Employer in respect thereof.

However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Contractor under the Contract.

Save for liquidated damages payable under this GCC Subclause 26.2, the failure by the Contractor to attain any milestone or other act, matter, or thing by any date specified in the Appendix (Time Schedule) to the Contract Agreement and/or other program of work prepared pursuant to GCC Subclause 18.2 shall not render the Contractor liable for any loss or damage thereby suffered by the Employer.

26.3 If the Contractor attains Completion of the Facilities or any part thereof before the Time for Completion or any extension thereof under GCC Clause 40, the Employer shall pay to the Contractor a bonus in the amount specified in the SCC. The aggregate amount of such bonus shall in no event exceed the amount specified as "Maximum" in the SCC.

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 540 days from the date of Completion of the Facilities (or any part thereof) or 1 year from the date of Operational Acceptance of the Facilities (or any part thereof), whichever first occurs, unless specified otherwise in the SCC pursuant to GCC Subclause 27.10.

If during the Defect Liability Period any defect should be found in the design, engineering, materials, and workmanship of the Plant supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its cost, repair, replace, or otherwise make good as the Contractor shall determine at its discretion, such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement, or making good of any defect, or of any damage to the Facilities arising out of or resulting from any of the following causes:

(a) improper operation or maintenance of the Facilities by the Employer,

(b) operation of the Facilities outside specifications provided in the Contract, or

(c) normal wear and tear.

27.3 The Contractor's obligations under this GCC Clause 27 shall not apply to

(a) any materials that are supplied by the Employer under GCC Subclause 21.2, are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein;

(b) any designs, specifications, or other data designed, supplied, or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility herein; or

(c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GCC Subclause 27.7.

27.4 The Employer shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect any such defect.

27.5 The Employer shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GCC Clause 27.

The Contractor may, with the consent of the Employer, remove from the Site any Plant or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.

27.6 If the repair, replacement, or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Employer may give to the Contractor a notice

requiring that tests of the defective part of the Facilities shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.

If such part fails the tests, the Contractor shall carry out further repair, replacement, or making good, as the case may be, until that part of the Facilities passes such tests. The tests shall be agreed upon by the Employer and the Contractor.

27.7 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than 15 days), the Employer may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Employer in connection therewith shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due the Contractor or claimed under the Performance Security.

27.8 If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Employer because of any of the aforesaid reasons.

27.9 Except as provided in GCC Clauses 27 and 33, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Plant, design, or engineering, or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, 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 SCC shall be subject to an extended defect liability period. Such obligation of the Contractor shall be in addition to the defect liability period specified under GCC Subclause 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 (Functional Guarantees) to the Contract Agreement, 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 (Functional Guarantees) to the Contract Agreement are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications, and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, modifications, and/or additions, and shall request the Employer to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Employer may consider termination of the Contract, pursuant to GCC Subclause 42.2.2.

28.3 If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the said Appendix to the Contract Agreement is met, the Contractor shall, at the Contractor's option, either

(a) make such changes, modifications, and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Employer to repeat the Guarantee Test; or

(b) pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the Appendix

(Functional Guarantees) to the Contract Agreement.

28.4 The payment of liquidated damages under GCC Subclause 28.3, up to the limitation of liability specified in the Appendix (Functional Guarantees) to the Contract Agreement, shall completely satisfy the Contractor's guarantees under GCC Subclause 28.3, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.

29. Patent Indemnity

29.1 The Contractor shall, subject to the Employer's compliance with GCC Subclause 29.2, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions, or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Employer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of (a) the installation of the Facilities by the Contractor or the use of the Facilities in the country where the Site is located, and (b) the sale of the products produced by the Facilities in any country.

Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Contractor, pursuant to the Contract Agreement.

29.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GCC Subclause 29.1, the Employer shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within 28 days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the 28-day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

29.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers, and Subcontractors from and against any and all suits, actions, or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Employer.

30. Limitation of Liability

30.1 Except in cases of criminal negligence or willful misconduct,

(a) the Contractor shall not be liable to the Employer, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer; and

(b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed a multiple of the Contract Price specified in the SCC or, if a multiple is not so specified, the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

G. Risk Distribution

31. Transfer of Ownership

31.1 Ownership of the Plant (including spare parts) to be imported into the country where the Site is located shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Plant from the country of origin to that country.

31.2 Ownership of the Plant (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Plant are brought on to the Site.

31.3 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.

31.4 Ownership of any Plant in excess of the requirements for the Facilities shall revert to the Contractor upon Completion of the Facilities or at such earlier time when the Employer and the Contractor agree that the Plant in question are no longer required for the Facilities.

31.5 Notwithstanding the transfer of ownership of the Plant, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GCC Clause 32 (Care of Facilities) hereof until Completion of the Facilities or the part thereof in which such Plant are incorporated.

32. Care of Facilities

32.1 The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Completion of the Facilities pursuant to GCC Clause 24 or, where the Contract provides for Completion of the Facilities in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GCC Clause 27. Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b), and (c) of GCC Subclauses 32.2 and 38.1.

32.2 If any loss or damage occurs to the Facilities or any part thereof or to the Contractor's temporary facilities by reason of

(a) insofar as they relate to the country where the Site is located, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably

foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GCC Clause 34 hereof; or

(b) any use or occupation by the Employer or any third party other than a Subcontractor, authorized by the Employer of any part of the Facilities; or

(c) any use of or reliance upon any design, data, or specification provided or designated by or on behalf of the Employer, or any such matter for which the Contractor has disclaimed responsibility herein,

the Employer shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed, or damaged, and will pay to the Contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed, or damaged. If the Employer requests the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with GCC Clause 39. If the Employer does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby lost, destroyed, or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Employer shall terminate the Contract pursuant to GCC Subclause 42.1 hereof.

32.3 The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the Facilities, except (i) as mentioned in GCC Subclause 32.2 with respect to the Contractor's temporary facilities, and (ii) where such loss or damage arises by reason of any of the matters specified in GCC Subclauses 32.2(b) and (c) and 38.1.

32.4 With respect to any loss or damage caused to the Facilities or any part thereof or to the Contractor's Equipment by reason of any of the matters specified in GCC Subclause 38.1, the provisions of GCC Subclause 38.3 shall apply.

33. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification

33.1 Subject to GCC Subclause 33.3, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions, or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property other than the Facilities whether accepted or not, arising in connection with the supply and installation of the Facilities and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers, or agents, except any injury, death, or property damage caused by the negligence of the Employer, its contractors, employees, officers, or agents.

33.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GCC Subclause 33.1, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within 28 days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the 28-day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

33.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers, and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Facilities not yet taken over, that is caused by fire, explosion, or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 34, provided that such fire, explosion, or other perils were not caused by any act or failure of the Contractor.

33.4 The party entitled to the benefit of an indemnity under this GCC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

34. Insurance

34.1 To the extent specified in the Appendix (Insurance Requirements) to the Contract Agreement, 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 (Insurance Requirements) to the Contract Agreement.

34.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Subclause 34.1, except for the Third Party Liability, Workers' Compensation, and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co- insureds under all insurance policies taken out by the Contractor pursuant to GCC Subclause 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 (Insurance Requirements) to the Contract Agreement, deliver to the Employer certificates of insurance or copies of the insurance policies as evidence that the required policies are in full force and effect. The certificates shall provide that no less than 21 days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.

34.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.

34.5 The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the Appendix (Insurance Requirements) to the Contract Agreement, 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 coinsureds under all such policies. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Employer shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than 21 days' notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Employer shall provide copies of the policies taken out by the Employer under this GCC Subclause 34.5.

34.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC Subclause 34.1, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If the Employer fails to take out and/or maintain in effect the insurances referred to in GCC 34.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Employer under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Employer. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards the Employer, and the Contractor shall have full recourse against the Employer for any and all liabilities of the Employer herein.

34.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 34, and all monies payable by any insurers shall be paid to the Contractor. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.

35. Unforeseen Conditions

35.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions other than climatic conditions, or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Facilities, including any data as to boring tests, provided by the Employer, and on the basis of information that it could have obtained from a visual inspection of the Site if access thereto was available, or other data readily available to it relating to the Facilities, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant or Contractor's Equipment, notify the Project Manager in writing of

(a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;

(b) the additional work and/or Plant and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;

(c) the extent of the anticipated delay; and

(d) the additional cost and expense that the Contractor is likely to incur.

On receiving any notice from the Contractor under this GCC Subclause 35.1, the Project Manager shall promptly consult with the Employer and Contractor and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.

35.2 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GCC Subclause 35.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.

35.3 If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC Subclause 35.1, the Time for Completion shall be extended in accordance with GCC Clause 40.

36. Change in Laws and Regulations

36.1 If, after the date 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 SCC, pursuant to GCC Subclause 11.2.

37. Force Majeure

37.1 "Force Majeure" shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected, and shall include, without limitation, the following:

(a) war, hostilities, or warlike operations whether a state of war be declared or not, invasion, act of foreign enemy and civil war;

(b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, and terrorist acts;

(c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority;

(d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;

(e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear, and pressure waves or other natural or physical disaster; and

(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 14 days after the occurrence of such event.

37.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered, or delayed. The Time for Completion shall be extended in accordance with GCC Clause 40.

37.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under GCC Subclauses 37.6 and 38.5.

37.5 No delay or nonperformance by either party hereto caused by the occurrence of any event of Force Majeure shall

(a) constitute a default or breach of the Contract; or

(b) give rise to any claim for damages or additional cost or expense occasioned thereby, subject to GCC Subclauses 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 60 days or an aggregate period of more than 120 days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other, but without prejudice to either party's right to terminate the Contract under GCC Subclause 38.5.

37.7 In the event of termination pursuant to GCC Subclause 37.6, the rights and obligations of the Employer and the Contractor shall be as specified in GCC Subclauses 42.1.2 and 42.1.3.

37.8 Notwithstanding GCC Subclause 37.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.

38. War Risks

38.1 "War Risks" shall mean any event specified in paragraphs (a) and (b) of GCC Subclause 37.1 and any explosion or impact of any mine, bomb, shell, grenade, or other projectile, missile, munitions, or explosive of war, occurring or existing in or near the country (or countries) where the Site is located.

38.2 Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to

(a) destruction of or damage to Facilities, Plant, or any part thereof;

(b) destruction of or damage to property of the Employer or any third party; or

(c) injury or loss of life

if such destruction, damage, injury or loss of life is caused by any war risks, and the Employer shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges, or expenses arising in consequence of or in connection with the same.

38.3 If the Facilities or any Plant or Contractor's Equipment or any other property of the Contractor used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any war risks, the Employer shall pay the Contractor for

(a) any part of the Facilities or the Plant so destroyed or damaged to the extent not already paid for by the Employer and so far as may be required by the Employer, and as may be necessary for completion of the Facilities;

(b) replacing or making good any Contractor's Equipment or other property of the Contractor so destroyed or damaged; and

(c) replacing or making good any such destruction or damage to the Facilities or the Plant or any part thereof.

If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction, or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to GCC Subclause 42.1.

If the Employer requires the Contractor to replace or make good on any such destruction or damage to the Facilities, the Time for Completion shall be extended in accordance with GCC 40.

38.4 Notwithstanding anything contained in the Contract, the Employer shall pay the Contractor for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any war risks, provided that the Contractor shall as soon as practicable notify the Employer in writing of any such increased cost.

38.5 If during the performance of the Contract any war risks shall occur that financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an

aggregate period of more than one hundred and twenty (120) days on account of any war risks, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other.

38.6 In the event of termination pursuant to GCC Subclauses 38.3 or 38.5, the rights and obligations of the Employer and the Contractor shall be specified in GCC Subclauses 42.1.2 and 42.1.3.

H. Change in Contract Elements

39. Change in the Facilities

39.1 Introducing a Change

39.1.1 Subject to GCC Subclauses 39.2.5 and 39.2.7, the Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition, or deletion to, in or from the Facilities hereinafter called "Change," provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract.

39.1.2 The Contractor may from time to time during its performance of the Contract propose to the Employer 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 Employer may at its discretion approve or reject any Change proposed by the Contractor, provided that the Employer shall approve any Change proposed by the Contractor to ensure the safety of the Facilities.

39.1.3 Notwithstanding GCC Subclauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.

39.1.4 The procedure on how to proceed with and execute Changes is specified in GCC Subclauses 39.2 and 39.3, and further details and forms are provided in the Employer's Requirements (Forms and Procedures).

39.2 Changes Originating from Employer

39.2.1 If the Employer proposes a Change pursuant to GCC Subclause 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, and

(f) effect on any other provisions of the Contract.

39.2.2 Prior to preparing and submitting the "Change Proposal," the Contractor shall submit

to the Project Manager an "Estimate for Change Proposal," which shall be an estimate of the cost of preparing and submitting the Change Proposal.

Upon receipt of the Contractor's Estimate for Change Proposal, the Employer shall do one of the following:

(a) accept the Contractor's estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal,

(b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate,

(c) advise the Contractor that the Employer does not intend to proceed with the Change.

39.2.3 Upon receipt of the Employer's instruction to proceed under GCC Subclause 39.2.2(a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Subclause 39.2.1.

39.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.

39.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this GCC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than 15%, the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor's objection, the Employer shall withdraw the proposed Change and shall notify the Contractor in writing thereof.

The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.

39.2.6 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within 14 days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.

If the Employer is unable to reach a decision within 14 days, it shall notify the Contractor with details of when the Contractor can expect a decision.

If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of 14 days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GCC Subclause 39.2.2.

39.2.7 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order."

Upon receipt of a Pending Agreement Change Order, the Contractor shall

immediately proceed with effecting the Changes covered by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.

If the parties cannot reach agreement within 60 days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Dispute Board in accordance with the provisions of GCC Subclause 45.3.

39.3 Changes Originating from Contractor

39.3.1 If the Contractor proposes a Change pursuant to GCC Subclause 39.1.2, the Contractor shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GCC Subclause 39.2.1.

Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Subclauses 39.2.6 and 39.2.7. However, should the Employer choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

40. Extension of Time for Completion

40.1 The Time(s) for Completion specified in the SCC shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

(a) any Change in the Facilities as provided in GCC Clause 39;

(b) any occurrence of Force Majeure as provided in GCC Clause 37, unforeseen conditions as provided in GCC Clause 35, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b), and (c) of GCC Subclause 32.2;

(c) any suspension order given by the Employer under GCC Clause 41 hereof or reduction in the rate of progress pursuant to GCC Subclause 41.2; or

(d) any changes in laws and regulations as provided in GCC Clause 36; or

(e) any default or breach of the Contract by the Employer, or any activity, act, or omission of the Employer, or the Project Manager, or any other contractors employed by the Employer; or

(f) any other matter specifically mentioned in the Contract; or

(g) any delay on the part of a Subcontractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this Subclause

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

40.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to a Dispute Board, pursuant to GCC Subclause 45.3.

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

In all cases where the Contractor has given a notice of a claim for an extension of time under GCC 40.2, the Contractor shall consult with the Project Manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall there after comply with all reasonable instructions which the Project Manager shall give in order to minimize such delay. If compliance with such instructions shall cause the Contractor to incur extra costs and the Contractor is entitled to an extension of time under GCC 40.1, the amount of such extra costs shall be added to the Contract Price.

41. Suspension

41.1 The Employer may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension, and the reasons therefor. The Contractor shall thereupon suspend performance of such obligation, except those obligations necessary for the care or preservation of the Facilities, until ordered in writing to resume such performance by the Project Manager.

If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than 90 days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within 28 days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Clause 39, excluding the performance of the suspended obligations from the Contract.

If the Employer fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GCC Clause 39 or, where it affects the whole of the Facilities, as termination of the Contract under GCC Subclause 42.1.

41.2 If

(a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix (Terms and Procedures of Payment) to the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Subclause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents, or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within 14 days after receipt of the Contractor's notice; or

(b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas in accordance with GCC Subclause 10.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,

then the Contractor may by 14 days' notice to the Employer suspend performance of all or

any of its obligations under the Contract, or reduce the rate of progress.

41.3 If the Contractor's performance of its obligations is suspended, or the rate of progress is reduced pursuant to this GCC Clause 41, then the Time for Completion shall be extended in accordance with GCC Subclause 40.1, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.

