



NATIONAL COMPETITIVE BIDDING DOCUMENT FOR

Implementation of transmission infrastructure to evacuate 3200 MW thermal power from upcoming generation station at Chapar

*(Design, Engineering, Manufacture, Assembly, Inspection, Testing at Manufacturer's Works before Dispatch, Packing, Supply, Delivery at Site, Including Insurance During Transit, Subsequent Storage, Erection and Commissioning of GIS, Power Transformers with Associated Switchgears, including Supply & Erection of Substation Steel Structures, Construction of Control Room Building, Erection and Commissioning of new associated Transmission Lines and all other Civil Works on **Turnkey Basis**)*

(e-Procurement)

Bid Identification No.: AEGCL/MD/Tech-1219/Thermal-Assam/2026/BID Dated 23.08.2026

Issued by:

ASSAM ELECTRICITY GRID CORPORATION LIMITED
The State Transmission Utility of Assam
Regd. Office, Bijulee Bhawan
Paltanbazar, Guwahati - 781001

Tender Fee: 5000.00

Table of Contents

SECTION-I	5
1. NOTICE INVITING BIDS (NIB)	5
SECTION – II.....	6
2. INSTRUCTIONS TO BIDDERS.....	6
GENERAL.....	6
2.1 INTRODUCTION.....	6
2.2 LANGUAGE OF BIDS	6
2.3 CODE OF INTEGRITY.....	6
2.4 CONFLICT OF INTEREST	8
2.5 BIDDERS' ELIGIBILITY	9
2.6 BIDDERS' QUALIFICATION	10
BIDDING DOCUMENT.....	10
2.7 CONTENT OF THIS BIDDING DOCUMENT.....	10
2.8 CLARIFICATIONS OF BIDDING DOCUMENTS	10
2.9 PRE-BID MEETING.....	11
2.10 AMENDMENTS TO BIDDING (TENDER) DOCUMENT	11
PREPARATION OF BIDS.....	12
2.11 DOCUMENTS COMPRISING THE TECHNICAL BID.....	12
2.12 PRICE BID	13
2.13 PREPARATION AND SUBMISSION OF BID.....	14
2.14 BID PRICES.....	15
2.15 BID CURRENCY	15
2.16 DOCUMENTS ESTABLISHING COMPLIANCE.....	15
2.17 DOCUMENTS ESTABLISHING ELIGIBILITY & QUALIFICATION OF THE BIDDER	16
2.18 PERIOD OF VALIDITY OF BIDS	16
2.19 BID PROCESSING FEE	16
2.20 BID SECURITY	16
SUBMISSION AND OPENING OF BIDS	18
2.21 SUBMISSION OF TECHNICAL BID (HARDCOPY)	18
2.22 EXTENSION OF DUE DATE FOR SUBMISSION OF BIDS	19
2.23 OPENING OF BIDS	19
EVALUATION AND COMPARISON OF BIDS	19
2.24 CONFIDENTIALITY.....	20
2.25 PRELIMINARY EXAMINATION OF BIDS	20
2.26 CLARIFICATION OF BIDS.....	20
2.27 IMMATERIAL NON-CONFORMITIES IN BIDS	21
2.28 DETERMINATION OF RESPONSIVENESS	21
2.29 NON-CONFORMITIES, ERRORS, AND OMISSIONS	22
2.30 PRICE AND PURCHASE PREFERENCE.....	22
2.31 EVALUATION AND COMPARISON OF BIDS	22
2.32 RIGHT TO ACCEPT OR REJECT ANY OR ALL BIDS	23
AWARD OF CONTRACT	23
2.33 AWARD OF CONTRACT	23
2.34 NOTIFICATION OF AWARD	23
2.35 PERFORMANCE SECURITY	24
2.36 SIGNING OF CONTRACT	24
2.37 PERIOD OF CONTRACT	24

SECTION III.....	25
3. BID DATA SHEET (BDS)	25
SECTION IV	29
4. EVALUATION AND QUALIFICATION CRITERIA	29
4.1. EVALUATION CRITERIA & METHODOLOGIES	29
4.2 QUALIFICATION CRITERIA.....	29
SECTION V	39
5.1 SCOPE OF SUPPLY OF PLANT AND SERVICES	39
5.2 SPECIFICATION	39
5.3 DRAWINGS.....	39
5.4 SUPPLEMENTARY INFORMATION	40
SECTION-VI	41
6. BIDDING FORMS.....	41
6.1 LETTER OF TECHNICAL BID	41
6.1 (A) LETTER OF FINANCIAL BID	43
6.2 BIDDER INFORMATION FORM.....	45
FORM ELI - 1: TENDERER’S INFORMATION SHEET	45
FORM ELI - 2: JOINT VENTURE INFORMATION SHEET	45
FORM LIT - PENDING LITIGATION.....	46
FORM CON – 1: HISTORICAL CONTRACT NONPERFORMANCE	47
FORM FIN - 1: HISTORICAL FINANCIAL PERFORMANCE.....	48
FORM FIN - 2: AVERAGE ANNUAL TURNOVER	49
FORM FIN – 3: AVAILABILITY OF FINANCIAL RESOURCES.....	50
FORM FIN- 4: FINANCIAL REQUIREMENTS FOR CURRENT CONTRACT COMMITMENTS	51
FORM FIN - 5: SELF-ASSESSMENT TOOL FOR TENDERER’S COMPLIANCE TO FINANCIAL RESOURCES.....	52
FORM EXP – 1: CONTRACTS OF SIMILAR SIZE AND NATURE	53
FORM EXP - 2: EXPERIENCE IN KEY ACTIVITIES PROVIDED IN SECTION VI: BIDDING FORMS (FORM- EXP- 2)	54
FORM EXP - 3: SUBCONTRACTORS	55
6.3 BANK GUARANTEE FORMAT FOR BID SECURITY.....	56
6.4 MANUFACTURER’S LETTER OF AUTHORIZATION.....	58
6.5. POWER OF ATTORNEY FOR SIGNING OF BID	61
6.6. UNDERTAKING BY THE BIDDER	63
6.7. PRICE Bid/ BoQ.....	64
6.10 CHECKLIST OF DOCUMENTS SUBMITTED ALONG WITH TECHNICAL BID.....	65
SECTION-VII	66
7. GENERAL CONDITIONS OF CONTRACT	66
SECTION VIII	123
7 SPECIAL CONDITIONS OF CONTRACT.....	123
1. DEFINITIONS.....	124

5. LAW AND LANGUAGE.....	124
8. TIME FOR COMMENCEMENT AND COMPLETION	124
11. CONTRACT PRICE	125
13. SECURITIES.....	125
22. INSTALLATION.....	126
25. COMMISSIONING AND OPERATIONAL ACCEPTANCE.....	127
26. COMPLETION TIME GUARANTEE	127
27. DEFECT LIABILITY	127
30. LIMITATION OF LIABILITY	127
45. DISPUTES AND ARBITRATION.....	128

SECTION – IX..... 130

NOTIFICATION OF AWARD 130

CONTRACT AGREEMENT..... 131

APPENDIX 1:TERMS AND PROCEDURES OF PAYMENT 135

APPENDIX 2: PRICE ADJUSTMENT -NOT APPLICABLE 138

APPENDIX 3: INSURANCE REQUIREMENTS 138

APPENDIX 4: TIME SCHEDULE 142

**APPENDIX 5:LIST OF MAJOR ITEMS OF PLANT AND SERVICES AND LIST OF APPROVED
SUBCONTRACTORS 143**

APPENDIX 6:SCOPE OF WORKS AND SUPPLY BY THE EMPLOYER..... 144

APPENDIX 7: LIST OF DOCUMENTS FOR APPROVAL OR REVIEW..... 144

APPENDIX 8:FUNCTIONAL GUARANTEES..... 145

NOTIFICATION OF AWARD..... 146

BANK GUARANTEE FORMAT FOR PERFORMANCE SECURITY 147

SECTION-I

1. Notice Inviting Bids (NIB)

ASSAM ELECTRICITY GRID CORPORATION LIMITED (AEGCL)