41.4 During the period of suspension, the Contractor shall not remove from the Site any Plant, any part of the Facilities or any Contractor's Equipment, without the prior written consent of the Employer.

42. Termination

42.1 Termination for Employer's Convenience

42.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GCC Subclause 42.1.

42.1.2 Upon receipt of the notice of termination under GCC Subclause 42.1.1, the Contractor shall, either immediately or upon the date specified in the notice of termination,

(a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition;

(b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii) below;

(c) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish, and debris of any kind, and leave the whole of the Site in a clean and safe condition; and

(d) subject to the payment specified in GCC Subclause 42.1.3,

(i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination;

(ii) to the extent legally possible, assign to the Employer all right, title, and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and

(iii) deliver to the Employer all nonproprietary drawings, specifications, and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities.

42.1.3 In the event of termination of the Contract under GCC Subclause 42.1.1, the Employer shall pay to the Contractor the following amounts:

(a) the Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination;

(b) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the

Contractor's and its Subcontractors' personnel;

(c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges;

(d) costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Subclause 42.1.2; and

(e) the cost of satisfying all other obligations, commitments, and claims that the Contractor may in good faith have undertaken with third parties in connection with the Contract, and that are not covered by paragraphs (a) through (d) above.

42.2 **Termination for Contractor's Default**

42.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the Contractor, referring to this GCC Subclause 42.2:

(a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up, other than a voluntary liquidation for the purposes of amalgamation or reconstruction, a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt;

(b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 43; and

(c) if the Contractor, in the judgment of the Employer has engaged in integrity violations, as defined in GCC 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 GCC Subclause 41.2, the progress of Contract performance for more than 28 days after receiving a written instruction from the Employer to proceed;

(c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause;

(d) refuses or is unable to provide sufficient materials, services, or labor to execute and complete the Facilities in the manner specified in the program furnished under GCC Subclause 18.2 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Facilities by the Time for Completion as extended,

then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor, stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within 14 days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GCC Subclause 42.2.

42.2.3 Upon receipt of the notice of termination under GCC Subclauses 42.2.1 or 42.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,

(a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition;

(b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d);

(c) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination;

(d) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and

(e) deliver to the Employer all drawings, specifications, and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

42.2.4 The Employer may enter upon the Site, expel the Contractor, and complete the Facilities itself or by employing any third party. The Employer may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of the Employer and with an indemnification by the Employer for all liability including damage or injury to persons arising out of the Employer's use of such equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Facilities for such reasonable period as the Employer considers expedient for the supply and installation of the Facilities.

Upon completion of the Facilities or at such earlier date as the Employer thinks appropriate, the Employer shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

42.2.5 Subject to GCC Subclause 42.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Facilities executed as of the date of termination, the value of any unused or partially used Plant on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Subclause 42.2.3. Any sums due the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

42.2.6 If the Employer completes the Facilities, the cost of completing the Facilities by the Employer shall be determined.

If the sum that the Contractor is entitled to be paid, pursuant to GCC Subclause 42.2.5, plus the reasonable costs incurred by the Employer in completing the Facilities, exceeds the Contract Price, the Contractor shall be liable for such excess.

If such excess is greater than the sums due the Contractor under GCC Subclause 42.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under GCC Subclause 42.2.5, the Employer shall pay the balance to the Contractor.

The Employer and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

42.3 **Termination by Contractor**

42.3.1 If

(a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix (Terms and Procedures of Payment) to the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Subclause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within 14 days after receipt of the Contractor's notice; or

(b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,

then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within 28 days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within 28 days of the said notice, the Contractor may by a further notice to the Employer referring to this GCC Subclause 42.3.1, forthwith terminate the Contract.

42.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GCC Subclause 42.3.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.

42.3.3 If the Contract is terminated under GCC Subclauses 42.3.1 or 42.3.2, then the Contractor shall immediately

(a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition;

(b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii);

(c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractors' personnel from the Site; and

(d) subject to the payment specified in GCC Subclause 42.3.4,

(i) deliver to the Employer the parts of the Facilities executed by the

Contractor up to the date of termination;

(ii) to the extent legally possible, assign to the Employer all right, title, and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and

(iii) deliver to the Employer all drawings, specifications, and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

42.3.4 If the Contract is terminated under GCC Subclauses 42.3.1 or 42.3.2, the Employer shall pay to the Contractor all payments specified in GCC Subclause 42.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.

42.3.5 Termination by the Contractor pursuant to this GCC Subclause 42.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GCC Subclause 42.3.

42.4 In this GCC Clause 42, the expression “Facilities executed” shall include all work executed, Installation Services provided, and all Plant acquired, or subject to a legally binding obligation to purchase, by the Contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.

42.5 In this GCC Clause 42, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to the Appendix (Terms and Procedures of Payment) to the Contract Agreement.

43. Assignment

43.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other party which consent shall not be unreasonably withheld, assign to any third party the Contract or any part thereof, or any right, benefit, obligation, or interest therein or thereunder, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

I. Claims, Disputes, and Arbitration

44. Contractor’s Claims

44.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall submit a notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Subclause 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 Subclause, monitor the record keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect,

(a) this fully detailed claim shall be considered as interim;

(b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and

(c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

Each payment certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The Project Manager shall agree with the Contractor or estimate (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with GCC Clause 40, and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

The requirements of this Subclause are in addition to those of any other Subclause which may apply to a claim. If the Contractor fails to comply with this or another Subclause 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 Subclause.

In the event that the Contractor and the Employer cannot agree on any matter relating to a claim, either party may refer the matter to the Dispute Board pursuant to GCC 45.3 hereof.

45. Disputes and Arbitration

45.1 Appointment of the Dispute Board

Disputes shall be referred to a Dispute Board for decision in accordance with GCC Subclause 45.3. The Parties shall appoint a Dispute Board by the date stated in the SCC.

The Dispute Board shall comprise, as stated in the SCC, 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 Dispute Board shall comprise three persons, one of whom shall serve as chairman.

If the Parties have not jointly appointed the Dispute Board 21 days before the date stated in the SCC and the Dispute Board 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 SCC, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the Dispute Board.

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 Dispute Board 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 Subclause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the Dispute Board (including each member) shall expire when the Operational Acceptance Certificate has been issued in accordance with GCC Clause 25.3.

45.2 Failure to Agree 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 Dispute Board by the date stated in the first paragraph of GCC Subclause 45.1;

(b) either Party fails to nominate a member (for approval by the other Party) of a Dispute Board of three persons by such date;

(c) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the Dispute Board by such date;

(d) the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation, or termination of appointment,

then the appointing entity or official named in the SCC shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the Dispute Board. 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.

45.3 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 Dispute Board for its decision, with copies to the other Party and the Project Manager. Such reference shall state that it is given under this Subclause.

For a Dispute Board of three persons, the Dispute Board shall be deemed to have received such reference on the date when it is received by the chairman of the Dispute Board.

Both Parties shall promptly make available to the Dispute Board all such additional information, further access to the Site, and appropriate facilities, as the Dispute Board may require for the purposes of making a decision on such dispute. The Dispute Board 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 Dispute Board and approved by both Parties, the Dispute Board shall give its decision, which shall be reasoned and shall state that it is given under this Subclause. 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 to proceed with the performance of the Facilities in accordance with the Contract.

If either Party is dissatisfied with the Dispute Board'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 Dispute Board 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 Subclause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in GCC Subclauses 45.6 and 45.7, neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Subclause.

If the Dispute Board 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 Dispute Board's decision, then the decision shall become final and binding upon both Parties.

45.4 Amicable Settlement

Where notice of dissatisfaction has been given under GCC Subclause 45.3 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 56th 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.

45.5 Arbitration

Unless settled amicably, any dispute in respect of which the Dispute Board's decision (if any) has not become final and binding shall be finally settled by international arbitration. Unless otherwise agreed by both Parties,

(a) arbitration proceedings shall be conducted as stated in the Special Conditions;

(b) if no arbitration proceedings is so stated, the dispute shall be finally settled by institutional arbitration under the Rules of Arbitration of the International Chamber of Commerce;

(c) the dispute shall be settled by three arbitrators; and

(d) the arbitration shall be conducted in the language for communications defined in GCC Subclause 5.3.

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 Dispute Board, 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 Dispute Board to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the Dispute Board 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 Dispute Board shall not be altered by reason of any arbitration being conducted during the progress of the Works.

45.6 Failure to Comply with Dispute Board's Decision

In the event that a Party fails to comply with a Dispute Board decision which has become final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under GCC Subclause 45.5. GCC Subclauses 45.3 and 45.4 shall not apply to this reference.

45.7 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 Dispute Board in place, whether by reason of the expiry of the Dispute Board's appointment or otherwise,

(a) GCC Subclauses 45.3 and 45.4 shall not apply, and

(b) the dispute may be referred directly to arbitration under GCC Subclause 45.5.

Appendix A: General Conditions of Dispute Board Agreement

1. Definitions

Each "Dispute Board Agreement" is a tripartite agreement by and between:

(a) the "Employer";

(b) the "Contractor"; and

(c) the "Member" who is defined in the Dispute Board Agreement as being:

(i) the sole member of the "Dispute Board" 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 "Dispute Board" (or "dispute board") and, where this is the case, the other two persons are called the "Other Members".

The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Board Agreement, which incorporates this Appendix. In the Dispute Board Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

2. General Provisions

Unless otherwise stated in the Dispute Board Agreement, it shall take effect on the latest of the following dates:

(a) the Commencement Date defined in the Contract;

(b) when the Employer, the Contractor, and the Member have each signed the Dispute Board Agreement; or

(c) when the Employer, the Contractor, and each of the Other Members (if any) have respectively each signed a dispute board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days' notice of resignation to the Employer and to the Contractor, and the Dispute Board Agreement shall terminate upon the expiry of this period.

3. Warranties

The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor, and the Project Manager. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the Employer and the Contractor relied upon the Member's representations that he/she is:

(a) experienced in the work, which the Contractor is to carry out under the Contract,

(b) experienced in the interpretation of contract documentation, and

(c) fluent in the language for communications defined in the Contract.

4. General Obligations of the Member

The Member shall:

(a) have no interest financial or otherwise in the Employer, the Contractor, or the Project Manager, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;

(b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor, or the Project Manager, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;

(c) have disclosed in writing to the Employer, the Contractor, and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer, or employee of the Employer, the Contractor, or the Project Manager, and any previous involvement in the overall project of which the Contract forms part;

(d) not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor, or the Project Manager, except as may be agreed

in writing by the Employer, the Contractor, and the Other Members (if any);

(e) comply with the annexed procedural rules and with GCC Subclause 45.1;

(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 Dispute Board's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor, and the Other Members (if any); and

(k) be available to give advice and opinions on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

5. General Obligations of the Employer and the Contractor

The Employer, the Contractor, the Employer's Personnel, and the Contractor's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the Dispute Board's activities under the Contract and the Dispute Board Agreement. The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member, and the Other Members (if any),

(a) be appointed as an arbitrator in any arbitration under the Contract;

(b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or

(c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

The Employer and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.

Whenever the Employer or the Contractor refers a dispute to the Dispute Board under GCC Subclause 45.3, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

6. Payment

The Member shall be paid as follows, in the currency named in the Dispute Board Agreement:

(a) a retainer fee per calendar month, which shall be considered as payment in full for:

(i) being available on 28 days' notice for all site visits and hearings;

(ii) becoming and remaining conversant with all project developments and maintaining relevant files;

(iii) all office and overhead expenses including secretarial services, photocopying, and office supplies incurred in connection with his duties; and

(iv) all services performed hereunder except those referred to in subparagraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Dispute Board Agreement becomes effective; until the last day of the calendar month in which the Taking- Over Certificate is issued for the whole of the 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 2 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, facsimiles, telexes, and use of the internet: a receipt shall be required for each item in excess of 5% of the daily fee referred to in subparagraph (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 SCC shall determine the amount of the fees to be used.

The Member shall submit invoices for payment of the monthly retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay each of the Member's invoices in full within 56 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the

Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the Dispute Board; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in accordance with GCC Subclause 12.3.

If the Member does not receive payment of the amount due within 70 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice under Clause 7.

7. Termination

At any time: (i) the Employer and the Contractor may jointly terminate the Dispute Board Agreement by giving 42 days' notice to the Member, or (ii) the Member may resign as provided for in Clause 2.

If the Member fails to comply with the Dispute Board Agreement, the Employer and the Contractor may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

If the Employer or the Contractor fails to comply with the Dispute Board Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the Employer and the Contractor. The notice shall take effect when received by them both.

Any such notice, resignation, and termination shall be final and binding on the Employer, the Contractor, and the Member. However, a notice by the Employer or the Contractor, but not by both, shall be of no effect.

8. Default of the Member

If the Member fails to comply with any of his obligations under Clause 4 concerning his impartiality or independence in relation to the Employer or the Contractor, he/she shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the Dispute Board 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 Employer and the Contractor, the Dispute Board shall visit the site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor, and the Dispute Board, 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 Dispute Board, the Employer, and the Contractor, or in the absence of agreement, shall be decided by the Dispute Board. The purpose of site visits is to enable the Dispute Board 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 coordinated by the Employer in cooperation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the Dispute Board shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.

4. The Employer and the Contractor shall furnish to the Dispute Board one copy of all documents which the Dispute Board may request, including Contract documents, progress reports, variation instructions, certificates, and other documents pertinent to the performance of the Contract. All communications between the Dispute Board and the Employer or the Contractor shall be copied to the other Party. If the Dispute Board comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.

5. If any dispute is referred to the Dispute Board in accordance with GCC Subclause 45.3, the Dispute Board shall proceed in accordance with GCC Subclause 45.3 and these Guidelines. Subject to the time allowed to give notice of a decision and other relevant factors, the Dispute Board shall:

   (a) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case; and

   (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.

6. The Dispute Board may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.

7. Except as otherwise agreed in writing by the Employer and the Contractor, the Dispute Board 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 Dispute Board is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.

8. The Employer and the Contractor empower the Dispute Board, among other things, to:

   (a) establish the procedure to be applied in deciding a dispute;

   (b) decide upon the Dispute Board'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 Dispute Board 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 Dispute Board shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the Dispute Board shall make and give its decision in accordance with GCC Subclause 45.3, or as otherwise agreed by the Employer and the Contractor in writing. If the Dispute Board 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 Employer and the Contractor; and

(c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:

(i) either the Employer or the Contractor does not agree that they do so, or

(ii) the absent Member is the chairman and he/she instructs the other Members to not make a decision.

Section 8: Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC. The clause numbers of the SCC correspond to the clause number of the GCC.

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1. Definitions

The Employer is: Nepal Electricity Authority

The Project Manager is: Mr. Bimal Raj Raut

The Bank is: Asian Development Bank Country of Origin: Nepal

“Local/Locally” Local means pertaining to, or originating within, the territory of Nepal in which the project is located. Local labor. Laborers, workers, or employees (unskilled, semi-skilled, or skilled) who are legally entitled to work in, and are ordinarily resident within, the Country.

“Local participation” Local participation refers to the use of local labor and local jobs creation and local skills development in the performance of the contract.

The Sub-Clause 1.1 (d) is replaced by: “SCC” means the document entitled Special Conditions of Contract included in the Contract, which consists of Part A – Environmental, Health, and Safety (EHS) Metrics for Progress Reports, and Part B – Key Performance Indicators (KPI) (if applicable), Part C – Bonuses (if applicable).”

5. Law and Language

5.1 The Contract shall be interpreted in accordance with the laws of: Nepal

5.2 The ruling language is: English

5.3 The language for communications is: English

6. Fraud and Corruption

6.4 The Contractor has the obligation to notify the Employer of any changes in connection with the matters described in paragraphs (i), (k), (l), (m), (n), (o), (p) and (t) of the Letter of Bid.

6.5 If the Contactor is debarred or temporarily suspended by ADB, it shall inform the Employer of such debarment or suspension, and that the endorsement of ADB’s Office of Anticorruption and Integrity is required for any variations, extensions or modifications to the Contract.

7. Scope of Facilities

7.3 The Contractor agrees to supply spare parts for a period of years: Five (5)

The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Plant. Other spare parts and components shall be supplied as promptly as possible, but at the most within 6 months of placing the order and opening the letter of credit. In addition, in the event of termination of the production of spare parts, advance notification will be made to the Employer of the pending termination, with sufficient time to permit the Employer to procure the needed requirement. Following such termination, the Contractor will furnish to the extent possible and at no cost to the Employer the blueprints, drawings, and specifications of the spare parts, if requested.

8. Time for Commencement and Completion

8.1 The Contractor shall commence work on the Facilities within Thirty (30) days from the Effective Date for determining Time for Completion as specified in the Contract Agreement provided that access to and possession of the Site or any part thereof have been given under subclause 10.2,

and shall then proceed with the work on the Facilities with due expedition and without delay.

8.2 The Time for Completion of the whole of the Facilities shall be 1095 days from the Effective Date as described in the Contract Agreement.

Time for Completion for parts of the Facilities: Partial completion of the part of the facilities is not acceptable.

9. Contractor's Responsibilities

9.6 To add the following paragraph at the end of GCC 9.6:

"ADB's right to inspect the Site and/or the Contractor's accounts and records relating to the performance of the Contract stated in Subclause 6.1 (e) and 9.6 shall survive termination and/ or expiration of this Contract."

9.8 Protection of the Environment

At the end of the subclause in 9.8 Protection of the Environment, add the following paragraphs: "The Contractor shall comply with all applicable national, provincial, and local environmental laws and regulations. The Contractor shall also comply with all reasonable requests of the national and local authorities responsible for enforcing environmental controls.

The Contractor shall comply with the Employer's project financier's environmental safeguard requirements [ADB's Safeguard Policy Statement (2009) including the International Finance Corporation's Environmental Health and Safety General Guidelines and guidelines on Electric Power Transmission and Distribution and the International Labor Organization's Safety and Health in Construction guidelines]. More particularly, the Contractor shall comply with (i) the measures and requirements set forth in the Environmental Impact Assessment (EIA) and the Environmental Management Plan (EMP), draft attached in Section-6: Employer's Requirement, (Volume-II, Section-XV-Social Safe Guard and Environment Management Plan) and (ii) any corrective or preventative actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor implementation of the EIA and the EMP. The definitive (final) version of the EIA and EMP to be complied with by the Contractor will be the version that is disclosed on the Employer's project financier's [ADB] website. The Contractor shall allocate a budget for compliance with these measures, requirements and actions.

Within 28 days of the Commencement Date the Contractor shall submit a detailed Site Specific Environmental, Health, and Safety Management Plan (SSEHSMP) and other relevant site-specific EHS management documents, based on the Bidder's Environmental, Health, and Safety Management Plan (Bidder's EHSMP) and other Bidder's EHS management documents submitted in the technical proposal, for the Project Manager's no objection showing how the Contractor intends to comply with environmental laws and regulations and other specific EHS requirements prescribed in the Contract, addressing all the monitoring and mitigation measures set forth in the project's Initial Environmental Examination(IEE), Environmental, Health, and Safety Management Plan ("EHSMP") and other relevant EHS assessment and management documents of the project attached in Section 6- Employer's Requirements. Work shall not commence on the Site until the no objection of SSEHSMP and other relevant site-specific EHS management documents has been obtained from the Project Manager and is being implemented.

The Contractor shall (a) establish an operational system for managing environmental impacts,(b) carry out all the monitoring and mitigation measures assigned to them as set forth in the IEE and EMP including subsequent updates to them, (c) allocate the budget required to ensure that such measures, requirements and actions are carried out, and implement any corrective actions required by the Employer, and (d) cover the cost of corrective action required in response to non-

compliance with the definitive version of the EMP or property damage caused by the Contractor, subcontractors and third parties employed by them. The Contractor shall submit monthly reports on the carrying out of such measures to the Employer. The Contractor shall ensure mitigation measures are implemented at construction sites as well as at any workers camps or accommodation provided by them or their subcontractors.

The Contractor shall not commence any "Physical Works" including site establishment and tree or vegetation clearance until (i) written confirmation is received from the Employer that all project financier [ADB] clearances have been obtained, (ii) the Contractor has obtained all required environment, health and safety (labor) permits or licenses, (iii) the Contractor has undertaken and reported to the Employer on the findings of all applicable pre-construction environmental survey work and baseline environmental monitoring requirements as set out in the definitive version of the EMP, (iv) the Contractor has incorporated all the applicable requirements of the definitive version of the EMP into their detailed designs; (v) the Contractor has submitted the detailed designs and as part of the SSEMP, all environmental, health and safety sub-plans required by the definitive version of the EMP and received written confirmation from the Employer of their approval.

The Contractor shall ensure that all its design and construction staff, as well as the staff of subcontractors and third-parties employed by them, regardless they are formally or informally contracted, understand their responsibilities to implement the EMP with appropriate environment, health and safety (EHS) training being provided by the Contractor including construction-site EHS inductions, emergency procedure drills, monthly refresher trainings, and daily toolbox talks. The Contractor shall ensure all construction staff, including the staff of subcontractors and third-parties employed by them, have attended the necessary specialized, task-specific training and are medically fit to perform their role.

The Contractor shall establish an operational system for managing and monitoring environmental, health and safety impacts and risks, progress with implementation, and compliance to the definitive version of the EMP requirements. The Contractor's management and EHS staff will attend monthly EHS meetings convened by the Employer and submit monthly reports on EMP progress and compliance to the Employer documenting the mitigation measures and monitoring activities carried out, issues encountered including statistics and details of all near misses and accidents, grievances received, and follow-up actions that were taken (or will be taken) to correct any issues.

In case of a chance find or any pollution or health and safety incident including near misses the Contractor will inform the "Employer" within 24 hours with details of the incident and the corrective action being taken.

The Employer may withhold payment if monthly reports are not submitted within 5 working days of month end or in the event corrective actions required by the Employer have not been addressed by the Contractor within 30 days.

Where unanticipated environmental risks or impacts become apparent during the Contract, the Contractor is required to update the SSEHSMP and other relevant site-specific EHS management documents, to outline the potential impacts to site works and associated mitigation measures for the Project Manager's approval."

9.9 Environmental, Health, and Safety Code of Conduct

A new sub-clause 9.9 is added as follows:

The Contractor shall adhere to the Environmental, Health, and Safety (EHS) Code of Conduct for the Contractor's Personnel.

The Contractor shall take all necessary measures to ensure that each Contractor's Personnel is made aware of the EHS Code of Conduct including specific behaviors that are prohibited and understands the consequences of engaging in such prohibited behaviors.

These measures include providing instructions and documentation that can be understood by the Contractor's Personnel and seeking to obtain, as part of the site induction training, that person's signature acknowledging receipt of such instructions and/or documentation, as appropriate. The Contractor shall keep records of such acknowledgement of receipt.

The Contractor shall also ensure that the EHS Code of Conduct is visibly displayed in multiple locations on the Site and any other place where the Works will be carried out, as well as in areas outside the Site accessible to the local community and project affected people. The posted EHS Code of Conduct shall be provided in languages comprehensible to Contractor's Personnel, Employer's Personnel, and the local community.

The Contractor's SSEHSMP and other relevant site-specific EHS management documents (as per Sub-Clause 22.2.7 [Health and Safety] and Sub-Clause 9.8 [Protection of the Environment]) shall include appropriate processes for the Contractor to verify compliance with these obligations.

9.10 Training of Contractor's Personnel

A new Sub-Clause 9.10 is added as follows:

The Contractor shall provide appropriate training to relevant Contractor's Personnel on EHS aspects of the Contract, including obligations set out in the respective Sub-Clause 22.2.7 [Health and Safety], Sub-Clause 9.8 [Protection of the Environment] and Sub-Clause 22.2.17 [Respectful Work Environment].

As stated in the Specification or as instructed by the Project Manager, the Contractor shall also allow appropriate opportunities for the relevant Contractor's Personnel to be trained on EHS aspects of the Contract by the Employer's Personnel.

9.11 Sign Boards

A new Sub-Clause 9.11 is added as follows:

"The Contractor shall prepare the sign board design in accordance with the Works' Requirements. The sign board design shall be submitted to the Project Manager for Review. No physical Works shall commence on Site until the Project Manager has given (or is deemed to have given) a Notice of No-objection to the sign board design and until the sign board(s) have been properly installed in the agreed-upon location(s) at the Site."

10. Employer's Responsibilities

10.1 Add the following at the end of the paragraph:

The Employer warrants that neither the data nor the information supplied in the Bidding Document regarding the general conditions on the site show the complete range of conditions which may be encountered on the Site.

The Contractor shall be deemed to have inspected and examined the Site and made such investigation as considered necessary before submitting his bid.

10.2 "There shall be no work nor construction activities at the Site or any part thereof (as the case may be) unless the Employer has granted access to the Site or part thereof (as the case may be) in accordance with this Subclause 10.2."

11. Contract Price

11.2 The Contract Price shall be fixed.

12. Terms of Payment

The following is added at the end of Sub-Clause 12.4:

The Contractor is required to submit an assessment of the Contractor's compliance with requirements assessed and/or measured based on the KPIs, if applicable. If the Contractor fails to meet any requirements assessed using the Key Performance Indicators (KPI) set out in Part E – Performance Damages and/or Part F – Bonuses of the Particular Conditions, if applicable, as determined by the Project Manager, necessary adjustments to the payments shall be made.

Add New Sub-Clause 12.5:

12.5 In case of Joint Ventures (JV), the JV Contractor shall open Project specific Bank Account in the name of Joint Venture including all the Partners of JV. All the eligible payments shall be made by the Employer in such Bank Account only as per the extant laws, in case of JV.

13. Securities

Supplementing Sub-clause 13.2.2

Add following new Sub-Clause as follows:

If the institution issuing the advance payment security is located outside the country of the employer, it shall have a correspondent financial institution located in the country of the employer to make it enforceable.

The Advance Payment Security shall be in the form of Bank guarantee as per form included in Section 9 (Contract Forms). Bank guarantee issued by a bank outside Nepal must be counter guaranteed by "A" class commercial bank in Nepal

13.3 Performance Security

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: Ten percent (10%) of the Contract Price, with a validity up to one (01) Month beyond the **Extended Defect Liability Period**.

The performance security(ies) shall be extended by the Contractor time to time till one (1) month beyond the Defect Liability Period and any extension thereof, as may be required under the Contract.

13.3.2 The performance security shall be in the form of the Bank Guarantee as per form included in Section 9 (Contract Forms). Bank Guarantee issued by a bank outside Nepal must be counter guaranteed by a Commercial Bank in Nepal.

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

13.3.4 In case of award of the Contract to a Joint Venture, the performance security shall be submitted in the name of the Joint Venture and not in the name of the Lead Partner or any Partner(s) of the Joint Venture alone.

The performance security shall be reduced to 10% of the value of the component covered by the extended defect liability to cover the Contractor's extended defect liability in accordance with the provision in the SCC, pursuant to GCC Subclause 27.10.

14. Tax and Duties

Add the following as sub-clause 14.5,

14.5.1. In the country of Origin

The prices bid by the Contractor for the imported goods and equipment shall include all taxes, duties and other charges imposed outside the Employer's country on the production, manufacture, sale and transport of the Contractor's Equipment, Plant, Materials and supplies to be used on or furnished under the Contract, and on the services performed under the Contract.

14.5.2. In Nepal

General:

(a) Unless otherwise specifically declared in the contract documents, the prices bid by the Contractor and its suppliers and subcontractors shall include business taxes and other taxes that may be levied in accordance with the laws and regulations in force or in effect in Nepal as **of 28 days** prior to the closing date for submission of tenders in the Employer's country on the Equipment, Plant, Materials and Supplies (permanent, temporary and consumables) acquired for the purpose of the Contract and on the services performed under the Contract. Whatsoever provisions made in the Contract document shall not relieve the Contractor, its suppliers and subcontractors, from their responsibility to pay income tax that may be levied in the Employer's country on profits made by the Contractor, its suppliers and subcontractors in respect of the Contract.

(b) Value Added Tax (VAT): The Contractor, Subcontractor or its nominated Subcontractor, shall be eligible for refund on all imported equipment and materials to be supplied and delivered exclusively for use in the Project.

- **Staff Income Tax:** The Contractor's staff, personnel and laborers, and those of its subcontractors, will be liable to pay personal income taxes in the Employer's country, irrespective of whether they are local or foreign nationals on income earned including salaries and wages as applicable under the laws and regulations of Nepal. The Contractor shall perform such duties in regard to Tax Deduction at Source (TDS) thereof as may be applicable by such laws and regulations.

- **Import License:** The Contractor shall inform the Employer and the Project Manager in writing the details of the equipment and materials to be imported into Nepal for use on the Works at least **56 days prior** to arrival of shipment at disembarkation port and shall submit a formal written request for assistance from the Employer for importation processing. The Employer will assist the Contractor to obtain necessary permits for import of such equipment and materials into Nepal. Import license fees or any other charges shall be at the cost of the Contractor. The Contractor shall be responsible for transport from the Port of disembarkation to the Site or location of the Works. The Contractor shall be fully responsible to determine these rates and the amount payable at the time of preparing tender document and include such costs in its bids. In failing to do so, the Employer shall not be liable to pay such costs, and the Contractor shall pay such charges as local or any customs authorities en-route may impose, which will not be an eligible item for refund from the Employer.

(c) Duties on Equipment, Plant, Materials and Supplies:

(a) Notwithstanding the provisions of this document, the Contractor's Plant and Equipment, including essential tools thereof, imported for the sole purpose of executing the Contract on condition of re-export upon completion of the Works, shall be exempt from payment of customs duties, VAT and applicable taxes. However, the Contractor shall deposit the amount or provide a Bank Guarantee to the GoN Customs office equal to amount of customs duties and other taxes as per the prevailing laws, rules and regulations of Nepal for those imported equipment's, plant, materials and supplies at the time of import. Such deposited amounts shall be refunded, or the Bank guarantee cancelled by the Customs Office after Re-export of those imported equipment, plant, materials and supplies.

(b) Any plant, materials or supplies imported by the Contractor for the performance of the Works but not incorporated in the Works shall be taken out of Nepal **within 90 (Ninety) days** from the date of issuance of the Performance Certificate. If the Contractor disposes off or consumes any equipment, spare parts, materials or supplies within Nepal, it shall pay all customs duties, VAT, income tax on the sales proceeds and taxes applicable on such items under the laws and regulation of Nepal in force.

(c) Equipment, plant, materials and supplies, imported by the Contractor for execution of the Works shall be subject to payment of customs duty at a special rate of one percent (1%) of CIP or Customs entry point value. This customs duty shall be paid by the Contractor at the time of import and will be reimbursed by the Employer to the Contractor upon submission of the original receipt issued by the Customs Department.

(d) VAT shall be exempted on all imported materials & equipment purchased for the use in the Works (shall be reimbursed by Employer in case the Employer is unable to avail exempt facility).

(e) VAT applicable on plant & equipment supplied directly from manufacturing plant in the Employer's country shall be reimbursed.

(f) The Contractor shall maintain records satisfactory to the Employer documenting use of all Plant, Materials and Supplies imported into and/or procured for the performance of the Works. If any of such Plant, Materials and/or Supplies, imported into Nepal or otherwise supplied to the Project at a special or preferential rate of Customs Duties or taxes, are misused or found to be used or appropriated for any purpose other than the Project, the Contractor shall be held fully responsible, and liable to pay customs duties, VAT and other taxes and/or any penalties as may be imposed in accordance with the prevailing laws and regulations of Nepal.

(g) Income tax assessed in accordance with the prevailing Income Tax Act of Nepal and as per the provision of any specific Double Taxation Agreement, shall be imposed on the Contractor, its sub-contractors and nominated sub- contractors. **An advance income tax/Tax Deduction at Source (TDS)/Final Tax Assessment as per the prevailing income Tax Act and Finance Act shall be deducted from the monthly progress payment of the Contractor as per section 9: Contract Forms.**

(h) The Contractor shall pay all duties, taxes, fees and contributions levied in Nepal in Nepalese Rupees as directed by the relevant governmental department or office, or any other local statutory agency or body in according with the relevant rules and regulations

(i) The provisions of this clause shall apply equally to foreign subcontractors or nominated subcontractors of the Contractor employed for the Works.