Address: Regd. Office, O/o the Managing Director, 1st Floor, Bijulee Bhawan

Paltanbazar, Guwahati – 781001

Email: neap.cell@aegcl.co.in with a copy to cgm.ppd@aegcl.co.in; website: www.aegcl.co.in

Notice Inviting Bids

Tender Ref. No./Bid Identification No.: AEGCL/MD/Tech-1219/Thermal-Assam/2026/BID

Dated 23.08.2026

Chief General Manager, PP&D, AEGCL hereby invites online Bids from eligible Bidders following **two-bid system** of bidding for “**Implementation of transmission infrastructure manner to evacuate 3200 MW thermal power from upcoming generation station at Chapar.**”

- (i) Open Competitive Bidding method shall be followed for selection of most preferred bidder for the tendered Item(s). The tender terms, conditions and procedures are in conformity with “The Assam Public Procurement Act, 2017” and “The Assam Public Procurement Rules, 2020” as amended from time to time.
- (ii) The Bidding Documents can be downloaded by any prospective bidders from the Procurement portal i.e., <http://assamtenders.gov.in>, free of cost.
- (iii) All Bids must be accompanied by Bid Processing Fee of Rs 5000 (Rupees Five Thousand and Bid Security of the amount as specified for the item(s) bided, unless otherwise mentioned in the Bidding Documents.
- (iv) Bids must be submitted online at the e-Procurement portal (i.e., <http://assamtenders.gov.in>) on or before the due date for submission i.e. **12:00 Hrs. of 03.10.2026.**
- (v) The Bidders are also required to submit the hardcopy of the EMD BG, POA and LOTT (with original documents) in the office of the Procuring Entity within due date, **11:00 Hrs. of 03.10.2026.** . The Late Bids will be liable for rejection summarily.
- (vi) The Technical Bid will be opened online on **14:00 Hrs. of 05.10.2026** and the Price Bid shall be opened online only for the technical qualified bidders.
- (vii) Bidders who seek to appeal against any decision, action or omission regarding this particular procurement may do so as per Section 38 of the Assam Public Procurement Act, 2017 and Rule 26 of the Assam Public Procurement Rules, 2020

Sd/-

Signature of the Authority/Official

Name: Smt. Jayashree Devi

Designation: Chief General Manager PP&D, AEGCL

SECTION – II

2. Instructions to Bidders

General

2.1 Introduction

- 2.1.1 The Procuring Entity as defined in **Bid Data Sheet (BDS)**, has issued this Bidding Document for the supply of goods and incidental services as specified in **“Section V - Schedule of Requirements”** in connection with the notice issued on [02.09.2026](#) inviting bids from the eligible bidders.
- 2.1.2 This Section provides the relevant information as well as instructions to assist prospective bidders in preparation and submission of bids. It also includes the mode and procedure to be adopted by the Procuring Entity for receipt and opening as well as scrutiny and evaluation of bids and subsequent placement of award of contract.
- 2.1.3 Before preparing and submitting the bids (Technical & Price) online at the e-Procurement portal in the prescribed manner, the bidder should read and examine all the terms and conditions, instructions, etc., contained in this Bidding Document. Failure to provide required information or to comply with the instructions incorporated in this Bidding Document may result in rejection of bid.
- 2.1.4 The Bidder shall bear all costs and expenditure incurred and/or to be incurred by it in connection with its bid including preparation, mailing and submission of its bid and subsequently processing the same. The Procuring Entity shall, in no case be responsible or liable for any such cost, expenditure, etc., regardless of the conduct or outcome of the bidding process.

2.2 Language of Bids

- 2.2.1 Bid submitted by the Bidder and all subsequent correspondences and documents relating to the bid exchanged between the Bidder and the Procuring Entity, shall be written in English language. However, the language of any printed literature furnished by the bidder in connection with its bid may be written in any other language, provided the same is accompanied by a self-certified English translation and, for purposes of interpretation of the bid, the English translation shall prevail.

2.3 Code of Integrity

- 2.3.1 The Procuring Entity and all its officials or employees, whether involved in the procurement process or otherwise, or bidders and their representatives or

consultants or service providers participating in a procurement process or other persons involved, directly or indirectly in any way in a procurement process shall maintain an unimpeachable standard of integrity.

2.3.2 Govt. of Assam prescribes to uphold the Code of Integrity, which prohibits officials or employees of a Procuring Entity or any person(s) participating in the bidding process, as bidder or otherwise, the following:

- i) any offer, solicitation or acceptance of any bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process;
- ii) any omission, including a misrepresentation that misleads or attempts to mislead so as to obtain a financial or other benefit or avoid an obligation;
- iii) any collusion, bid rigging or anti-competitive behavior to impair the transparency, fairness and progress of the procurement process;
- iv) improper use of information shared between the procuring entity and the bidders with an intent to gain unfair advantage in the procurement process or for personal gain;
- v) any financial or business transactions between the bidder and any officer or employee of the Procuring Entity, who are directly or indirectly related to the tender or execution process of contract;
- vi) any coercion including impairing or harming or threatening to do the same, directly or indirectly, to any party or to its property to influence the procurement process;
- vii) any obstruction of any investigation or audit of a procurement process;
- viii) making false declaration or providing false information for participation in
 - a) tender process or to secure a contract;
 - b) disclosure of Conflict of Interest;
 - c) disclosure by the bidder of any previous transgressions with any entity in India or any other country during the last three years or of any debarment by any other Procuring Entity.

2.3.3 In case of any breach of the Code of Integrity by a bidder or a prospective bidder, as the case may be, the TIA after giving a reasonable opportunity of being heard, may take appropriate measures including –

- (i) exclusion of the bidder from the procurement process;
- (ii) calling off pre-contract negotiations and forfeiture or encashment of bid security;
- (iii) forfeiture or encashment of any other security or bond relating to

- procurement;
- (iv) recovery of payments made by the BIE along with interest thereon at bank rate;
 - (v) cancellation of the relevant contract and recovery of compensation for loss incurred by it;
 - (vi) Initiate available legal actions available under different laws in India
 - (vii) debarment of the bidder from participation in any tender issued by the Procuring Entity for a period not exceeding **three years**.

2.4 Conflict of Interest

2.4.1 Conflict of Interest for a Procuring Entity or its personnel (i.e., officials or employees) and bidders is a situation in which a party has interests that could improperly influence that performance of its duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations.

2.4.2 Govt. of Assam describes the situations in which a Procuring Entity or its personnel maybe considered to be in a situation of Conflict of Interest include, but are not limited to the following-

- (i) Conflict of Interest occurs when the private interests of a Procuring Entity or its personnel, such as personal, non-official, extra-professional or other relationships or personal financial assets, interfere or appear to interfere with the proper performance of its professional functions or obligations as a procurement official.
- (ii) within the procurement environment, a Conflict of Interest may arise in connection with such private interests as personal investments and assets, political or other social activities and affiliations while in the service of the Procuring Entity, employment after retirement from service or of relatives or the receipt of a gift that may place the Procuring Entity or its personnel in a position of obligation;
- (iii) Conflict of Interest also includes the use of assets of the Procuring Entity including human, financial and material assets, or the use of the office of the Procuring Entity or knowledge gained from official functions for private gain or to prejudice the position of someone the Procuring Entity or its personnel does not favour;
- (iv) Conflict of Interest may also arise in situations where the Procuring Entity or any of its personnel is seen to benefit directly or indirectly or allow a third party, including family, friends, or someone they favour, to benefit directly or indirectly from the decision or action of the Procuring Entity.

2.4.3 The situations in which bidders participating in a procurement process or their representatives may be in Conflict of Interest include, but are not limited to the following:

- (i) If they or their personnel or representatives or agents have any relationship or financial or business transactions or interests with any official of the Procuring Entity that are directly or indirectly involved in or related to the procurement process or execution of contract;
- (ii) If they receive or have received any direct or indirect subsidy from any other bidder;
- (iii) If they have the same legal representative for purposes of the bid;
- (iv) If they have a relationship with each other, directly or through common third parties that puts them in a position to have access to information about or influence on the bid of another;
- (v) If they participate in more than one bid in the same bidding process;
- (vi) If they have controlling partners in common;
- (vii) If a bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the subject matter of procurement of the bidding process or were involved in such preparation in anyway.

2.4.4 In case of a holding company having more than one independently manufacturing/processing/producing unit or more than one unit having common business ownership or management, only one unit shall be allowed to submit bid or quote to prevent any Conflict of Interest. Similar restrictions shall apply to closely related sister or subsidiary companies. Such bidders must proactively declare such sister or subsidiary company or common business or management units in similar lines of business.

2.5 Bidders' Eligibility

2.5.1 Bidder may be a natural person, private entity, or government-owned enterprise

2.5.2 A Bidder, and all partners constituting the tenderer, shall have the nationality of India or any country acceptable by Govt of India.

2.5.3 In addition, any bidder participating in the bidding process shall–

- (i) Have fulfilled his obligation to pay such of the tax payable to the Central Government or the State Government or any local authority.
- (ii) not be insolvent, in receivership, bankrupt or being wound up, not have its affairs administered by a court or a judicial officer, not have its business activities suspended and must not be the subject of legal proceedings for any of the foregoing reasons;

- (iii) not have, and their directors and officers do not have, been convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract within a period of three years preceding the commencement of the procurement process, or not have been otherwise disqualified pursuant to debarment proceedings.
- (iv) not be debarred by any Procuring Entity under the State Government, the Central Government, Autonomous body, Authority by whatever name called under them.

2.6 Bidders' Qualification

- 2.6.1 Bidders should substantially meet the qualification criteria as stipulated in the **"Section IV - Evaluation and Qualification Criteria"**.
- 2.6.2 Bidders should fill and submit the Forms provided in **"Section VI - Bidding Forms"** with relevant information and supporting evidence of fulfillment of their qualification, along with the technical bid.

BIDDING DOCUMENT

2.7 Content of this Bidding Document

- 2.7.1 The Bidding Documents include the following Sections, which should be read in conjunction with any amendment issued in accordance with **ITB Para 2.10**.
 - (i) Section I Notice Inviting Bids (NIB)
 - (ii) Section II Instructions to Bidders (ITB)
 - (iii) Section III Bid Data Sheet
 - (iv) Section IV Evaluation and Qualification Criteria
 - (v) Section V Schedule of Requirements
 - (vi) Section VI Bidding Forms
 - (vii) Section VII General Conditions of Contract (GCC)
 - (viii) Section VIII Special Conditions of Contract (SCC)
 - (ix) Section IX Contract Forms
- 2.7.2 Unless downloaded directly from the e-Procurement portal **as specified in the BDS**, the Procuring Entity shall not be responsible for the correctness of the Bidding Document, responses to requests for clarification, the Minutes of the Pre-bid meeting, if any, or amendment(s) to the Bidding Documents in accordance with **ITB Para 2.10**.
- 2.7.3 Bidders are expected to examine all instructions, forms, terms, and specifications in the Bidding Documents and to furnish with its Bid all relevant information and documents as required by the Bidding Documents.

2.8 Clarifications of Bidding Documents

- 2.8.1 A Bidder requiring any clarification of the Bidding Document shall communicate in writing to the Procuring Entity in the address as **specified in the BDS** with reference to the Bidding Document. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received within a period **specified in the BDS**.
- 2.8.2 The Procuring Entity shall also promptly publish brief description of the enquiry but without identifying its source and its response at the official website/e-Procurement portal as **specified in the BDS**.
- 2.8.3 Should the clarification result in changes to the essential elements of the Bidding Documents, Procuring Entity shall amend the Bidding Documents following the procedure given under **ITB Para 2.10**.

2.9 Pre-Bid Meeting

- 2.9.1 Prospective bidders are invited to participate in the pre-bid meeting as scheduled to be held on the date, time, and manner (online or physical) as specified in the **BDS**. The prospective bidders may submit in writing their queries for clarifications or suggestion, if any, on the bidding document in advance, for the consideration of the Purchase Committee of the Procuring Entity.
- 2.9.2 During the pre-bid meeting, the clarification sought by representative of prospective bidders shall be responded appropriately. However, they must submit their queries for clarification and suggestions in written. The Procuring Entity shall publish written response to such requests for clarifications, without identifying its source in the e-Procurement portal. In case required, amendment(s), in terms of **ITB Para 2.10** below shall be issued, which shall be binding on all prospective bidders.

2.10 Amendments to Bidding (Tender) Document

- 2.10.1 At any time prior to the due date for submission of bid, the Procuring Entity may amend or modify the Bidding Document by issuing amendment(s) pursuant to **ITB Para 2.8 and 2.9** or for any other reason, it deemed fit.
- 2.10.2 Such amendment(s) will be published at the e-Procurement portal or on the official website as **specified in the BDS** and the same shall be binding on all prospective Bidders.
- 2.10.3 To give reasonable time to prospective bidders to take necessary action in preparing their bids, the Procuring Entity may, at its discretion extend the deadline for the submission of bids and other allied time frames, which are linked with that deadline.
- 2.10.4 Any Bidder who has downloaded the Bidding Documents should check the amendment(s), if any, issued on the Procurement portal. The Procuring Entity shall not be responsible, in any manner, if any prospective Bidder miss any

amendment(s) published on the portal.

PREPARATION OF BIDS

2.11 Documents Comprising the Technical Bid

2.11.1 The bid shall be submitted online in two parts (i.e., Technical Bid & Price Bid) at the e-Procurement portal by the bidder within due date and time. The Technical Bid shall consist of following documents.

- i) **“Letter of Bid”** as per Form provided in **Section VI – Bidding Forms (Form-B1)**; The bidders are required to affix in the bid letter a stamp duty of Rs 8.25 (if they are from Assam) or IPO of Rs 10.00 (if they are from outside of Assam).
- ii) **“Bidder Information Form”** provided in **Section VI: Bidding Forms (Form-ELI – 1 and EL-2)**;
- iii) **Pending Litigation Form** provided in **Section VI: Bidding Forms (Form-LIT)**
- iv) **Historical Contract Nonperformance** provided in **Section VI: Bidding Forms (Form- CON – 1)**
- v) **Historical Financial Performance** provided in **Section VI: Bidding Forms (Form- FIN - 1)**
- vi) **Average Annual Turnover** provided in **Section VI: Bidding Forms (Form-FIN - 2)**
- vii) **Availability of Financial Resources** provided in **Section VI: Bidding Forms (Form- FIN - 3)**
- viii) **Financial Requirements for Current Contract Commitments** provided in **Section VI: Bidding Forms (Form- FIN - 4)**
- ix) **Self-Assessment Tool for Tenderer’s Compliance to Financial Resources** provided in **Section VI: Bidding Forms (Form- FIN - 5)**
- x) **Contracts of Similar Size and Nature** provided in **Section VI: Bidding Forms (Form- EXP-1)**
- xi) **Experience in Key Activities** provided in **Section VI: Bidding Forms (Form- EXP-2)**
- xii) **Experience of Subcontractors** provided in **Section VI: Bidding Forms (Form- EXP-3)**
- xiii) **Bank Guarantee Format for Bid Security** provided in **Section VI: Bidding Forms (Form- B-3)**