(j) The Contractor and any foreign subcontractors or nominated subcontractors employed on the Works, if not already registered in Nepal, shall be required to get registered with the Inland Revenue Department (IRD) for the purpose of the Contract, which shall be undertaken **within 28 days** after signing of the Contract Agreement. The Contractor, sub-contractor or the nominated subcontractor shall submit certified copies of the Registration Certificate(s) to the Project Manager within **14 days of registration**.

(k) Other local fees and charges (toll taxes) shall be applied in accordance with the prevailing laws and regulations of Nepal.

(l) Locally available goods, construction materials including fuel, lubricating oil, cement, timber, iron and steel goods, etc. shall be procured locally. All taxes for such goods procured from the local market shall be included in the Contract Rates and Prices and no reimbursement or payment in that respect shall be made to the Contractor.

15. **Intellectual Property**

The copyright in all drawings, documents, and other materials containing data and information furnished to the Employer in due course of design of the projects by the Contractor herein shall remain vested in the Employer

17. Representatives

Add the following at the end of this sub-clause 17.2.1.

17.2.1

The application of permission of leaving the Site/Country by the Contractor's Representative shall be submitted to the Project Manager (Employer) for approval.

Rephrase the first paragraph of this sub-clause 17.2.3 as follows

17.2.3

The Contractor's Representative may, subject to the approval of the Employer which shall not be unreasonably withheld, in his absence may delegate to person (with similar qualification and experience of Contractor's Representative) any of the powers, functions and authorities vested in him or her temporarily for a maximum of two months. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions, and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Project Manager.

Add the following at the end of this sub-clause 17.2.4.

17.2.4

The application of permission to leave the Site/Country by the Construction Manager shall be submitted to the Project Manager (Employer) for approval at least 5 (five) working days prior to the commencement of the leave.

18. Work Program

18.2: Program of Performance

Add the following lines:

The contractor shall submit the Time Schedule considering the above delivery requirement mentioned in Appendix-1, Terms and Procedure of Payments of the Contract Forms.

18.3 Progress Report

Add the followings:

The contractor shall prepare and submit four (4) copies of monthly progress report to the Employer and the Consultant (English Calendar) in the following prescribed form.

a) Project Background

b) Major events of the months

c) Actual physical and financial progress of each activity of the reporting month

d) Design Status

e) original schedule versus actual progress

f) Overall Physical and Financial Progress,

g) Status of Environmental and Social Safeguard issues.

h) Activities falling behind planned schedule and reasons for delay along with likely consequences on the performance of the Project

i) Correctives Measure to be Taken

j) Details of Manpower, Equipment and Construction materials at Construction Site/Stores.

k) Photographs (Color on Film Papers)

l) Any other significant details

Add the following subparagraph to Sub-Clause 18.3 of the GCC:
(c) monitoring of the obligations in Sub-Clauses 21.1, 22.1.1, 22.2.3 (d), 22.2.4, 22.2.7(d), 22.2.15, 22.2.16, 46 and 47.1

19. Subcontracting

19.6 The Contractor shall not subcontract (i) works with a total accumulated value greater than the specified percentage of the Contract Price, or (ii) any part of the Works for which subcontracting is not permitted as specified below;

(i) Maximum allowable accumulated value of work subcontracted (as a percentage of the Contract Price): 25(Twenty five) %

(ii) Parts of the Works for which subcontracting is not permitted: Not Applicable

20. Design and Engineering

Add the following at the end of Sub-Clause 20.2 Codes and Standard

The contractor shall supply legal copy of Standards (hard and soft copy) the Employer and the relevant cost should be loaded in the relevant items of the Bid Price Schedule.

20.3 Approval/Review of Technical Documents by Project Manager

20.3.2 Within 21 days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Subclause 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 21 days, then the said document shall be deemed to have been approved by the Project Manager.

21. Procurement

Add the following at the end of Sub-Clause 21.1

21.1. The Contractor shall adequately record the condition of roads, agricultural land and other infrastructure prior to the start of transporting materials, goods and equipment, and construction.

Add the following at the beginning of Sub-Clause 21.4

21.4 Custom Clearances**:**

The Contractor shall get themselves acquainted with the rules and regulations of Nepal with regard to customs, duties, taxes, importation and clearing of goods and equipment and the Contractor shall

follow the required procedures regardless of the relief provided by the Employer. The Employer will provide assistance whenever possible.

22. Installation

22.2 Labor

22.2.1 Engagement of Staff and Labor

The following are added at the end of 22.2.1:

(e) The Contractor shall provide the Contractor's Personnel information and documentation that are clear and understandable regarding their terms and conditions of employment. The information and documentation will be provided at the beginning of the working relationship. The information and documentation shall set out their rights under relevant labor Laws and the project's Labor Management Plan applicable to the Contractor's Personnel (which will include any applicable collective agreements), including their rights related to hours of work, wages, overtime, compensation, and benefits, as well as those arising from any requirements in the Specification. The Contractor's Personnel shall be informed when any material changes to their terms or conditions of employment occur.

(f) The Contractor shall provide project workers a written notice of termination of employment and details of severance payments in a timely manner, and in accordance with the requirements of the applicable Laws and the project's labor management plan.

(g) The Contractor shall ensure up-to-date employment records are kept that respect the rights of Contractor's Personnel to privacy and data protection.

(h) The Contractor is further responsible for ensuring that subcontractors comply with these standards and that all contracted workers have access to the grievance mechanism.

(i) The Contractor shall maintain open communication channels with workers, providing timely updates on employment conditions and project changes. Workers shall be informed of their rights and responsibilities in a language they understand.

(j) The Contractor shall maintain HR policies and labor management systems proportionate to workforce size and risk, ensuring clarity, accessibility, and compliance with applicable Laws and Employer requirements.

(k) The Contractor is *required to ensure that no less than 50% of the Contractor's Personnel consists of local labor.*

22.2.1 (a). Add the following at the end:

The Contractor shall comply with (i) the measures and requirements set forth in the IEE and EMP, to the extent it concerns impacts on affected people during construction; and (ii) any corrective or preventive actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor implementation of the resettlement plan. The Contractor shall allocate a budget for compliance with these measures, requirements and actions

22.2.3 (d). Add the following paragraph:

The Contractor shall not make employment decisions based upon personal characteristics unrelated to job requirements. The Contractor shall base the employment relationship upon equal opportunity and fair treatment and shall not

discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment or retirement, and discipline. The Contractor shall provide equal wages and benefits to men and women for work of equal value or type

22.2.4 Rates of Wages and Conditions of Labor

(c) The Contractor shall pay wages in legal tender, on time, and in full. Deductions must be lawful and transparent. Its staff, labor and other employees shall receive written wage information and records shall be maintained. The Contractor shall comply with labor and social security laws. Obligations shall not be avoided through labor-only contracting. Written contracts outlining terms of employment, wages, working hours (including overtime), safe and healthy working environment and benefits must be provided in a language understood by its staff, labor and other employees.

Add the following sub item 22.2.4 (d):

(d) The Contractor shall follow all applicable labor laws of Nepal the Contractor shall not use children as labor: (b) follow legally mandated provisions of labor, health safety, sanitation welfare and working conditions, and (c) take steps to ensure priority employment for female headed households The Contractor shall provide enabling working conditions for women workers. Breach of these provisions by the Contractor shall cause termination of the contract.

Add the following sub item 22.2.4 (e)

(e) The Contractor shall not differentiate wages between men and women for work of equal value. The Contractor shall not make employment decisions based upon personal characteristics unrelated to job requirements. The Contractor shall base the employment relationship upon equal opportunity and fair treatment and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment or retirement, and discipline.

22.2.5 Working Hours

(a) Normal working hours are: Normal working hours are: 10 AM – 5 PM except on Saturday (Off day) however, depending on the circumstances and criticality of the work nature, working hours may be changed. The proposed different or extended working hours shall, always, be compliant with the Country's Labor Legislation.

22.2.7 Health and Safety

(a) The Contractor shall throughout the contract (including the Defect Liability 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 Subcontractor's 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 Subclause 18.2 an alleviation program for Site staff and labor and their families in respect of STI and 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 Subclause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related subcontracting proposed. The program shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for the preparation and implementation this program shall not exceed the amount dedicated for this purpose.

After the existing paragraph in GCC 22.2.7 (a), add the following:

"The Contractor is responsible for establishment of preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks of the construction site work to the health and safety of local communities.

Within 28 days of the Effective Date the Contractor shall submit a detailed Site Specific Environmental, Health, and Safety Management Plan (SSEHSMP) and all the required site-specific EHS management documents based on the Bidder's Environmental, Health, and Safety Management Plan (Bidder's EHSMP) and other Bidder's EHS management documents submitted in the technical proposal, for the Project Manager 's no objection showing how he/she intends to comply with the local Health and Safety laws and regulations and other specific requirements prescribed in the Contract, taking into account the Supplementary Information in Section 6- Employer's Requirements, and addressing all the monitoring and mitigation measures set forth in the project's EIA, EHSMP, Labor Management Plan (LMP) and other relevant EHS assessment and management documents of the project attached in Section 6 – Employer's Requirements. Work shall not commence on the Site until the confirmation of no objection of the SSEHSMP and other relevant site-specific EHS management documents has been obtained from the Project Manager and is being implemented.

Where unanticipated health and safety hazards or risks become apparent during the Contract, the Contractor is required to update the SSEHSMP and other relevant site-specific EHS management documents to outline the potential impacts to site works and associated mitigation measures for the Project Manager's no objection.

The Contractor shall comply with the approved SSEHSMP and other relevant site-specific EHS management documents.

In particular, the Contractor is required to provide all personnel on site including Employer's Personnel and visitors with personal protective equipment, including protection for feet (safety boots), head, eyes, ears (safety helmets) and hands, etc. , in accordance with the Contractor's SSEHSMP and other relevant site-specific EHS management documents. The Contractor should ensure that his Subcontractors comply with the

SSEHSMP and other relevant site-specific EHS management documents and provide all such necessary equipment to their personnel.

The Contractor shall bear the costs to ensure that such measures, requirements and actions are carried out.

The Contractor shall submit semi-annual reports on the compliance of such measures to the Employer."

Add after the existing paragraph in GCC 22.2.7 (c) the following:

"In the event of a significant injury involving medical treatment or hospitalization and fatal accident the Contractor shall notify the Project Manager immediately by verbal communication and submit a formal report as soon as practicable after its occurrence. For all accidents, whether fatal or not, the Contractor shall also notify the appropriate local authorities in accordance with the Laws of the Country."

It shall be the full responsibility of the Contractor to maintain SSHSMP. If the Contractor fails to comply the Safety Provision, deduction of the payment shall be imposed to the Contractor in the form of penalty as per following:

a. **USD 100 per** event will be deducted from the progress bill if safety norms are not followed at site supported by evidence (photographs, video-graphs and any other means) and recommended by the Engineer.

b. **USD 1000 per** event will be deducted from the progress bill if accident is recorded or reported at site supported by evidence (photographs, video-graphs, reports and any other means) and recommended by the Engineer.

c. **USD 5000 per event** will be deducted from the progress bill if fatality is recorded or reported at site supported by evidence (photographs, video-graphs, reports and any other means) and recommended by the Engineer.

The Contractor shall conduct awareness campaign on anti-human trafficking, shall develop information and print material on anti-human trafficking, and shall distribute to all construction workers and the community in the Project areas throughout the Project implementation period.

The Contractor is responsible for establishment of preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks of the construction site work to the health and safety of local communities.

Within 28 days of the Commencement Date the Contractor shall submit a detailed Site-Specific Health and Safety Management Plan (SSHSMP) for the Engineer's no objection showing how he/she intends to comply with the local Health and Safety laws and regulations and other specific requirements prescribed in the Contract, taking into account the Supplementary Information in Section 6- Employer's Requirements. Work shall not commence on the Site until the confirmation of no objection of the SSHSMP has been obtained from the Engineer and is being implemented. Such confirmation of no objection by the Engineer shall not relieve the Contractor of any of his/her obligations or responsibilities under the Contract. Where unanticipated health and safety hazards or risks become apparent during the Contract, the Contractor is required to update the SSHSMP to outline

the potential impacts to site works and associated mitigation measures for the Engineer's no objection.

The Contractor shall comply with the approved SSHSMP and any corrective or preventative actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor the implementation of the project EMP through the SSHSMP.

In particular, the Contractor is required to provide all personnel on site including Employer's Personnel and visitors with personal protective equipment, including protection for feet (safety boots), head, eyes, ears (safety helmets) and hands, etc. in accordance with the Contractor's SSHSMP.

The Contractor should ensure that his Subcontractors comply with the SSHSMP and provide all such necessary equipment to their personnel.

The Contractor shall bear the costs to ensure that such measures, requirements and actions are carried out. The Contractor shall submit semi-annual reports on the compliance of such measures to the Employer.

22.2.8 Funeral Arrangements

The Contractor is responsible for such arrangement as per ethnicity of the labor.

22.2.12 **Supply of Water/Electricity**

The Contractor shall, having regard to local conditions, provide on the Site an adequate potable supply of drinking and other water for the use of Contractor's Personnel and electricity supply for construction and any other purposes at his own cost.

22.2.16 **Prohibition of Harmful Child Labor**

"Child" means a child below the statutory minimum age specified under applicable national, provincial or local law of Nepal.

22.2.17 Respectful Work Environment

The Contractor shall ensure that its employees and Subcontractors observe the highest ethi-cal standards and refrain from any form of bullying, discrimination, misconduct, and harass-ment, including sexual harassment and shall, at all times, behave in a manner that creates an environment free of unethical behavior, bullying, misconduct and harassment, including sexual harassment. The Contractor shall take appropriate action against any employees or Subcontractors, including suspension or termination of employment or subcontract, if any form of unethical or inappropriate behavior is identified.

The Contractor shall conduct training programs for its employees and Subcontractors to raise awareness on and prevent any form of bullying, discrimination, misconduct, and harassment including sexual harassment, and to promote a respectful work environment. The Contractor shall keep an up-to-date record of its employees and Subcontractors who have attended and completed such training programs and provide such records to the Employer or the Engineer at their first written request.

22.4 Add the following Sub-Clause 22.4.1 and 22.4.2:

22.4.1 The Contractor shall comply with all the Safeguards Policy Statement of ADB, National Legislatures, Environmental Acts, proposed Environmental legislatures and the proposed mitigation measures in preparing proposed site regulations and plan for approval.

The Contractor shall take all reasonable steps to protect the environment on and off the Site and avoid damage or nuisance to persons to persons or to property of the public or others resulting from pollution, noise or other causes as a consequence of his method of operation.

During the progress of the Contract, the Contractor and his Sub-contractors shall abide at all times by all existing Acts on environmental protection and rules made there under, regulations, notifications bye-laws of Government of Nepal, and any other law, bye-law, regulations that may be passed or notifications that may be issued in this respect in future and Safeguard Policy Statement of ADB.

The mitigation measures to be undertaken by the Contractor for the adverse environmental impacts have been detailed in PSR in Volume II.

22.4.2 Use of Explosives:

No blasting or work involving the use of explosives will be permitted in the Transmission Line area or adjacent areas under this Contract without prior permission from Employer and concerned govt. authorities.

22.7 Add the following at the end of first paragraph:

The materials to be removed shall be incinerated or disposed off at places which will not be unsightly or objectionable to the inhabitants of the area following all environmental requirements.

22.9 Add the followings:

Sufficient Stock of Materials

Nepal being the landlocked and the Project Site remote, the Contractor shall at all times arrange for sufficient stock of such major materials as cement, fine and coarse aggregates, reinforcing steel bars, fuel, tower members, insulators and hardwares, conductors, earthing materials. This shall not be cited as reason for the seeking time and cost overrun.

23. Tests and Inspection

23.2 Add the following at the end of this Sub-Clause:

The Employer and the Project Manager or their designated representatives shall be entitled to attend at his own cost to witness the tests for all the major equipment's as specified in the Section 6-Employers Requirements (Technical Specifications) or as specified in Appendix-5 of the Contract Agreement at Manufacturer's/Contractor's factory.