- xiv) **Manufacturer's Authorization Letter**, in case the bidder is not the Manufacturer of the quoted item(s), as per Form given in **Section VI: Bidding Forms (Form-B4)**;
- xv) Duly Executed **"Power of Attorney"** for the Authorized Signatory of the Bid as per format given in **Section VI: Bidding Forms (Form-B7)**;
- xvi) **"Undertakings by the Bidder"** as per format given in **Section VI: Bidding Forms (Form-B8)**
- xvii) **"Bid Processing Fee"** in accordance with **ITB Para 2.19**;
- xviii) **"Bid Security"** furnished in accordance with **ITB Para 2.20**;
- xix) Documents establishing the compliance to the required quality standards of the product offered and of the process followed by the manufacturer in accordance with **ITB Para 2.16 and Section-V: Schedule of Requirements (Para 5.5)**;
- xx) Bidder's Certificate of Incorporation/ Registration, Article and Memorandum of Association or any such registration document.
- xxi) Self-attested copy of PAN;
- xxii) Self-attested copy of GST Registration Certificate.
- xxiii) Audited Statement of Accounts for last five financial years ending on 31/03/2026.
- xxiv) Additional documents, if any, as mentioned in BDS.
- xxv) "Checklist of Documents" submitted along with the Bid in the Format (**Form-B10**) as given in **Section VI: Bidding Forms**

2.12 Price Bid

2.12.1 The blank Price Bid in the form of BoQ (Total 13Nos. of BoQ Sheet) should be downloaded from the portal <http://assamtenders.gov.in> and saved on Bidder's computer without changing filename otherwise price bid will not get uploaded. The Bidder should fill in the details in the same file and upload the same back to the portal.

2.12.2 Price Bid (BoQ) must be submitted online (soft copies) only. The BoQ (excel sheet available in e-procurement portal) is specific to the Bidder and is not interchangeable. The BoQ file shall be downloaded from the e-procurement portal and quote the prices in the respective fields before uploading it. The Price bids submitted in any other formats will be treated as non-responsive and not considered for tabulation and comparison. The BoQ should be submitted online in the portal i.e., <http://assamtenders.gov.in>.

2.12.3 Additional cost components required to determine lifecycle cost, if specified in the **BDS** shall also be submitted online (in “.pdf” format separately), in addition to the BoQ to be submitted in “.xls” format at the e-Procurement portal, as part of Price Bid. (The formats for additional costs components, wherever required, shall be furnished in **Section-VI: Bidding Forms**)

2.12.4 Price Bid shall be prepared in accordance with **ITB Para2.14**;

2.13 Preparation and Submission of Bid

2.13.1 The Bidder shall prepare the Technical Bid comprising of all documents as mentioned in **ITB-11**. The bid shall be typed or written in ink with all pages serially numbered and signed by the Bidder or a person duly authorized to sign on its behalf, as mentioned in **BDS**, in token of acceptance of the Bid terms and conditions, Corrections in the bid such as interlineations, erasures, or overwriting shall be valid only if they are duly signed or initialed by the person signing the bid.

2.13.2 The Bidder shall submit both Technical and Price Bid online at the e-Procurement portal within due date and time for submission of Bid as mentioned in **BDS**. In addition to the online submission, the Bidder must submit the hardcopy of the Technical Bid within the due date and time of submission as mentioned in **BDS** and in the manner as specified in **ITB 2.21.1**. Non-submission of hardcopy of the required documents shall amount to cancellation of the Bid, summarily.

2.13.3 The hard copy of the documents which are to be submitted along with the technical bid envelop are listed in BDS

2.13.4 The bidding documents issued by the Procuring Entity in the e-procurement portal (i.e., <http://assamtenders.gov.in>) will appear in the “Latest Active Tender”. The Bidders/ Guest users can download the Bidding documents only after the due date & time of issue. The publication of the Bidding Document (i.e., Tender) will be for specific period till the due date for submission of bids after which the same will be removed from the list of “Latest Active Tender”.

2.13.5 **Portal Registration:** The bidder intending to participate in the bid is required to register in the e-Procurement portal using an active personal/ official e-mail ID as his/her Login ID and attach his/her valid Digital Signature Certificate (DSC) - Class II or III to his/her unique Login ID. He/ She must submit the relevant information as asked for about the bidder. The portal registration of the bidder is to be authenticated by the State Procurement Cell after verification of original valid certificates/documents such as (i) PAN and (ii) GST Registration Certificate (RC) (iii) In Procuring Entity Certificate (iv) manufacturing license of the concerned bidder. Any change of information by the bidder is to be re-authenticated by the State Procurement Cell. After successful authentication, bidder can participate in the online bidding process.

2.13.6 **Logging to the Portal:** The Bidder is required to type his/her Login ID and

password. The system will again ask to select the DSC and confirm it with the password of DSC as a second stage authentication. For each login, a user's DSC will be validated against its date of validity and against the Certificate Revocation List (CRL) of respective CAs stored in system database. The system checks the unique Login ID, password and DSC combination and authenticates the login process for use of portal.

2.13.7 The bidder can download the bidding document and undertake the necessary preparatory work off-line and upload the completed bid at their convenience before due date and time for submission.

2.13.8 The bidder can upload technical bid in two files in ".pdf" format. For management of space, the bidder can serially arrange their document as per the checklist and create two equal size check ".pdf" files and upload them.

2.14 Bid Prices

2.14.1 The prices quoted by the Bidder in the Price Bid (Price Schedule) shall conform to the requirements specified below.

2.14.2 The Bidder must quote for one or more items in the price schedule of its choice, unless otherwise specified in **BDS**.

2.14.3 The price quoted by the Bidder shall be fixed (remain Firm) during the Bidder's performance of the Contract and shall not be subject to variation on any account, **unless otherwise specified in this Bidding Document**. The bid submitted with adjustable price quotation shall be treated as nonresponsive and shall be rejected.

2.14.4 The price offered in the Price Bid for the item(s) shall be based on FOR consignee location/ DDP (Place of destination) price.

2.14.5 The bidder must unconditionally offer in the Bid to supply the goods and other associated services as specified for each /item in **Section-V: Schedule of Requirements**.

2.15 Bid Currency

2.15.1 The bidder should submit its quote in Indian Rupees only.

2.15.2 Bids, where prices are quoted in any other currency shall be treated as non-responsive and rejected.

2.16 Documents Establishing Compliance

2.16.1 The Bidder shall furnish as part of its Bid the documentary evidence that the item(s) offered by it, conforms to the required specifications, quality standard and other criteria as specified in **Section-V: Schedule of Requirements**.

2.16.2 The documentary evidence may be in the form of literature, drawings, certificate,

or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the item(s) offered, demonstrating substantial responsiveness of the quality standards & other requirements as per **Section-V: Schedule of Requirements**.

2.17 Documents Establishing Eligibility & Qualification of the Bidder

2.17.1 To establish their eligibility in accordance with **ITB Para 2.5**, Bidders shall complete the Letter of Bid, included in **Section-VI: Bidding Forms**

2.17.2 The documentary evidence of the Bidder's qualifications to participate in the bid and own the contract, shall establish to the Bid Evaluation Committee's satisfaction that the Bidder meets each of the qualification criterion specified in **Section-IV: Qualification and Evaluation**

2.18 Period of Validity of Bids

2.18.1 Bids shall remain valid for the period **specified in the BDS** after the due date for submission of Bid. A bid valid for a shorter period shall be rejected as non-responsive

2.18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Procuring Entity may request bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. A Bidder may refuse the request without forfeiting its Bid Security.

2.18.3 The Bidder who agrees to the extension of the period of validity of bids so requested by the Procuring Entity shall also extend the period of validity of bid securities submitted by them or submit new bid security to cover the extended period of validity of their bids. A bidder whose bid security is not extended, or new bid securities not submitted shall be considered to have refused the request to extend the period of validity of its bids and rejected as non-responsive. The decision of the Procuring Entity will be final and binding in this regard.

2.19 Bid Processing Fee

2.19.1 The Bidder shall furnish as part of its bid, the Bid Processing Fee (non-refundable), of the amount and in favour of the Procuring Entity or the Authority as specified in the BDS. The Bid Processing Fee shall be in any of the following forms at the Bidder's option:

- (a) Demand Draft / Banker's Cheque issued by Scheduled Bank in India; or
- (b) Through online payment option available at e-Procurement portal; or
- (c) Any other digital mode, as **specified in BDS**

2.20 Bid Security

2.20.1 The Bidder shall furnish as part of its bid, a Bid Security in the amount and in favour of the Procuring Entity or the Authority as **specified in BDS**.

2.20.2 Bidders belonging to Scheduled Caste (SC), Scheduled Tribes (ST), Other Backward Classes (OBC) and any other class of bidders notified by government from time to time may deposit 50% of the stipulated amount of Bid Security, but in such cases documentary proof regarding their caste issued by the competent authority must also be submitted along with the Bid. The above provision is applicable if mentioned in **BDS**.

2.20.3 If mentioned in **BDS**, the Bidders who are currently registered with the following, for the specific Goods as required in “**Section V-Schedule of Requirements**”, shall be eligible for exemption from Bid Security, provided they submit a self-attested copy of its valid registration / recognition certificate issued in their name by relevant authority along with the notification:

- i) District Industries & Commerce Centre (DI&CC), Govt. of Assam; or
- ii) National Small Industries Procuring Entity (NSIC), New Delhi; or
- iii) Any other entity providing such certificates as notified by State Government.

2.20.4 The bid security shall be in any of the following forms at the Bidder's option:

- (i) Fixed Deposit Receipt (FDR) or Term Deposit Receipt (TDR) issued by Scheduled Bank in India and duly lien marked in favour of the Procuring Entity/Authority; or
- (ii) Bank Guarantee issued by a Scheduled Bank in India; or
- (iii) Online EMD through e-Procurement portal; or
- (iv) Any other digital mode as specified in BDS

2.20.5 In case, bid security is submitted in form of Bank Guarantee, it should be submitted either using the form provided in “**Section VI - Bidding Forms**”. The Bank Guarantee submitted as Bid Security shall be verified and confirmed from the competent authority of the concerning issuing Bank.

2.20.6 The Bid Security must remain valid for **Forty-Five (45) days** beyond the original or extended validity period of the bid.

2.20.7 Any bid not accompanied by a Bid Security as specified in **ITB Para 2.20** shall be rejected as non-responsive.

2.20.8 The bid security of a bidder lying with the Procuring Entity, if any, in respect of other bids awaiting decision shall not be adjusted towards bid security required under this Bidding Documents.

2.20.9 The bid security originally deposited by a Bidder may be taken into consideration, in case bids are re-invited, if found valid, if so, **specified in the BDS**. Such Bidders are required to ascertain validity of bids for consideration in lieu of bid security required under this Bidding Documents.

2.20.10 The Bid Security of unsuccessful bidder shall be released within 30 working days after signing of Agreement and deposit of performance security by the successful bidder.

2.20.11 The Bid Security of successful Bidders shall be released within 30 working days upon the successful Bidder's signing the contract and furnishing the Performance Security pursuant to **ITB Para 2.35**. As an alternative, the amount of Bid Security may be adjusted with the amount of performance security required from him or refunded if the successful bidder furnishes the full amount of performance security, if **provided in the BDS**.

2.20.12 In case Procuring Entity decides to cancel the procurement process, it shall return the bid security of all bidders after the decision to cancel procurement process.

2.20.13 The Bid Security of the bidder, who withdraws its bid prior to deadline for submission of bids, in case bid withdrawal is permitted, shall be returned after the opening of the bids.

2.20.14 The Bid Security deposited by a Bidder shall be forfeited in the following cases:

- (i) when the bidder withdraws or modifies its bid after due date for submission.
- (ii) when the bidder does not deposit the required performance security and/or sign the contract within the specified period; and
- (iii) if the bidder breaches any provisions of Code of Integrity prescribed for bidders as per **ITB Para 2.3**.

SUBMISSION AND OPENING OF BIDS

2.21 Submission of Technical Bid (Hardcopy)

2.21.1 In addition to online submission of the technical bid, the Bidders shall submit the hardcopy of the documents along with technical bid by post or by hand or drop in the box earmarked and placed in the office of the Procuring Entity within due date and time for submission as mentioned in the **BDS**. Bids so submitted shall enclose the original documents of the technical bid in sealed envelopes duly marked as "HARDCOPY OF THE TECHNICAL BID" along with the following details duly super scribed on it:

- (i) name and complete address along with the mobile, telephone number and email address of the Bidder;
- (ii) complete postal address of the Bid Inviting Entity;
- (iii) specific identification mark / Tender Ref. No. and subject matter of procurement.
- (iv) A warning 'not to open before the time and date for bid opening' as indicated in the Bidding Documents

2.21.2 If the envelope is not sealed and marked as required, the Procuring Entity will assume no responsibility about its consequences viz. misplacement or

premature opening of the bid

2.22 Extension of Due Date for Submission of Bids

2.22.1 Bids must be submitted (online and hardcopy) within due date and time for submission of bid.

2.22.2 The date of submission and opening of bids shall not be extended except when–

- (i) sufficient number of bids have not been received within the given time and the Purchase Committee of the Procuring Entity is of the opinion that further bids are likely to be submitted if time is extended; or
- (ii) the Bidding Documents are required to be substantially modified because of discussions in pre-bid meeting or otherwise and the time for preparations of bids by the prospective bidders appears to be insufficient for which such extension is required.

2.22.3 In cases where the time and date of submission of bids is extended, an amendment to the Bidding Documents shall be issued in accordance with **ITB Para 2.10**, in which case all rights and obligations of the Procuring Entity and Bidders previously subject to the deadline shall thereafter be subject to the deadline extended.

2.22.4 If the due date for submission of bids is not a working day, the bids shall be received and opened at the same time and hour on the next working day.

2.22.5 Bidder can withdraw or resubmit an online bid any time prior to the due date and time for submission of Bid (except details of online submission of Bid Security& Processing fee). In case of online resubmission of the bid, the latest submitted bid shall be available for evaluation.

2.23 Opening of Bids

2.23.1 Technical Bids submitted by the Bidders through the e-Procurement portal shall be opened online on the due date for opening of the bid as specified in the BDS. It shall be cross checked first to confirm whether all the bidders have also submitted the hardcopy of the technical bid within due date for submission. The bid of those bidders who fails to submit the hardcopy of the technical bid within the due date and time for submission of hardcopy as specified in the BDS shall be cancelled and excluded from further evaluation.

2.23.2 The Technical Bid of only those bidders who have submitted both hardcopy and online within due date and time shall be considered for evaluation by the Bid Evaluation Committee of the Procuring Entity.

EVALUATION AND COMPARISON OF BIDS

2.24 Confidentiality

2.24.1 Information relating to the evaluation of bids including finalization of the list of technically qualified bidders, price comparison and recommendation for award of contract, shall not be disclosed to bidders or any other persons not officially concerned with the bidding process until information on Contract Award is officially communicated to all Bidders.

2.24.2 Any effort by a Bidder to influence the officials of the Procuring Entity or its committee in the evaluation or contract award decisions may result in the rejection of its Bid.

2.24.3 Notwithstanding **ITB Para 2.24.2**, from the time of bid opening to the time of Contract Award, if any Bidder wishes to contact the officials of the Procuring Entity on any matter related to the bidding process, it should do so in writing.