23.3 Supplementing Sub Clause 23.3

The Contractor shall intimate the Project Manager the detailed program about the tests and/or inspection and of the place and time thereof at least two (2) weeks in advance in case of domestic supplies and six (6) weeks in advance in case of foreign supplies.

23.4 Supplementing Sub-Clause GC 23.4

The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection within fifteen (15) days after completion of tests".

23.6 Add the following at the end of this Sub-Clause:

All costs incurred by the Employer including all travelling and board and lodging expenses by the repetition of the tests or false call for tests shall be borne by the Contractor pursuant to GCC Sub-Clause 23.2. Any delay in delivery due to retest or false call shall not constitute a release of the Contractor from his responsibilities for delay.

Add the following Sub Clauses:

GC 23.12 Type Test

The major equipment/materials to be supplied **(as per Appendix-5 of the form of Contract Agreement)** under the contract shall have been type tested within the last 10 (ten) years prior to the bid opening. The type tests conducted earlier should have either been conducted in accredited laboratory (accredited by the national accreditation body of the country where laboratory is located) or any equivalent. The contractor is required to furnish all the type test reports for the equipment/materials during detail design & engineering phase.

If the proposed equipment/materials are not type tested or the type test reports are incomplete and not complying with the technical specifications, contractor shall undertake to type test in the presence of authorized representative of the Employer at no additional cost implications to the Employer including travelling, boarding & lodging of client's or its representative to witness the test along with along with any transportation or costs associated with performing such tests.

GC 23.13 Routine Tests

These tests would be conducted on raw materials and other finished materials in accordance with provisions of internationally accepted Standards. Proper record of all Routine tests has to be maintained and made available to the Employer on demand.

GC 23.14 Acceptance Tests

These tests would be conducted as per Quality Assurance Programme approved by the Employer on each and every lot of finished material, which is ready for dispatch. The tests shall be conducted in the presence of Employer authorized representative(s).

Note: For all type, routine and acceptance test, the acceptance values shall be the values guaranteed by the bidder in the guaranteed technical particulars of his proposal or the acceptance test value specified in this specification, whichever is more stringent for that particular test. Correct grade and quality of all the materials including steel and zinc shall be used by the Contractor. Employer reserves the right of carrying out any inspection or test of reasonable nature at Contractor's/Manufacturer's works, or at site, or at any approved laboratory in addition to the tests as specified above to satisfy himself that the materials comply with the specifications without any extra cost.

GC 23.15 Material Dispatch Clearances

After the materials have been found acceptable a Material Dispatch Clearance (MDC) shall be issued in writing by the Owner representative without which no materials should be dispatched. Necessary procedure for packing shall be followed before dispatch of material as given in Technical Specifications.

24. Completion of the Facilities

Sub-Clause 24.8 Completion of Facilities.: Modify the Sub-clause 24.8 as follows:

24.8 Upon Operational Acceptance as per clause 25, the Employer shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.

24.9 Completion of Facilities:

add as new Sub-Clause 24.9:

24.9 Upon the completion of construction, the Contractor shall fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition as recorded by the Contractor in consonance with its obligation in Clause 21.1.

25. Commissioning and Operational Acceptance

25.2.2 The Guarantee Test of the Facilities shall be successfully completed within 30 (thirty) days from the date of Completion.

Added new clause 25.3.5

Upon Operational acceptance, the Employer shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.

26. Completion Time Guarantee

26.2 Applicable rate for liquidated damages: 0.05% of contract price per day of delay.

Maximum deduction for liquidated damages: 10 (Ten)% of contract price.

Add the following at the end of Sub-Clause 26.2:

Liquidated damages (LD) amount (as applicable) will be recovered by the Employer as per the process detailed in the ANNEXURE-1 of this SCC.

Applicable (amount or rate) for the bonus for early Completion: Not Applicable

Maximum bonus: Not Applicable

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

27. Defect Liability

27.8 Upon correction of the defects in the Facilities or any part thereof by repair/replacement, such repair/replacement shall have the Defect Liability Period extended by a **period of maximum Twelve (12)** months from the time such repair/replacement is completed and from the date of operational acceptance of the Facilities or any part thereof.

27.9 Change “Completion" in line 5 of the Sub Clause to "Operational Acceptance".

27.10 The critical components covered under the extended defect liability are **Transformers, and the period shall be Two (2) years.**

30. Limitation of Liability

30.1 (b) The multiplier of the Contract Price is: 1 (One)

31.Transfer of Ownership

31.5 In the 4th line, replace "Completion of the Facilities" by "Operational acceptance of the Facilities".

32.**Care of Facilities**

32.1 Replace all "Completion" by "Operational Acceptance**"** in GCC**.**

33. Loss of Damage

33.1 Add "and defective design, material or workmanship of the Contractor" after "the supply and installation of the Facilities" in GCC.

39. Changes Originating from Employer

39.2.4 Replace this Sub-Clause as:

"The pricing of any change shall be calculated in accordance with the rates and prices included in the contract for the items mentioned in Bid Price Schedule".

39.4 Add this new Sub-Clause as follows:

The scope of work under the package shall be as per the Section-6 "Employer's Requirement" of Bidding Documents. The quantity variation applicable for the existing scope shall be generally as per the following.
The Employer reserves the right to increase or decrease the quantity of different items of the specified goods and services to the extent of fifteen percent (15%) of the revised contract price pursuant to the GCC Clause 11.1, by way of suitable amendment to the Contract, without any change in unit rate/price and/or other terms and conditions of the Contract. However, the quantities of individual items of goods and services may vary up to any extent.

40.Extension of Time for Completion

Add the following paragraph as Sub-Clause 40.4

In addition to the submission of necessary documents for individual events or circumstances, time to time, for claim of Time for Completion.

All the cumulative documents justifying events or circumstances for Claim of Extension of Time for Completion as a whole, shall also be submitted to the Employer at least 21 (twenty-one) days prior to the expiry of the original Time for Completion of the Project (including any extension thereto).

An Interim Extension of Time may be granted by the Employer as per the process detailed in the ANNEXURE-1 of this SCC.

42. Termination

42.1 Termination for Employer's Convenience

42.1.3 (f) a reasonable amount of profit for the parts of the Works not executed by the Contractor as at the date of termination.

45. Disputes and Arbitration

45.1 The Dispute Board shall be appointed within 28(Twenty-Eight) days after the Effective Date.

The Dispute Board shall be One (1) sole member

List of potential Dispute Board members is: None

45.2 Appointment (if not agreed) to be made by: Nepal Council for Arbitration (NEPCA)

45.5 Rules of procedure for arbitration proceedings:

(a) Contracts with foreign contractors:

International arbitration shall be conducted in accordance with the rules of **UNCITRAL Arbitration Rules as at present in force**. If no rules have been specified, then the Rules of the Singapore International Arbitration Centre (SIAC) shall apply.

Arbitration shall be administered **by Singapore International Arbitration Centre (SIAC**). If no institution has been specified, then SIAC shall be the institution to administer the arbitration.

The place of arbitration shall be the place of the institution administering the arbitration.

(b) Contracts with contractors being nationals of the Employer's country: As per procedures of NEPCA.

45.6 GCC Subclause 45.6 shall be replaced with the following sentence:

In the event that a Party fails to comply with a Dispute Board decision which has become ether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Subclause 45.5 [Arbitration] for summary or other expedited relief, as may be appropriate. Subclause 45.3 [Obtaining Dispute Board's Decision] and Subclause 45.4 [Amicable Settlement] shall not apply to this reference.

46. Safeguard Policy

46.1

- The Contractor shall comply with all applicable Safeguard Policy Statement of ADB, national, provincial, and local environment laws and regulations. The Contractor shall (a) establish an operational system for managing environmental impacts, (b) carry out all of the monitoring and mitigation measures set forth in the Environment Impact Assessment (EIA)/Initial Environmental Examination ("IEE") and Environmental Management Plan ("EMP") (c) comply with any corrective or preventative actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor implementation of the initial environmental examination and the environmental management plan, and (d) allocate the budget required to ensure that such measures are carried out. The Contractor shall submit monthly, semi-annual and annual reports on the carrying out of such measures to the Employer.
- The Contractor shall comply with (i) the measures and requirements set forth in the Resettlement and Indigenous Peoples Plan (RIPP) to the extent it concerns impacts on affected people during construction; and (ii) any corrective or preventive actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor implementation of the resettlement plan. The Contractor shall allocate a budget for compliance with these measures, requirements and actions.
- The Contractor shall provide the Employer with a written notice of any unanticipated environmental, resettlement or indigenous people risks or impacts that arise during

construction, implementation or operation of the Project that were not considered in the EIA, IEE, the EMP and the RIPP.

- The Contractor shall adequately record the condition of the roads, agricultural land, and other infrastructure prior to starting to transport materials and construction; and
- Upon the completion of construction, the Contractor shall fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition as recorded by the Contractor in consonance with its obligation in the subparagraph (d).

Part A – Environmental, Health, and Safety (EHS)

Metrics for Progress Reports

Metrics for regular reporting:

a. Incidents for Nonconformance

(i) Environmental incidents or nonconformance with contract requirements as defined in EMP, including contamination, pollution, or damage to ground or water supplies, air, and soil;

(ii) Health and safety incidents, accidents, injuries that require treatment, and all fatalities;

(iii) Interactions with regulators: identify agency, dates, subjects, outcomes (report the negative if none).

b. Status of All Permits and Agreements

(i) Work permits: number required, number received, and actions taken for those not received;

(ii) Status of permits and consents:

(a) List areas and facilities with permits required (quarries, asphalt, and batch plants), dates of application, dates issued (actions to follow up if not issued), dates submitted to resident engineer (or equivalent), and status of area (waiting for permits, working, abandoned without reclamation, decommissioning plan being implemented, and others).

(b) List areas with landowner agreements required (borrow and spoil areas, camp sites), dates of agreements, and dates submitted to resident engineer (or equivalent).

(c) Identify and highlight major activities and environmental and health and safety mitigation measures undertaken in each area in the reporting period (such as land clearing, provisioning of temporary access, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation).

(d) For quarries: indicate status of relocation and compensation (completed, or details of activities and current status in the reporting period).

(e) List parts of the Site for which Notice to commence work and confirmation by the Employer as per Sub-Clause 10.2 [*Employer's Responsibilities*] was received by the Contractor and the other parts of the Site for which such Notice is pending.

c. Compliance[18]

(i) Compliance status for conditions of all relevant consents and permits for the Work, including quarries, and others: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance;

(ii) Compliance status of SSHSMP (as per Sub-Clause 22.2.7 [*Health and Safety*] and SSEMP as per Sub-Clause 9.8 [*Protection of the Environment*]): statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance; and

(iii) Other unresolved issues from previous reporting periods related to environmental and

social: continued violations, continued failure of equipment, continued lack of vehicle covers, spills not dealt with, continued compensation or blasting issues, and others. Cross-reference other sections as needed.

d. Supervision

(i) Environmental and Social Supervision

(a) Environmental specialist: number of days worked, areas inspected, number of inspections of each (road section, work camp, accommodations, quarries, borrow areas, spoil areas, swamps, forest crossings, and others), highlights of activities and findings (including violations of environmental requirements/best practices, actions taken), and reports to environmental specialist, construction, and site management;

(b) Social Specialist and Community liaison person(s): number of days worked (hours community center is open), number of people met, highlights of activities (issues raised, and others), and reports to specialist, construction, and site management.

(ii) Health and Safety Supervision

(a) Health and Safety specialist: number of days worked, number of full and partial inspections, and reports to construction and project management;

(b) Number of workers, work hours, metric of personal protection equipment (PPE) use (percentage of workers with full PPE, partial, and others), worker violations observed (by type of violation, PPE or otherwise), warnings given, repeat warnings given, and follow-up actions taken (if any);

(c) Number of partial and full site inspections (by area: road section, work camp, accommodations, quarries, borrow areas, spoil areas, work site, clinic, HIV/AIDS center, community centers, and others), highlights of activities (including violations of environmental, health and safety and social requirements observed, actions taken), and reports to health and safety specialist, construction, and site management.

e. Worker Accommodations

(i) Number of expats housed in accommodations and number of locals;

(ii) Date of last inspection and highlights of inspection including status of accommodations' compliance with national and local laws and good practice, including sanitation, space, and others; and

(iii) Actions taken to recommend or require improved conditions, or to improve conditions.

f. Training

(i) Number of new workers, number receiving induction training, and dates of induction training;

(ii) Number and dates of toolbox talks, number of workers receiving training related to Environmental, Health, and Safety (EHS);

(iii) Number and dates of communicable diseases (including sexually transmitted diseases [STDs]) sensitization and/or training, number of workers receiving training (in the reporting period and in the past), and same questions for gender sensitization and flag person training; and

(iv) Number and date of EHS-related prevention sensitization and/or training events, including number of workers receiving training on EHS Code of Conduct for Contractor's Personnel (in the reporting period and in the past), and others.

g. Grievances

List of EHS-related grievances: grievances from affected communities and Worker grievances as

recorded in the Contractor's grievance redress mechanism; traffic, road safety, and vehicles and equipment (health and safety or safeguard or environmental specialist needs to provide these requirements):

(i) Traffic and road safety incidents and accidents involving project vehicles and equipment: provide date, location, damage, cause, follow-up;

(ii) Traffic and road safety incidents and accidents involving nonproject vehicles or property (also reported under immediate metrics): provide date, location, damage, cause, and follow-up; and

h. Overall condition of vehicles or equipment (subjective judgment by environmental specialist and social specialist); nonroutine repairs and maintenance needed to improve safety and/or environmental and social performance (to control smoke, and others).Mitigations and Issues (what has been done):

(i) Environmental Mitigations

(a) Dust: number of working bowsers, number of watering per day, number of complaints, warnings given by environmentalist, actions taken to resolve; highlights of quarry dust control (covers, sprays, operational status); percentage of rock and spoil lorries with covers, and actions taken for uncovered vehicles;

(b) Erosion control: controls implemented by location, status of water crossings, environmentalist inspections and results, actions taken to resolve issues, and emergency repairs needed to control erosion or sedimentation;

(c) Quarries, borrow areas, spoil areas, asphalt plants, batch plants: identify major activities undertaken in the reporting period at each, and highlights of environmental protection—land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, and decommissioning implementation;

(d) Blasting: number of blasts (and locations), status of implementation of blasting plan (including notices, evacuations, and others), and incidents of off-site damage or complaints (cross-reference other sections as needed);

(e) Spill clean-ups, if any: material spilled, location, amount, actions taken, and disposal (report all spills that result in water or soil contamination;

(f) Waste management: types and quantities generated and managed, including amount taken off-site (and by whom) or reused, recycled, or disposed on-site;

(g) Details of tree plantings and other mitigations required undertaken in the reporting period;

(h) Details of water and swamp protection mitigations required undertaken in the reporting period;

(i) The Contractor shall identify and report on any special or temporary right of way and any additional facility that have temporary and/or permanent impacts on affected persons' assets, access to assets, and/or livelihoods (income sources). It shall put in place corresponding mitigation measures, and implement them;

(j) Restoration of the environment due to damage caused by the construction activities

(ii) Health and Safety Mitigations

(a) Occupational Health and Safety (OHS): Implement OHS Plan; provide and enforce PPE use; conduct safety inspections and toolbox talks.

(b) compliance status of labor management plan and prevention, mitigation, and response measures: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance.

(c) Establish systems to monitor their own employment practices and the practices of any appointed sub-contractors.

(d) Workforce Management: Ensure all workers have valid contracts, are registered, and receive induction on EHS code of conduct and grievance mechanism.

(e) Worker Accommodation and Welfare: Maintain compliant, gender-segregated, and hygienic accommodation with clean water, sanitation, and waste systems.

(f) Grievance Mechanism: Maintain and publicize Contractor's personnel grievance mechanism and grievance mechanism for the project; ensure anonymity and timely resolution of worker grievances.

(g) Training and Capacity Building: Conduct training on OHS, labour rights, and respectful workplace behaviour.

(h) Contractor and Subcontractor Compliance: monitor contractors for compliance with labor, OHS, and welfare standards.

(i) Child and Forced Labor Prevention: Screen workforce; monitor supply chain; remediate any violations immediately.