2.25 Preliminary Examination of Bids

2.25.1 The Bid Evaluation Committee duly constituted by the Procuring Entity shall conduct a preliminary scrutiny of the bids at the beginning to assess the prima-facie responsiveness and record its findings thereof particularly in respect of the following:

- (i) That the bid is prepared in the prescribed manner and contains the documents and information as required.
- (ii) the bid is valid for the period, specified in the Bidding Documents.
- (iii) that the bid is accompanied by due Bid Security and Processing Fee.
- (iv) That the bid is unconditional, and that the bidder has agreed to give the required performance security; and
- (v) whether any other conditions specified in the Bidding Documents are fulfilled.

2.26 Clarification of Bids

2.26.1 To assist in the examination, evaluation, comparison and qualification of the bids, the Bid Evaluation Committee may, at its discretion, ask any bidder in writing for clarification by a specific date regarding its bid specifically therein that if the bidder does not comply or respond by that date his bid shall be liable to be rejected. The request of the Committee for clarification and the response of the bidder thereto shall be in writing. Depending on the outcome, such bids shall be ignored or considered further.

2.26.2 Any clarification submitted by a bidder about his bid that is not in response to a request by the Committee specifically shall not be considered.

2.26.3 No substantive change to qualification information or to a submission, including changes aimed at making an unqualified bidder qualified or an unresponsive submission, responsive shall be sought, offered, or permitted under any circumstances.

2.26.4 All communication generated as above shall be included in the record of the procurement proceedings.

2.27 Immaterial Non-conformities in Bids

2.27.1 The Bid Evaluation Committee may waive non-conformities in the bid that do not constitute a material deviation, reservation or omission and deem the bid to be responsive.

2.27.2 The Bid Evaluation Committee may request the bidder to submit necessary information or documents which are **historical in nature** like audited statements of accounts, tax clearance certificate, PAN, etc. within a reasonable period. Failure of the bidder to comply with the request within the given time shall result in the rejection of its bid.

2.27.3 The Bid Evaluation Committee may rectify immaterial non-conformities or omissions based on the information or documentation received from the bidder under **ITB Para 2.27.2**.

2.28 Determination of Responsiveness

2.28.1 The Bid Evaluation Committee constituted by the Procuring Entity shall determine the responsiveness of a bid to the Bidding Documents based on the contents of the bid submitted by the Bidder;

2.28.2 A bid shall be deemed to be substantially responsive if it meets the requirements of the Bidding Documents without any material deviation, reservation, or omission where:

- (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 Documents; and
- (c) “omission” is the failure to submit part or all of the information or documentation required in the bidding documents.

2.28.3 A “material deviation, reservation, or omission” is one that,

- (a) If accepted, shall: -
 - (i) effect in any substantial way the scope, quality, or performance of the subject matter of procurement specified in the Bidding Documents; or
 - (ii) limit in any substantial way, inconsistent with the Bidding Documents, the rights of the Procuring Entity or the obligation of the Bidder under the proposed contract; or

- (b) if rectified shall unfairly affect the competitive position of other Bidders presenting responsive bids.

2.28.4 The Bid Evaluation Committee shall examine the technical aspects of the bid to confirm that all requirements of Bidding Documents have been met without any material deviation, reservation or omission.

2.28.5 The Bid Evaluation Committee shall regard a bid as responsive if it conforms to all requirements set out in the Bidding Documents, or contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the Bidding Documents, that is, there is no material deviation, or if it contains errors or oversights that can be corrected without any change in the substance of the bid;

2.28.6 Bids that are not responsive or contain any material deviation shall be rejected. Bids declared as non-responsive shall be excluded from any further evaluation.

2.29 Non-conformities, Errors, and Omissions

2.29.1 Provided that a Bid is substantially responsive, the Bid Evaluation Committee may waive any non-conformity in the Bid.

2.29.2 Provided that a bid is substantially responsive, the Bid Evaluation Committee may request that the Bidder submit the necessary information or documentation, within a reasonable period, to rectify nonmaterial, non-conformities or omissions in the bid related to documentation requirements. Such omission 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.

2.30 Price and Purchase Preference

NOT APPLICABLE

2.31 Evaluation and Comparison of Bids

2.31.1 The Evaluation Committee of the Procuring Entity for Evaluation of this Bid shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

2.31.2 The Price Bid of only those bidders who are technically responsive/ qualified shall be opened online for comparative evaluation on the date and time a **specified in BDS**.

2.31.3 Unless otherwise specified in “**Section IV: Evaluation and Qualification Criteria**” and the **BDS**, the evaluation shall be done for each item in the price schedule (BOQ) separately (item-wise). The responsive bidder offering lowest price for a particular items shall be declared L1 (lowest) bidder for that item. In case of tie, the bidder having highest average annual turnover in last three years shall be declared as the most preferred bidder.

2.31.4 The evaluation of a bid will exclude and not consider:

- (i) IGST/SGST/CGST payable on the Goods/items quoted. GST, if payable, shall be paid at the applicable rate.
- (ii) Any other component as specified in the BDS

2.31.5 If specified in the BDS, the price evaluation shall be done on total lifecycle cost of the Goods. In such case price shall include other cost components as defined therein.

2.31.6 The list of responsive and non-responsive bidder shall be published at the e-Procurement portal i.e., <http://assamtenders.gov.in> along with the reason for non-responsiveness.

2.32 Right to Accept or Reject any or all Bids

2.32.1 The Procuring Entity reserves the right to accept or reject any bid, and to cancel / annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to the Bidders for which the management of the Procuring Entity shall keep record of clear and logical reasons properly for any such action / recall of bidding process. In case of cancellation / annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders

AWARD OF CONTRACT

2.33 Award of Contract

2.33.1 Subject to **ITB 2.32.1**, the contract shall be award to the lowest responsive bidder for the tendered item(s) as determined in the manner specified in **ITB 2.31**.

2.33.2 Procuring Entity shall award the entire tendered quantity to L1 bidder unless otherwise mentioned in BDS.

2.33.3 In case of a tie between two or more bidders in the price bid for a particular item (or where more than one bidder is L1 for a particular item/seed verity), then the bidder having highest average annual turnover amongst them (all L1 bidders) shall be declared as most preferred bidder.

2.34 Notification of Award

2.34.1 Prior to the expiration of the period of bid validity, the Procuring Entity shall notify the successful Bidder, in writing, that its Bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the "Letter of Acceptance") shall specify the price of the goods that the Procuring Entity will pay the Contractor in consideration of timely supply of contracted item(s) (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price"). In addition, the contracted rate quantity to be supplied by the

contracted party shall also be specified. (Hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Qty”)

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

2.34.3 Procurement Entity shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with **ITB Para2. 34.1**, requests in writing the grounds on which its bid was not selected.

2.35 Performance Security

2.35.1 Within twenty-eight (28) days of the receipt of Letter of Acceptance from the Procuring Entity or before signing of the Contract, the successful Bidder, shall furnish the Performance Security in accordance with the GCC, using the Performance Security Bank Guarantee Form as given in “**Section IX: Contract Forms**”,

2.35.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Procuring Entity may award the Contract to the next lowest evaluated Bidder, whose bid is substantially responsive, provided it agrees to lowest evaluated bid price i.e., L1 price.

2.35.3 The validity of the performance security shall be for a period of **90(Ninety) days** beyond the date of completion of all contractual obligations including warranty and maintenance obligations, if any.

2.36 Signing of Contract

2.36.1 Promptly after notification of Award/ issue of Letter of Acceptance, the Procuring Entity shall send the successful Bidder the draft Contract Agreement.

2.36.2 The successful Bidder shall sign, date, and return the contract to the Procuring Entity within twenty-eight (28) days of receipt of the Letter of Acceptance along with required performance security.

2.37 Period of Contract

2.37.1 The contract shall remain valid for a period as specified in BDS. The contract price shall remain firm during the period of contract except for any price adjustments if authorized in the SCC.