(j) Details of hazard prevention and control mitigations required undertaken in the reporting period.

Part B – Performance Damages

NOTE TO EMPLOYER

The Employer should specify which KPIs are intended to be applied, including the relevant criteria mentioned under MPC in Section 3.

1. General

The Key Performance Indicators (KPIs) listed here shall be assessed and/or measured accordingly and financial deductions shall be applied. The following are in addition to Performance Damages as defined under Sub-Clauses 1.1.63 and as set out in the Schedule of Performance Guarantees.

2. Assessment of KPI

Unless explicitly specified otherwise within the KPI (e.g. quantitative KPIs), all qualitative KPIs will be assessed as follows.

KPIs will be assessed and/or measured and then scored according to the established measurement methodology, using four categories: Unsatisfactory, Partially Meeting Expectations, Satisfactory Performance, and Outstanding Performance. Each assessment shall be conducted initially by the Contractor, reported in its monthly (or Final as applicable) payment statements, and shall be reviewed and decided by the Project Manager. [*A sample table is given below*]

KPI	Description of KPI	Rating	Justification (the Contractor)	Comments (the Project Manager)
1. […]	[…]	Assign the relevant one from *Unsatisfactory, Partially meeting expectations, Satisfactory performance, Outstanding performance*		
2. […]	[…]			
3. […]	[…]			

The Parties agree that financial deductions shall be imposed only in the event of unsatisfactory performance or partial fulfillment of expectations, as described below. The expectations shall be assessed based on the requirements of the Contract or the Bid of the Contractor (which was evaluated under MPC), whichever sets a higher standard or any changes arising during implementation which have been approved by the Project Manager as appropriate.

The cumulative deductions under this Part B shall not exceed X%[19] of the Contract Price. [*The Employer should take into account the cumulative limit of X% in determining the percentages which shall be imposed as financial deductions in the table below.*] The limit of X% under this Part B and the limit of delay damages which may be applied under Sub-Clause 26.2 [liquidated damages], combined shall not exceed XX%[20]. Should the financial deductions reach the X% threshold and the Contractor continues in failing to meet the requirements outlined in this Part B, such continued non-compliance shall be treated as per relevant provisions of the Contract.

3. Approach and Methodology (or any other aspects included in the MPC criteria, under Section 3 of the Bidding Document)

The assessment of these KPI will be conducted on a monthly basis, unless otherwise stated, and any resulting implications shall be reflected into the interim payments.

[19] Recommended 5%. Depending on the size and complexity of the contract package, this percentage may be adjusted.

[20] It is recommended that the financial deductions under Part B and the limit under liquidated damages combined, shall not exceed 10%

Example KPIs [Employer should include only 1 KPI]

Key Performance Indicator	*Measurement/ Deviation*	*Implication*
i. Bidder proposed batching plant for concrete production is established	*Outstanding Performance*	*None*
	Satisfactory Performance	*None*
	Partially meeting expectations	*Noncompliance x […..]% of Accepted Contract Amount[1] / month*
	Unsatisfactory	*Noncompliance x […..]% of Accepted Contract Amount[1] / month*

[1] The Employer should set an appropriate percentage. The percentages should be proportional to the importance and weight of the relevant criteria / KPI.

4. Local Participation

The evaluation of this Local Participation KPI will be conducted only once upon the conclusion of the Contract, with any resulting implications reflected into the Statement at Completion. A monthly or interim measurement shall not be made.

Example KPIs [Employer should include only 1 KPI]

Key Performance Indicator	**Measurement/ Deviation**	***Implication***
Percentage of local labor—Measures how much local labor is utilized in comparison to what was identified in the Contract or in the bid. (whichever sets higher standard)	Outstanding Performance	*None*
	Satisfactory Performance	*None*
	Partially meeting expectations	*Noncompliance 0.25% [zero point two five]% of Accepted Contract Amount[1]*
	Unsatisfactory	*Noncompliance 0.5 [zero point five]% of Accepted Contract Amount[1]*

[1] The Employer may set an appropriate percentage for damage. For illustration:

If a bidder proposes 50,000 person-days of local labor and fails to fully comply at the end of the Time for Completion, a damage of X% of the accepted contract amount will be applied. In the event of partial compliance, the percentage of damages may be prorated based on the level of achievement, for example:

$$\textit{Actual compliance} = \frac{30{,}000}{50{,}000} \times X\% = Y\%$$

Thus, if the contractor provides only 30,000 person-days instead of 50,000, the prorated damage of Y% will be applied.

5. EHS Requirements

The assessment of these KPI will be conducted on a monthly basis and any resulting implications reflected into the interim payments.

Example KPIs [Employer should include only 1 KPI]

Key Performance Indicator	**Measurement/ Deviation**	***Implication***
*Noncompliance with Environmental, Health, and Safety management measures as identified in the Contract or in the bid (whichever **sets higher standard**)*	Outstanding Performance	*None*
	Satisfactory Performance	*None*
	Partially meeting expectations	*Noncompliance x […..]% of Accepted Contract Amount[3]*
	Unsatisfactory	*Noncompliance x […..]% of Accepted Contract Amount[3]*

[1] The Employer may set an appropriate percentage.

NOTE TO EMPLOYER

Aspects that can be considered in setting EHS related KPIs

1. Environmental l Management Plan (EMP)
(a) % of EMP measures implemented vs. planned
(b) # of non-compliance warning letters and findings in EMP monitoring and audits
(c) Timeliness of EMP reporting (% of reports submitted on schedule)

2. Health and Safety Management Plan (HSMP)
(a) Number of Work-Related Fatalities
(b) Lost Time Injury Frequency Rate (LTIFR) (# of lost-time injuries per million hours worked)
(c) % of workforce trained in HSMP protocols
(d) % of H&S internal audits and inspections conducted versus plan
(e) Number of emergency drills conducted per year
(f) PPE compliance rate (% of workers observed using required PPE)

3. Labor Management Plan
(a) % of workforce contracts compliant with labor standards
(b) # of grievances related to labor issues resolved within timeframe
(c) % of sub-contractors verified for compliance prior to mobilization % of subcontractors audited for labor compliance
(d) % of workers trained on labor and working conditions topics

4. Grievance Mechanism
(a) % of grievances resolved within agreed timeframe
(b) Average resolution time (days)
(c) # of grievances escalated beyond first tier
(d) Accessibility score (availability of multiple channels: hotline, in-person, digital)

5. Stakeholder Engagement
(a) # of consultations conducted per quarter
(b) % of stakeholder groups represented in consultations (women, vulnerable groups)
(c) % of commitments made to stakeholders fulfilled
(d) Stakeholder satisfaction rating (from feedback forms)

6. Training and Capacity Building
(a) % of workforce trained in EHS and labor and working condition topics
(b) # of refresher trainings conducted annually
(c) Training effectiveness score (post-training assessment results)
(d) % of subcontractors included in training programs

Part C – Bonuses (Not-Applicable)

NOTE TO EMPLOYER

The Employer should specify which Bonus are intended to be applied, including the relevant criteria for measurement. The bonuses here are additional to the bonus specified under Sub-Clause 26.3.

The Contractor shall be entitled to a bonus payment if the following is (are) completed earlier than the stipulated time or better than the requirement (as the case may be). The amount of bonus is stated below.

Aspect of Performance	Amount the Contractor is paid if the target stated is achieved
Example: Submission of Clause 18.1 Programme early and obtain Project Manager's No objection with maximum 2 iterations and the number of days between submission of the programme and acceptance of the programme by the Project Manager …days.	
… Quality	
…EHS	

Section 9: Contract Forms

This Section contains the Letter of Acceptance, the Contract Agreement, and Appendixes to the Contract Agreement, which, once completed, will form part of the Contract. When required, the Performance Security and Advance Payment Security, substantially in the forms provided, shall be submitted by the successful Bidder after contract award.

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Notice of Intention for Award of Contract

[*on letterhead paper of the Employer*]

[*date of notification*]

To: [*name of the Bidder*]

Attention: [*insert name of the Bidder's authorized representative*]

Address: [*insert address of the Bidder's authorized representative*]

Telephone and/or Fax numbers: [*insert telephone and/or fax numbers of the Bidder's authorized representative*]

E-mail Address: [*insert e-mail address of the Bidder's authorized representative*]

This is to notify you of our intention to award the contract [*insert name of the contract and identification number, as given in the Bid Data Sheet*]. You have [*insert number of days as specified in ITB 44.1*] days from the date of this notification to (i) request for a debriefing in relation to the evaluation of your Bid; and/or (ii) submit a bidding-related complaint in relation to the intention for award of contract, in accordance with the procedures specified in ITB 49.1.

The summary of the evaluation is as follows:

1. List of Bidders [*insert names of all Bidders that submitted a bid together with the corresponding bid price at opening and evaluated bid price (if applicable)*]

Name of Bidder	Bid Price as Read Out at Opening	Evaluated Bid Price

2. Reason(s) Why Your Bid Was Unsuccessful

[*provide reasons separately to each unsuccessful Bidder why its bid was unsuccessful*]

3. The Successful Bidder

Name of Bidder:	
Address:	
Accepted Contract Amount:	
Duration of Contract:	
Scope of the Contract Awarded:	
Amount Performance Security Required:	

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

Invitation to Finalization of the Draft Contract Before Notification of Award

[*on letterhead paper of the Employer*]

[*date]*

To: [*name and address of the Bidder*]

Subject: [*please specify]*

Contract No.: [*please specify]*

This is to notify you that your Bid dated [date] for execution of the [name of the contract and identification number, as given in the Bid Data Sheet] is hereby found as the Most Advantageous Bid by our Agency,

You are hereby invited to discussions to finalize the draft contract, through […enter means of discussions such as in-person meetings, venue, or electronic correspondence…]. The discussions on the finalization of the draft contract will include the topics given in the Attachment to this invitation.

Authorized Signature: ……

Name and Title of Signatory: ……

Name of Agency: ……

Attachment: Topics to be discussed during finalization of the draft contract.

NOTE

The invitation to finalization of the draft contract provisions shall consider the following:

Finalization of draft contract can be made through in-person meetings or through correspondence, including electronic means through authorized emails of the parties to the draft contract.

During the discussions for finalization of the draft contract, no substantial changes shall be made to the Bid of the Bidder, scope of the Works, provisions of the Contract or any other aspects of the Bidding Documents, which would unfairly affect the competitive position of other bidders.

Without prejudice to the above, discussions during finalization of the draft contract may include, if applicable, the following; finalization of price adjustment indices, KPIs in relation to the Bid of the successful Bidder which have been scored under MPC, schedules of payment currencies, mobilization plan, construction seasons, and any other matters which need clarification prior to issuance of Notification of Award.

Parties shall take into account that the finalization of the draft contract provisions is not a negotiation stage, but clarification and finalization of various aspects within the Contract, before signing of the contract. At this stage, the Employer shall not use this step to reject the Bid of the Bidder and move to the second ranked Bidder, or the successful Bidder shall not refuse to sign the Contract based on any disagreements. If such circumstances arise, the Employer shall seek ADB's no-objection prior to declaring that a contract with the successful bidder cannot be signed.

Letter of Acceptance

[on letterhead of Employer]

[*date*]

To: [*Name and address of the contractor*]

Subject:

Contract No. [*please specify*]

This is to notify you that your Bid dated [*date*] for execution of the [*name of the contract and identification number, as given in the Bid Data Sheet*] for the Contract Price in the aggregate of [*amounts in words and figures*] [*name of currency*], as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract and any additional security required as a result of the evaluation of your bid, using for that purpose one of the Performance Security Forms included in Section 9 (Contract Forms) of the Bidding Document.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

Attachment: Draft Contract Agreement

Beneficial Ownership Disclosure Form

NOTE

NOTE TO BIDDERS
This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful Bidder. In case of joint venture, the Bidder must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.
For the purposes of this Form, a Beneficial Owner of a Bidder is any natural person who ultimately owns or controls the Bidder by meeting one or more of the following conditions:

- *directly or indirectly holding 25% or more of the shares*
- *directly or indirectly holding 25% or more of the voting rights*
- *directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder.*

Contract No.: *[please specify]*

To: *[insert complete name of Employer]*

In response to your request in the Letter of Acceptance *dated [insert date of letter of Acceptance]* to furnish additional information on beneficial ownership: *[select one option as applicable and delete the options that are not applicable]*

(i) we hereby provide the following beneficial ownership information.

Details of beneficial ownership

Identity of Beneficial Owner	Directly or indirectly holding 25% or more of the shares (Yes / No)	Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)	Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Bidder (Yes / No)
[include full name (last, middle, first), nationality, country of residence]			

OR

(ii) *We declare that there is no Beneficial Owner meeting one or more of the following conditions:*

- directly or indirectly holding 25% or more of the shares
- directly or indirectly holding 25% or more of the voting rights
- directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder

OR

(iii) We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Bidder shall provide explanation on why it is unable to identify any Beneficial Owner]

- directly or indirectly holding 25% or more of the shares
- directly or indirectly holding 25% or more of the voting rights

- directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder]"

Name of the Bidder: *[*insert complete name of the Bidder*]

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

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

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

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

* In the case of the Bid submitted by a Joint Venture specify the name of the Joint Venture as Bidder. In the event that the Bidder is a joint venture, each reference to "Bidder" in the Beneficial Ownership Disclosure Form (including this Introduction thereto) shall be read to refer to the joint venture member.

** Person signing the Bid shall have the power of attorney given by the Bidder. The power of attorney shall be attached with the Bid Schedules.

Contract Agreement

THIS CONTRACT AGREEMENT made on the [*insert number*] day of [*insert month*], [*insert year*], BETWEEN

(1) [*name of the Employer*], a corporation incorporated under the laws of [*country of the Employer*] and having its principal place of business at [*address of the Employer*] (hereinafter called "the Employer"), and (2) [*name of the contractor*], a corporation incorporated under the laws of [*country of the contractor*] and having its principal place of business at [*address of the contractor*] (hereinafter called "the Contractor").

WHEREAS the Employer desires to engage the Contractor to design, manufacture, test, deliver, install, complete, and commission certain Facilities, viz. [*list of facilities*] ("the Facilities") and the Contractor have agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

Article 1 Contract Documents

1.1 Contract Documents (Reference GCC Clause 2)

The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract Agreement:

(a) This Contract Agreement and the Appendixes hereto

(b) Letter of Technical Bid

(c) Letter of Price Bid and Price Schedules submitted by the Contractor

(d) Special Conditions of Contract including attachments

(e) List of Eligible Countries that was specified in Section 5 of the Bidding Document

(f) General Conditions of Contract

(g) Specifications including EHS personnel, and equipment requirements

(h) Drawings

(i) Environmental, Health, and Safety (EHS) Code of Conduct for Contractor's Personnel

(j) Environmental, Health, and Safety Management Plan (EHSMP) and other EHS assessment and management documents

(k) Other completed Bidding Forms submitted with the Letter of Bid

(l) Any other documents forming part of the Employer's Requirements

(m) Any other documents forming part of the Contract[21]

1.2 Order of Precedence (Reference GCC Clause 2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the

[21] Tables of Adjustment Data may be added if the contract provides for price adjustment (see GCC 11).

order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.

1.3 Definitions (Reference GCC Clause 1)

Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions.

Article 2 Contract Price and Terms of Payment

2.1 Contract Price (Reference GCC Clause 11)

The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of [*amounts of foreign currency in words*], [*amounts in figures*] as specified in Price Schedule No. 5 (Grand Summary), [*amounts of local currency in words*], [*amounts in figures*], or such other sums as may be determined in accordance with the terms and conditions of the Contract.

2.2 Terms of Payment (Reference GCC Clause 12)

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

The Employer shall 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 [*equal to the total named in Schedule 1 less Insurance, Clearing, Forwarding and Transportation up to Site less the advance payment less Tax Deduction at Source (TDS)/Final Tax less retention money to be made for plant and mandatory spare parts supplied from*]; and shall be subject to the Uniform Customs and Practice for Documentary Credits 1993 Revision, ICC Publication No. 500.[22]

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

Article 3 Effective Date

3.1 Effective Date (Reference GCC Clause 1)

The Effective Date upon which the period until the Time for Completion of the Facilities shall be counted from is the date when all of the following conditions have been fulfilled:

(a) This Contract Agreement has been duly executed for and on behalf of the Employer and the Contractor.