2.37.2 The contract period may be extended further with mutual consent for a maximum period of 30 days.

SECTION III

3. Bid Data Sheet (BDS)

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

ITB Para No.	Particulars
	A. General
ITB 2.1.1	Procuring Entity: Assam Electricity Grid Corporation Limited (AEGCL)
ITB 2.5.1	Joint Venture Not Applicable
ITB 2.7.2	Bidding Documents shall be available online at e-Procurement portal i.e., http://assamtenders.gov.in
	B. Bidding Documents
ITB 2.8.1	Contact details of the concerned official of Procuring Entity for the purpose of any clarification is: Chief General Manager, PP&D, AEGCL, Address: Regd. Office, O/o the MD, AEGCL, 1st Floor, Bijulee Bhawan, Paltanbazar, Guwahati – 781001 Email: neap.cell@aegcl.co.in with a copy to cgm.ppd@aegcl.co.in; Requests for clarification should be received by the Procuring Entity before date scheduled for Pre-Bid Meeting.
ITB 2.8.2	Response to the queries raised by the prospective bidders shall be published in the e-Procurement portal i.e., http://assamtenders.gov.in and there shall be no individual communication. The prospective bidders are expected to visit the portal on regular interval.
ITB 2.9.1	Pre-Bid Meeting shall be scheduled: Yes Name of contact person: <u>Smt Jayashree Devi, CGM, PP&D</u> Contact Details (Phone / Mobile /E-mail): neap.cell@aegcl.co.in with a copy to cgm.ppd@aegcl.co.in Ph. No.: 9854076553 Address of Venue: <u>Conference Room, O/o the MD, AEGCL, 1st Floor, Bijulee Bhawan, Paltanbazar, Guwahati – 781001</u> Time and Date: 12.00 hrs. of 16.09.2026
ITB 2.10.2	Amendments or modifications, if any, in the bidding document shall be published at e-Procurement portal i.e., http://assamtenders.gov.in . and www.aegcl.co.in

	C. Preparation of Bids																	
ITB 2.11.1 (xv)	The Tenderer shall submit with its tender the following additional documents: i. Valid Electrical license issued by the Authority anywhere in India. ii. Notarized Manufacturer’s Authorization iii. Technical Compliance. iv. Undertaking between the GIS Manufacturer and authorised agents in India to provide service facility as per clause V of 4.2.1(c) (Subcontractor-GIS) of section IV (Evaluation and Qualification requirement) vii. Undertaking by the contractor to supply spare parts for a period of 10 years.																	
ITB 2.12.3	Not Applicable																	
ITB 2.13.1	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: <table><tr><th>Constitution of the Bidder</th><th>Signatory</th><th>Documentation</th></tr><tr><td>Proprietorship</td><td>Proprietor</td><td>NA</td></tr><tr><td>Partnership Firm</td><td>Any one of the Partner duly authorized by the partnership (Partners)</td><td>Declaration of Authorized Signatory</td></tr><tr><td>Company</td><td>Employee authorized as signatory vide duly executed Power of Attorney Director or Key Officials (CEO, CFO & Company Secretary) duly authorised vide Board Resolution.</td><td>Original Power of Attorney Document Certified copy Board Resolution</td></tr><tr><td>Society/Trust</td><td>Employee authorised as signatory vide duly executed Power of Attorney Trustee/Office Bearer</td><td>Original Power of Attorney Document Certified copy EB Resolution</td></tr></table> Format for Power of Attorney document given in “Section-V: Bid Form” as Form-B9			Constitution of the Bidder	Signatory	Documentation	Proprietorship	Proprietor	NA	Partnership Firm	Any one of the Partner duly authorized by the partnership (Partners)	Declaration of Authorized Signatory	Company	Employee authorized as signatory vide duly executed Power of Attorney Director or Key Officials (CEO, CFO & Company Secretary) duly authorised vide Board Resolution.	Original Power of Attorney Document Certified copy Board Resolution	Society/Trust	Employee authorised as signatory vide duly executed Power of Attorney Trustee/Office Bearer	Original Power of Attorney Document Certified copy EB Resolution
Constitution of the Bidder	Signatory	Documentation																
Proprietorship	Proprietor	NA																
Partnership Firm	Any one of the Partner duly authorized by the partnership (Partners)	Declaration of Authorized Signatory																
Company	Employee authorized as signatory vide duly executed Power of Attorney Director or Key Officials (CEO, CFO & Company Secretary) duly authorised vide Board Resolution.	Original Power of Attorney Document Certified copy Board Resolution																
Society/Trust	Employee authorised as signatory vide duly executed Power of Attorney Trustee/Office Bearer	Original Power of Attorney Document Certified copy EB Resolution																
ITB 2.13.2	a) Due Date & Time for submission of online Bids (Technical & Price): For Technical Bid: 3rd October 2026 upto 12:00 Hrs. For Price: Will be notified. b) Due date & Time for submission of the Hardcopy of the documents in the office of the Procuring Entity. 3rd October 2026 upto 11:00 Hrs.																	

ITB 2.13.3	The Tenderer (for single entity) shall submit with its tender the following additional documents: i. Valid Electrical license issued by the Authority anywhere in India. ii. Manufacturer's Authorization iii. Technical Compliance. iv. Undertaking between the GIS Manufacturer and authorised agents in India to provide service facility as per clause V of 4.2.1(c) (Subcontractor-GIS) of section 3 (Evaluation and Qualification requirement) vii. Undertaking by the contractor to supply spare parts for a period of 10 years.
ITB 2.14.2	NOT APPLICABLE
ITB 2.14.3	The price quoted by the Bidder shall be fixed (remain Firm) during the Bidder's performance of the Contract and shall not be subject to variation on any account.
ITB 2.18.1	The bid validity period shall be 180 days .
ITB 2.19.1	Bid Processing Fee (Nonrefundable) shall be for Rs 5000 (Rupees Five Thousand)
ITB 2.20.1	The Bidder shall furnish a Bid security in the amount of ₹ 24 Crores (Rupees Twenty Four Crore only) in the in the form of Bank Guarantee/DD/FIXED DEPOSIT from Nationalised Bank (India)in favour of ASSAM ELECTRICITY GRID CORPORATION LIMITED, AEGCL payable at Guwahati, Assam. The Bid Security must remain valid for forty-five (45) days beyond the original or extended validity period of the bid.
ITB 2.20.2	NOT APPLICABLE
ITB 2.20.3	NOT APPLICABLE
ITB 2.20.4 (iii)	Bid Security deposit through digital mode is not permitted.
ITB 2.20.9	The Bid Security originally deposited by a Bidder shall be considered.
ITB 2.20.11	The Bid Security "shall not be" adjusted with the amount of performance security required from him. The Bid Security of successful bidder shall be refunded upon submission of the full amount of performance security by the successful bidder.
ITB 2.21.1	c) Due Date & Time for submission of online Bids (Technical & Price): For Technical Bid: 3rd October 2026 up to 12:00 Hrs. For Price: Will be notified. d) Due Date & Time for submission of the hardcopy of only the technical bid in the office of Bid Inviting Entity 3rd October 2026 up to 11:00 Hrs.

ITB 2.23.1	Due Date & Time for opening of the Bid: 5th October 2026 on 14:00 Hrs.
ITB 2.31.3	<i>Price evaluation shall not be done item wise.</i>
ITB 2.31.4(ii)	<i>No other component</i>
ITB 2.31.5	lifecycle cost of Goods not considered.
ITB 2.37.1	Contract shall be for a period of 3(Three) years from the date of its signing.