(b) The Contractor has submitted to the Employer the performance security and the advance payment guarantee.

(c) The Employer has paid the Contractor the advance payment. *(*The day on which the Employer sends payment recommendation to the Bank shall be considered the date of payment*)*.

Each party shall use its best efforts to fulfill the above conditions for which it is responsible as soon as practicable.

[22] Or Uniform Customs and Practice for Documentary Credits 2007 Revision, ICC Publication No. 600 (or the latest version).

3.2 If the conditions listed under 3.1 are not fulfilled within 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.

3.3 If the contractor fails to submit the Advance Payment Guarantee within sixty days from the contract signing date, then the contract will be automatically effective from sixty first day of the contract signing date.

Article 4 Communications

4.1 The address of the Employer for notice purposes, pursuant to GCC 4.1 is [*Employer's address*].

4.2 The address of the Contractor for notice purposes, pursuant to GCC 4.1 is [*Contractor's address*].

Article 5 Appendixes

5.1 The Appendixes listed in the attached List of Appendixes shall be deemed to form an integral part of this Contract Agreement.

5.2 Reference in the Contract to any Appendix shall mean the Appendixes attached hereto, and the Contract shall be read and construed accordingly.

IN WITNESS WHEREOF the Employer and the Contractor have caused this Contract Agreement to be duly executed by their duly authorized representatives the day, month, and year first above written.

Signed by, for, and on behalf of the Employer

[*Signature*]

[*Title*]

in the presence of

[*Signature*]

[*Title*]

Signed by, for, and on behalf of the Contractor

[*Signature*]

[*Title*]

in the presence of

[*Signature*]

[*Title*]

APPENDIXES

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 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 9: Environmental, Health, and Safety Code of Conduct

Appendix 1: Terms and Procedures of Payment

In accordance with the provisions of GCC Clause 12 (Terms of Payment), the Employer shall pay the Contractor in the following manner and at the following times, based on the Price Breakdown given in the section on Price Schedules. Payments will be made in the currencies quoted by the Bidder unless otherwise agreed between the parties. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

(A) Terms of Payment

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

In respect of plant and mandatory spare parts supplied from abroad, the following payments shall be made:

Ten percent (10%) of the total CIP amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the plant and mandatory spare parts delivered to the site, as evidenced by delivery documents.

Seventy five percent (75%) of the total or pro rata CIP or amount upon Incoterm “CIP,” upon delivery to the site within 45 days after receipt of invoice.

The items in Schedule No. 1 shall be supplied and delivered in two (2) lots of equal quantity and accordingly payment shall be made in two installments. The second lot shall be dispatched & delivered after the installation of 50% of the items delivered in first lot.

Ten percent (10%) of the total or pro rata CIP or amount upon issue of the Completion Certificate, within 45 days after receipt of invoice.

Five percent (5%) of the total or pro rata CIP or amount upon issue of the Operational Acceptance Certificate, within 45 days after receipt of invoice.

Letter of Credit will be issued in favor of the Contractor by deducting Insurance, Clearing, Forwarding and Transportation up to Site, TDS (Tax deduction at source)/Final Tax less advance payment and less retention amounts.

TDS/Final Tax will be applicable as per following:

a. 1.5% TDS is applicable if the Contractor receives the payment through Letter of Credit (LC) in the Employer’s country.

b. 5% Tax Deduction as the final tax assessment is applicable if the Contractor receives the payment through Letter of Credit (LC) outside of the Employer’s country.

Note: Insurance, Clearing, Forwarding and Transportation up to Site amount will be paid through withdrawal application (WA).

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

In respect of plant and mandatory spare parts supplied from within the Employer's country, the following payments shall be made:

Ten percent (10%) of the total EXW amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the plant and mandatory spare parts delivered to the site, as evidenced by delivery documents.

Seventy five percent (75%) of the total or pro rata EXW amount upon Incoterm "Ex-Works," upon delivery to the site within 45 days after receipt of invoice.

The items in Schedule No. 1 shall be supplied and delivered in two (2) lots of equal quantity and accordingly payment shall be made in two installments. The second lot shall be dispatched & delivered after the installation of 50% of the items delivered in first lot.

Ten percent (10%) of the total or pro rata EXW amount upon issue of the Completion Certificate, within 45 days after receipt of invoice.

Five percent (5%) of the total or pro rata EXW amount upon issue of the Operational Acceptance Certificate, within 45 days after receipt of invoice.

TDS (Tax deduction at source) will be deducted from each payment as applicable under the Rules and Regulations of the Government of Nepal.

Payment(s) under this schedule will be made in Local currency in the account of the Contractor maintained in Nepal.

Schedule No. 3 – Design Services

In respect of design services for both the foreign currency and the local currency portions, the following payments shall be made:

Ten percent (10%) of the total design services amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer.

Ninety percent (90%) of the total or pro rata design services amount upon acceptance of design by the Project Manager within 45 days after receipt of invoice.

TDS (Tax deduction at source) will be deducted from each payment as applicable under the Rules and Regulations of the Government of Nepal.

Payment(s) under this schedule will be made in Local currency in the account of the Contractor maintained in Nepal.

Schedule No. 4 – Installation and Other Services

In respect of installation services for both the foreign and local currency portions, the following payments shall be made:

Ten percent (10%) of the total installation and other services amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of work performed by the Contractor as evidenced by the invoices for installation services.

Seventy five percent (75%) of the measured value of work performed by the Contractor, as identified in the said Program of Performance, during the preceding month, as evidenced by the Employer's authorization of the Contractor's application, will be made monthly within 45 days after receipt of invoice.

Ten percent (10%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Completion Certificate, within 45 days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Operational Acceptance Certificate, within 45 days after receipt of invoice.

Payment Related to Implementation of Project level Environmental, Health and Safety Management Plan-(Schedule 4-B Only)

- Related amount shall be paid on a quarterly basis after the **date of contract effectiveness** for an amount equal to that quoted amount in **Schedule 4-B.**
- In case of non-compliance by Contractor, warning letters/non-compliance letters shall be issued by Project Manager. In case of issuance of more than two such warning letters/non-compliance letters in a quarter period, the above-mentioned amount for that quarter shall be forfeited and shall not be payable to the Contractor under the contract.

  TDS (Tax deduction at source) will be deducted from each payment as applicable under the Rules and Regulations of the Government of Nepal.

  Payment(s) under this schedule will be made in the account of the Contractor maintained in Nepal.

Payment Related to Implementation of Build4Skill Program-(Schedule 4-C Only)

- Direct Trainee Cost related to each trainee shall be released at the end of the month after the verification of monthly attendance over the training period.

- Administrative cost and Capacity building Cost shall be lump sum based according to BPS.
- If the training has to be conducted in multiple lots due to insufficient number of trainees
    - The decision to continue with available number of trainees shall remain in Employer.
    - Administrative cost and Capacity building Cost shall be released on the pro rata basis
- Administrative cost and Capacity building Cost shall be paid on two installments over the training period.

TDS (Tax deduction at source) will be deducted from each payment as applicable under the Rules and Regulations of the Government of Nepal.

Payment(s) under this schedule will be made in the account of the Contractor maintained in Nepal.

In the event that the Employer fails to make any payment on its respective due date, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate of 0.25 (zero point two five) percent (%) per month for period of delay until payment has been made in full.

(B) Payment Procedures

When applying for certification and making payments, the procedures shall be as follows:

a. Local Currency

Eligible claims for local currency payment shall be made through withdrawal application (WA). Invoices shall be submitted to the Project Office which shall verify the completed jobs/works and certify the invoice for payment. The Project Office shall then recommend certified invoice for their payment to Project Management Directorate Office, which shall then be forwarded to ADB for payment.

b. Foreign Currency

Foreign Currency payment shall be made through Letter of Credit (L/C). The charges for establishment of letter of credit within the territory of Nepal shall be borne by the Employer, and outside Nepal shall be borne by the Contractor.

c. Invoices

The Contractor shall submit the invoices (original) in triplicate to the Project Office whenever an invoice is required to be submitted as per provision of the Contract. Invoices should be duly certified by Project Manager.

d. Documentation Required for Payment

Claims for payment must be supported by the following documentation as specified hereinafter; Requests for reimbursement for the cost of equipment materials, freight, transportation and

insurance shall be supported by the documents as specified in the Letter of Credit for supply of plant and equipment from abroad (each copy to be certified by the Contractor or the Contractor's representative to be a true copy of the document of which it is a copy)

Additional Sub-Clause for Submission of Bills for Payment:

i) All Payments for the works in part or full shall be based upon measurements or otherwise as per the Contract. Immediately after execution of foundation of any structure or otherwise, but before filling the trench or foundation, the Contractor shall take and record measurements in presence of the authorized representatives of the Employer.
ii) All Measurements recorded in a Measurement Book (MB) issued by the Employer should be signed with date by the Contractor and the Employer.
iii) The Value of work executed shall be determined by the Employer.
iv) The Contractor seeking any payment shall submit the bills with the relevant MBs and other requisite documents, duly signed by the site representatives of the Employer, to the Employer. The Employer will then verify the bills and approve for release of payment.

Appendix 2: Price Adjustment (Not Applicable)

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:

$$P_1 = P_o \times \left(a + b\frac{L_1}{L_o} + c\frac{M_1}{M_o} \right) - P_o$$

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 indexes 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 indexes in the country of origin on the base date and the date for adjustment, respectively

NOTE

a + b + c = 100%

Conditions Applicable to Price Adjustment

The base date shall be the date 28 days prior to the deadline for submission of the Bid.

The date of adjustment shall be the midpoint of the period of manufacture or installation of the 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 indexes, 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.

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

Appendix 3: Insurance Requirements

(A) Types of Insurance to Be Taken Out by the Contractor

In accordance with the provisions of GCC Clause 34, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the types of insurance 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.

Amount [in currency(ies)]	Deductible limits [in currency(ies)]	Parties insured [names]	From [place]	To [place]
110% of total price for plant and equipment	(*)	Contractor	Manufacturer place/cargo warehouse	Site Delivery

(*) Excess 5% of claimed amount subject to minimum of NPR. 20,000 for Normal and NPR. 80,000 for act of God perils and collapse.

(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.

Amount [in currency(ies)]	Deductible limits [in currency(ies)]	Parties insured [names]	From [place]	To [place]
110% of total price for plant and equipment	(*)	Contractor	Site Delivery	Operational Acceptance Certificate

(*) Excess 5% of claimed amount subject to minimum of NPR. 10,000 or its equivalent for Normal and NPR. 30,000 or its equivalent for testing 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 (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.

Amount [in currency(ies)]	Deductible limits [in currency(ies)]	Parties insured [names]	From [place]	To [place]
NPR. 1,000,000 or its equivalent as in (b) above		Contractor's Employee	Commencement of Work	Operational Acceptance Certificate
NPR. 1,000,000 or its equivalent as in (b) above		Third Party personnel	Commencement of Work	Operational Acceptance Certificate
NPR. 1,000,000 or its equivalent as in (b) above		Employer's Property	Commencement of work	Operational Acceptance Certificate

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors (whether owned by them or not) 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 Insurance

The Contractor is also required to take out and maintain at its own cost the following types of insurance:

Details:

Amount [in currency(ies)]	Deductible limits [in currency(ies)]	Parties insured [names]	From [place]	To [place]

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Subclause 34.1, except for the Third Party Liability, Workers' Compensation, and Employer's Liability Insurance, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GCC Subclause 34.1, except for the Cargo, Workers' Compensation, and Employer's Liability Insurance. 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.

(B) Types of Insurance to Be Taken Out by the Employer

The Employer shall at its expense take out and maintain in effect during the performance of the Contract the following insurance policies. (None)

Details:

Amount [in currency(ies)]	Deductible limits [in currency(ies)]	Parties insured [names]	From [place]	To [place]

Appendix 4: Time Schedule

The Contractor shall submit the detail implementation schedule. The Contractor shall be required to indicate the number of lots that it proposes for the supply of materials in schedule 1 and 2.

4.1 Description of Facilities:

Name of Facilities	Completion Time required by the Employer from the Effective Date	Completion date guaranteed by the Contractor from the Effective Date
Design, Supply, Delivery, Installation, Testing and Commissioning of 11/0.4/0.23 kV Lines and Transformer Installation works for Network Rehabilitation and Electrification in Karnali Province	**1095 (One thousand and Ninety-Five) Days**	

4.2 The activity (ies) under the Contractor's programme for Project Completion shall be in the form of a master network (MNW) and shall identify the various activities like design, engineering, manufacturing, supply, installation, factory testing, transportation to site, site testing and commissioning, trial operation and Taking Over etc. of the Facilities or specific part thereof (where specific parts are specified in SCC). The network shall conform to the above Project Completion Schedule.

This master network will be discussed and agreed before Award in line with above, engineering drawing and data submission schedule shall also be discussed and finalized before Award. Liquidated damages for delay in successful completion of the Facilities or specific part thereof (where specific parts are specified in SCC) and Operational Acceptance at rates specified in relevant SCC clause shall be applicable beyond the date specified above.

4.2 The Employer reserves the right to request minor changes in the work schedule at the time of Award of Contract to the successful bidder.

4.3 The successful bidder shall be required to prepare detailed Network(s) and project implementation plans & programmes and finalize the same with the Employer as per the requirement specified in Technical Specifications, which shall from a part of the Contract.

Appendix 5: List of Major Items of Plant and Services and List of Approved Subcontractors

A list of major items of plant and services is provided below.

The following Subcontractors and Manufacturers are approved for carrying out the item of the facilities indicated. Where more than one Subcontractor is listed, the Contractor is free to choose between them, but it must notify the Employer of its choice in good time prior to appointing any selected Subcontractor. In accordance with GCC Subclause 19.1, the Contractor is free to submit proposals for Subcontractors for additional items from time to time. No Subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the Employer and their names have been added to this list of Approved Subcontractors.

Major Items of Plant and Services	Approved Subcontractors and Manufacturers	Nationality

Appendix 6: Scope of Works and Supply by the Employer (Not Applicable)

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

All personnel, facilities, works, and supplies will be provided by the Employer 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 GCC Subclause 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)

Appendix 7: List of Documents for Approval or Review

Pursuant to GCC Subclause 20.3.1, the Contractor shall prepare, or cause its Subcontractor to prepare, and present to the Project Manager in accordance with the requirements of GCC Subclause 18.2 (Program of Performance), the following documents for

(A) Approval

1.Work Program

2.Work Procedure

3.Manufacturers, prior to placing of order

4.Design, calculations and drawings of Plant & Equipment

5. All Installation drawings.

6. …….

7. …….

8. Any other documents as desired by the Employer

(B) Review

As mentioned in the relevant chapter/Section of the Technical Specifications of the Bidding documents and the following:

1.Any necessary documents as desired by the Employer

Note: Contractor shall furnish the exhaustive list, which shall be discussed and finalized for incorporation into the Contract Agreement.

Appendix 8: Functional Guarantees

1. General

This Appendix sets out

(a) the functional guarantees referred to in GCC Clause 28 (Functional Guarantees);

(b) the preconditions to the validity of the functional guarantees, either in production and/or consumption, set forth below;

(c) the minimum level of the functional guarantees;

(d) the formula for calculating 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:

3. Functional Guarantees

Subject to compliance with the foregoing preconditions, the Contractor guarantees as follows:

3.1 Production Capacity

3.2 Raw Materials and Utilities Consumption

4. Failure in Guarantees and Liquidated Damages

4.1 Failure to Attain Guaranteed Production Capacity

If the production capacity of the facilities attained in the guarantee test, pursuant to GCC Subclause 25.2, is less than the guaranteed figure specified in para. 3.1 above, but the actual production capacity attained in the guarantee test is not less than the minimum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications, and/or additions to the Facilities, pursuant to GCC Subclause 28.3, then the Contractor shall pay liquidated damages at the rate of **double** for every complete 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 1%.

4.2 Raw Materials and Utilities Consumption in Excess of Guaranteed Level

If the actual no load and full load losses of any transformer exceed the guaranteed values, then the payment for the supply of transformers shall be made by deducting the amount calculated for losses that exceed the guaranteed values. The amount for such losses is more than the guaranteed values shall be calculated as two times multiplied by loss values in excess of the guaranteed values as given below

- For Transformer

(i) Value of No-Load Loss=$ 5670 per KW
(ii) Value of Load Loss = $ 2210 per KW

Any transformer shall be rejected if losses (No load and load loss) exceed the guaranteed value by an amount more than the following

Total losses: 10 %
Component losses: 15% (unless the total losses exceed 10%)

If the actual measured figure of specified raw materials and utilities consumed per unit (or their average total cost of consumption) exceeds the guaranteed figure specified in para. 3.2 above (or their specified average total cost of consumption), but the actual consumption attained in the guarantee test, pursuant to GCC Subclause 25.2, is not more than the maximum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications, and/or additions to the Facilities pursuant to GCC Subclause 28.3, then the Contractor shall pay liquidated damages at the rate of **double** for every complete 1% of the excess consumption of the Facilities, or part thereof, of less than a complete 1%.

4.3 Minimum Levels

Notwithstanding the provisions of this paragraph, if as a result of the guarantee test(s), the following minimum levels of performance guarantees (and consumption guarantees) are not attained by the Contractor, the Contractor shall at its own cost make good any deficiencies until the Facilities reach any of such minimum performance levels, pursuant to GCC Subclause 28.2:

(a) production capacity of the Facilities attained in the guarantee test: 95% of the guaranteed production capacity,

and/or

(b) average total cost of consumption of all the raw materials and utilities of the Facilities: 105% of the guaranteed figures.

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 **10 (Ten) percent %** of the Contract price

Appendix 9: Environmental, Health, and Safety Code of Conduct

Environmental, Health, and Safety Code of Conduct for Contractor's Personnel Form

ENVIRONMENTAL, HEALTH, AND SAFETY
CODE OF CONDUCT FOR CONTRACTOR'S PERSONNEL

We are the Contractor, [*enter name of Contractor*]. We have signed a contract with [*enter name of Employer*] for [*enter description of the Works*]. These Works will be carried out at [*enter the Site and other locations where the Works will be carried out*]. Our contract requires us to implement measures to address environmental, health, and safety (EHS) risks related to the Works.

This EHS Code of Conduct is part of our measures to deal with environmental, health, and safety risks related to the Works as contained in the Environmental, Health, and Safety Management Plan (EHSMP) and other relevant project documents. It applies to all our staff, laborers, and other employees at the Works Site or other places where the Works are being carried out. It also applies to the personnel of each subcontractor and any other personnel assisting us in the execution of the Works. All such persons are referred to as "Contractor's Personnel" and are subject to this EHS Code of Conduct.

This EHS Code of Conduct identifies the behavior that we require from all Contractor's Personnel.

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

REQUIRED CONDUCT

Contractor's Personnel shall:

1. carry out its duties competently and diligently;
2. comply with this EHS Code of Conduct and all applicable laws, regulations, and other requirements, including requirements to protect the health, safety, and well-being of other Contractor's Personnel and any other person;
3. maintain a safe working environment, including by:
   (a) ensuring that workplaces, machinery, equipment, and processes under each person's control are safe and without risk to health;
   (b) wearing required personal protective equipment;
   (c) using appropriate measures relating to chemical, physical, and biological substances and agents; and (d) following applicable emergency operating procedures;
4. report work situations that it believes are not safe or healthy and remove itself from a work situation that it reasonably believes presents an imminent and serious danger to its life or health;
5. treat other people with respect and not discriminate against specific groups such as women, people with disabilities, migrant workers, or children;
6. report violations of this EHS Code of Conduct; and
7. not retaliate against any person who reports violations of this EHS Code of Conduct, whether

to us or the Employer, or who makes use of the grievance mechanism for Contractor's Personnel or the project's Grievance Redress Mechanism.

RAISING CONCERNS

If any person observes behavior that it believes may represent a violation of this EHS Code of Conduct, or that otherwise concerns it, it should raise the issue promptly. This can be done by calling [*insert number*] to reach the Contractor's hotline (if any) and leave a message.

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

CONSEQUENCES OF VIOLATING THE ENVIRONMENTAL, HEALTH, AND SAFETY CODE OF CONDUCT

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

FOR CONTRACTOR'S PERSONNEL:

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

Name of Contractor's Personnel: [*insert name*]

Signature:

.....

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

.....

Countersignature of authorized representative of the Contractor:

Signature:

.....

Date: [*day month year*]:

.....

NOTE TO THE BIDDER

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

Performance Security

[*Bank's name, and address of issuing branch or office*][23]

Beneficiary : .....[*Name and address of the Employer*].....
Date :.....
Performance Guarantee No.:.....

We have been informed that [*name of the Contractor*] (hereinafter called "the Contractor") has entered into Contract No. [*reference number of the Contract*] dated [*date*] with you, for the execution of [*name of Contract and brief description of plant and 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 Contractor, we [*name of the bank*] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [*name of the currency and amount in words*][24] [*amount in figures*] such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire no later than the earlier of

(a) 18 months after our receipt of
  (i) a copy of the Completion Certificate; or
  (ii) a registered letter from the Contractor, attaching a copy of the notice to the project manager that the Facilities are ready for commissioning, and stating that 14 days have elapsed from receipt of such notice (or 7 days have elapsed if the notice was a repeated notice) and the project manager has failed to issue a Completion Certificate or inform the Contractor in writing of any defects or deficiencies; or
  (iii) a registered letter from the Contractor stating that no Completion Certificate has been issued but the Employer is making use of the Facilities; or

(b) the [*date*] day of [*month*], [*year*].[25]

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, (URDG) 2010 Revision, ICC Publication No. 758 except that the supporting statement under Article 15 (a) is hereby excluded.[26]

.....
[*Signature(s) and seal of bank (where appropriate)*]

Note to Bidder

If the bank issuing performance security is located outside the Employer's country, it shall be counter-guaranteed or encashable by a bank in the Employer's country.

[25] Insert the expected expiration date of the Defect Liability Period. The employer should note that in the event of an extension of the time for completion of the contract, the Employer would need to request an extension of this guarantee from the guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [6 months][1 year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

[26] Or the employer may use Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded" as appropriate.

Advance Payment Security

[*Bank's name, and address of issuing branch or office*][27]

Beneficiary: .....[*Name and address of the Employer*]
Date: .....
Advance Payment Guarantee No.: .....

We have been informed that [*name of the Contractor*] (hereinafter called "the Contractor") has entered into Contract No. [*reference number of the Contract*] dated [*date*] with you, for the execution of [*name of Contract and brief description of plant and services*] (hereinafter called "the Contract").
Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum [*name of the currency and amount in words*][28] [*amount in figures*] is to be made against an advance payment guarantee.
At the request of the Contractor, we [*name of the bank*] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [*name of the currency and amount in words*][29] [*amount in figures*] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor:

(a) used the advance payment for purposes other than the costs of mobilization and cash flow support in respect of the Works; or
(b) has failed to repay the advance payment when it has become due and payable in accordance with the conditions of the Contract, specifying the amount payable by the Contractor.

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 Contractor on its account number [*Contractor's account number*] at [*name and address of the bank*].
The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates, which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate, indicating that 80% of the Contract Price has been certified for payment, or on the [*date*] day of [*month*], [*year*],[30] whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.[31]

. . . . . .

[*Signature(s) and seal of bank (where appropriate)*]

Note to Bidder

If the bank issuing advance payment security is located outside the Employer's country, it shall be counter-guaranteed or encashable by a bank in the Employer's country.

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[29] The guarantor shall insert an amount representing the amount of the advance payment denominated either in the currency(ies) of the advance payment as specified in the contract, or in any freely convertible currency acceptable to the employer.
[30] Insert the expected expiration date of the Time for Completion. The employer should note that in the event of an extension of the Time for Completion of the contract, the employer would need to request an extension of this guarantee from the guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [6 months][1 year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."
[31] Or the employer may use "Uniform Rules for Demand Guarantees (URDG), ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded" as appropriate.

ANNEXURE-1 OF THE SCC

Time Extension and Liquidated Damages (LD)

1. Responsibility Centre:

- Project Manager, Individual Projects;
- Director, Transmission Line and Substation Department;
- DMD, Project Management Directorate;
- MD, Nepal Electricity Authority.

2. General Principles:

The time remains the essence of all major contracts awarded by NEA and all works/supply under a contract need to be completed within the stipulated time schedule. Therefore, a provision has been kept in the contract that in case of delay in completion, for the reasons attributable to the contractor, they are required to pay to the owner, a sum, as LD, calculated at a specified rate but limited to the ceiling mentioned in the Contract. The ceiling limit in the contract is 10% of the contract price or part thereof.

3. Delays and Time Extensions:

Notwithstanding the fact that time is the essence of the contract, a number of cases of delay in completion of projects are encountered. Though the reasons for delay are diverse, the contracts are finally completed beyond the contract completion period. In order to keep the contract alive, it is also necessary that extension of time is granted to the contractor for the extended period of completion. While communicating the approval of extension of time, a decision on imposition/waiver of LD, fully or partly, on account of delay in completion of work is also required to be indicated. Since the reasons for delay are generally mixed up i.e., attributable to both NEA & contractor, the issue of time extension with imposition / waiver of LD needs to be dealt with meticulously and delicately taking into account all the relevant aspects. The relevant aspects to be considered include the reasons for delay, the period of delay attributable to either parties and the loss or damages, if any, suffered by NEA.

3.1. Since the above exercise can normally be taken up only after physical completion of works, Provisional time extension will be granted with the approval from the competent authority so that the contract is alive and delayed supplies/works can be accepted by NEA. Such Provisional time extension will be without prejudice to all the obligations of the contractor under the contract and further without prejudice to NEA's right to levy LD and other rights under the Contract. Above facts will be clearly indicated in the provisional time extension letter.

3.2. In normal course, the proposal for Provisional/Interim time extension or Final extension of time along with settlement of LD shall be initiated upon receipt of request from the Contractor to that effect.

4. Guidelines for Imposition of LD:

In order to safeguard the long term and larger interest of NEA, the cases for imposition of LD need to be dealt with logically and rationally, maintaining consistency in approach. Accordingly, in the normal course, the cases of time extension/LD will be dealt with as per guidelines given hereunder.

4.1. Our Contracts have a provision for recovering compensation as LD from the Contractor for delays attributable to them in performance of the Contract, in form of a predetermined sum for each unit of time delay subject to an overall limit. Therefore, if there is a delay in execution of the contract and reasons for delay are attributable to the contractor, LD is recoverable from the contractor as per provisions of the contract. The delay attributable to the contractor must however, be analyzed in a proper manner.

4.2. In Contracts awarded by NEA, delay in performance of the Contract may be on account of one or more of the following:

(i) Reasons attributable to the owner viz., delay in providing the work front, approval of drawings/sub-vendors, issue of owner supplied material and/or fulfillment of NEA's other obligations as provided

in the Contract, etc., Increase in contract price beyond the quantity variation limit can also be considered, if felt justified.

(ii) Reasons attributable to "Force Majeure" conditions as defined in the Contract.

(iii) Reasons attributable to the Contractor viz, delay in mobilization, submission of drawings, finalization of sub-vendors, supply of material/equipment, fulfillment of the Contractor's other obligations under the Contract, etc.

4.3. The proposal for time extension and decision on LD shall, accordingly, contain a detailed analysis indicating reasons & period of delay on each account as outlined in para 4.2 above, along with documentary evidence thereof to the extent feasible and relevant. Based on the analysis, the period of delay due to 'Force Majeure' and for reasons attributable to NEA shall be identified. The idea of the exercise is to find out the net delay, which is attributable to the contractor. Experience of LD cases dealt with in the past tells that all the three types of delay mentioned above are so much mixed up/intermingled, with one running concurrently with another, at intermittent stages, that it becomes extremely difficult to directly identify the delay attributable to the contractor. As such, a practicable approach for working out the net delay attributable to the contractor, as described below, shall be adopted:

(i) Total delay that has occurred in a Contract = A

(ii) Cumulative period of delay on account of "Force Majeure" = B

(iii) Cumulative period of delay on account of NEA = C

(iv) Concurrent cumulative period in (ii) & (iii) = X

(v) Cumulative period of delay on account of "Force Majeure" and NEA = B+C-X

(vi) Net period of delay attributable to the contractor, Z = A-(B+C-X)

4.4. In case the period Z, arrived at as per para 4.3 above, is not positive, the time extension, till the actual completion of the works/supplies, shall be allowed without any LD.

4.5. In case the period Z, arrived at as per para 4.3 above, is positive, the time extension, till the actual completion of the works/supplies shall be allowed with imposition of LD in terms of provisions of the Contract.

5. Provisional/Final Settlement:

Provisional Settlement:

In the normal course, the settlement of LD along with provisional/interim time extension shall be done within 90 days from approval of the provisional/interim time extension including approval and issuance of letter to the contractor.

Final Settlement:

In the normal course, the settlement of LD along with final time extension shall be done after physical completion of supplies/works as per the Contract, and entire processing including approval and issuance of letter to the contractor will be completed within 120 days of physical completion.

6. Withholding of Payments:

In cases where the works/supplies extend beyond the contractual completion, amount towards LD from the RA bills shall not be withheld/retained if adequate retention payment (over and above Performance Bank Guarantee and Advance Payment Bank Guarantee) remains to be released as per Contract. In case, it is not so, the Contractor shall furnish additional Bank Guarantee (BG) which will be utilized by the NEA to recover LD, if finally levied. The validity of such additional BG shall be 6 (six) months beyond the anticipated completion of the works/supplies under the Contract.

7. Proposal Initiation:

The proposal for final time extension including decision on LD shall be initiated by concerned execution site after obtaining comments of the concerned departments on whose account delays have been identified/pointed

out by the Contractor in his request for time extension.

8. BG/Security Validity:

Once a time extension (Final or provisional) is granted, the completion period for purposes of extension of validity of BGs, securities shall be determined by the extended period of completion except if otherwise provided in the Contract.

9. Initial Delays:

In cases where, because of initial delay in providing front at site due to problems in land acquisition or other local problems or any other valid reasons not attributable to the contractor, the commencement of work by the Contractor is delayed and consequently contractual completion period needs to be extended, there will be no objection to grant extension to the completion period in the initial stage itself.

10. Record Keeping:

To properly carry out analysis of delays in execution of a contract/project, it is imperative that date wise record of various activities right from award of contract to completion of works/supplies is meticulously and systematically maintained by concerned Depts. in respect of areas under their responsibility. In line with the above, the following details shall be maintained:

- **Detailed Engineering Records:** These shall include receipt of drawings/design calculations/other technical details from the Contractor and its approval by NEA, type tests, approval of sub-vendor items involving QR; etc. and intermediate activities if relevant.

- **QA&I Records:** These shall include approval of sub-vendor of non-QR items, approval of quality plan of different manufacturer, inspection of material including issuance of Material Inspection and Clearance Certificate (MICC) based on inspection call received from contractor; etc.

- **Site Execution Records:** Execution site shall ensure that hindrance register shall be maintained and entries will be made therein on a daily basis. The hindrance register should record all the hindrances in scheduled progress of work, such as delay in release in fronts due to non-completion of work by another agency doing associated work, delay in supply of infrastructure, facilities by 'Owner' as per contract, delay in receipt of material, delay in deployment of trained/adequate manpower, non-availability of site engineer/project in charge of contractor etc., apart from the day-to-day delay. These records also shall be reviewed during the fortnightly review of the progress of the work and corrective measures shall be taken. Moreover, the entries/records in the register will be used/referred while analyzing LD cases/arbitration cases/other claims of the contractor.

- **Payment Details Records:** Execution site and the concerned account division shall maintain a Bill Register (preferably computerized) wherein date of receipt of bill, date of return of bill/intimation of discrepancies or deficiencies to the Contractor/Execution Site (if applicable) with reasons thereof in brief, date of forwarding of authorized bill (for execution site only) and date of release of payment (for finance only) shall, inter-alia, be recorded. Concerned in-charge of the execution site and head of account division shall furnish the status as above, in regard to bills being paid on monthly basis. All cases involving release of payment after period mentioned above shall be reviewed on monthly basis.