SECTION IV

4. Evaluation and Qualification Criteria¹

4.1. Evaluation Criteria & Methodologies

4.1.1 Evaluation Criteria

- (i) The Procuring Entity shall use the criteria and methodologies listed in this Section to evaluate Bids. By applying the criteria and methodologies the TEC shall determine the Most Advantageous Bid for Item/ Schedule. This is the Bid that meets the Qualification Criteria and has been determined to be:
 - a) substantially responsive to the bidding document, and
 - b) the lowest evaluated cost for the item(s) or the Schedule, as the case may be, as per **ITB 2.31**.
- (ii) The determination of bidder quoting lowest evaluated cost shall be based on the comparison of evaluated bid price carried out on “Delivery Duty Paid (DDP) consignee site basis”, quoted by substantially responsive bidders.
- (iii) The evaluation of a Bid to determine lowest evaluated bidder may consider, in addition to the Bid Price as quoted in the price bid procurement preference policy as given below.

4.1.2 Purchase and Price Preferences- Not Applicable

4.1.3 Lifecycle Cost – Not Applicable

4.1.4 Alternative Bids

Not Allowed

4.2 Qualification Criteria

4.2.1 Required Minimum Experience

Tenderer's Experience

4.2.1 (a) Contracts of Similar Size and Nature

¹This Section contains all the criteria that the Procuring Entity shall use to evaluate a bid and qualify the Bidders, no other factors, methods or criteria shall be used.

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture (Not allowed)			Submission Requirements
		All Partners Combined	One Partner	Lead Partner	
PART-A (For 400/220 kV Gas Insulated Substation) The tenderer must have designed, supplied, erected, tested & commissioned including Civil works complete at least One (1) no. GIS of 400 KV or above voltage class; The above credential shall be from any state/ central power utility and the same should have been in successful operation for at least one year within last 12 (Twelve) years on the originally scheduled date of bid opening.	Must meet requirement	NA	NA	NA	Form EXP – 1
PART B: (Associated Transmission Lines) The tenderer shall have executed Turnkey contracts involving design, supply, tower foundation, erection and stringing; and shall have: Successfully commissioned at least 100 ckt km of length of 400 kV or above voltage level in a single project in the state of Assam and the same should have been in successful operation for at least one year within last 12 (Twelve) years as on the originally scheduled date of bid opening	Must meet requirement	NA	NA	NA	

4.2.1 (b) Experience in Key Activities

Table A

Criteria	Compliance Requirements	Documents
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Requirement	Single Entity	Joint Venture (Not Allowed)	Submission Requirements
For the above or other contracts executed during the period stipulated in 2.4.1, a minimum experience in the following key activities:	Must meet requirement	NA	Form EXP – 2
For Part A: Substation			
A. The tenderer must have the experience of design, install, test and commission of the following listed equipment's which are in successful operation for at least one year within last twelve years as on the date of original bid submission. i. 400KV class capacity of Power/Auto Transformers, ii. AIS/GIS circuit breaker bays of 400 kV or above voltage level. iii. Control & Relay Panel and iv. RTU / BCU and Substation Automation System v. Construction of control room building with all civil works complete.	Must meet requirement	NA	
B. The bidder must have experience of construction of 400KV or above voltage class transmission line of minimum total 100 Circuit KM length with the following listed equipment, which are in successful operation for at least one year within last twelve years as on the date of bid opening. (i) Power Conductors, (ii) Insulators. (iii) Transmission Line Towers. (iv) OPGW laying	Must meet requirement	NA	

4.2.1 (c) Manufacturers/Subcontractor

The proposed manufacturers or subcontractors by the tenderer for the following major items of plant and services must meet the minimum qualification criteria as mentioned below:

Item No.	Description of Item	Criteria to be met	Submission Requirements
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1	GIS	I. The manufacturer should have designed, supplied, erected, tested and commissioned on supply cum erection basis at least 3 (three) nos. GIS installations of 400kV or above voltage level in India during last 7(seven) years having minimum 5 (five) nos. complete GIS Bays and which should be under satisfactory operation for at least 1 (one) year as on the originally schedule date of tender opening (Certificate of original customer to be submitted). II. The GIS manufacturer must have well established testing (including High Voltage Testing) & Service faculty in India or an authorized agent in India to perform these activities, so that competent service engineer(s) can be deputed within 100 hours from the time of incidence reporting. The agreement between GIS manufacturer / the authorized agent and the tenderer shall be submitted along the technical tender. III. The Manufacturer shall have to furnish type test report of SF6 gas insulated sub-station equipment duly Designed, Manufactured, tested (as per IEC standard) which, shall not be older than 10 (Ten) years, as on date of tender opening. The language of the type test report should be in English only. Type Test should have been conducted at any of the following internationally accredited testing laboratories, (a) KEMA (Holland) (b) CESI (Italy) (c) CERDA (France) (d) PEHLA (Germany) (e) KERI (S. Korea) (f) CPRI/ERDA (India) (g) Intertek (ASTA), UK (h) ESEF ASEFA, France (i) JSTC, Japan (j) SATS Norway (k) VEIKI, Hungary (m) FGH (Germany) (n) VOLTA (France). (o) STLNA, USA The testing Laboratory shall be accepted only if international accreditation certificate is furnished. In case the type test reports are older than 10 years and there is no change in design of the GIS equipment, the manufacturer shall provide an undertaking declaring that there has not been any change of design of the GIS equipment intended to be supply. In case any subcomponent of GIS equipment is tested by the sub Contractors, the manufacturer shall submit such test report along with the certificate of the laboratory from the appropriate accreditation authority. IV. The tenderer/manufacturer shall not be currently debarred/blacklisted nationally or internationally from	FORM: EXP-3
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		any of the state, central and Govt. or undertaking department as on date of tender submission. V. The Tenderer shall furnish performance guarantee for an amount of 20% of the ex-works cost of GIS equipment(s) for a period of five (5) years after completion of the defect liability period. This performance guarantee shall be in addition to Contract Performance Guarantee to be submitted by the tenderer to cover the Contractor's extended defect liability in accordance with the provision in the SCC, pursuant to GCC Subclause 27.10. If the tenderer is not the manufacturer, the agreement between the tenderer and the GIS manufacturer containing the terms and conditions pertaining to this performance guarantee for 20% of the ex-works cost of GIS equipment(s) for a period of five (5) years after completion of the defect liability period shall be submitted to AEGCL, 3 months prior to the expiry of the defect liability period. VI. A GIS manufacturer who on its own does not meet the requirement as specified in clause No. I & III above, but has established production line in India for manufacturing of SF6 Gas Insulated switchgear (GIS) based on technological support of its parent company (Holding Company) can also be considered provided that they (Parent company) have manufactured, type tested (as per IEC standard) of such equipment with the following stipulation: - a) manufacturer's parent company (Holding Company) has manufactured, type tested (as per IEC standard). (b) The parent company (Holding Company) meets qualifying requirements stipulated under clause no. I & III above. (c) The manufacturer must furnish the following: i. A joint undertaking with the parent company (Holding company) shall be furnished to guarantee equality, timely supply, performance and warranty obligations for a period of 5 (Five) years as specified for the equipment(s) in the parent company's (Holding Company) letterhead, which is required to be submitted at the time of signing/execution of the contract agreement. ii Such manufacturer should submit valid collaboration agreement for technology transfer / license to design, manufacture, test and supply GIS equipment(s) in India at the time of tendering. iii. Shall meet above clause (V) above.	FORM: EXP-3
2	Power Transformers of 400/220KV, or above voltage level	i. The Transformer manufacturer must have designed, manufactured; type tested, supplied the transformers, which are in successful operation for at least 3 (three) years during last 7(seven) years as on the date of bid opening for the following rated capacity of transformers. The bidder should list such works	

		executed to substantiate the requirement of this Clause. ii. The Transformer manufacturer must have well established testing (including High Voltage Testing) & Service facility in India or an authorized agent in India to perform these activities,	FORM: EXP-3
3.	Control and Relay Panel and Substation Automation System including RTU / BCU of 220KV Voltage class	i. The manufacturer must have designed, manufactured; type tested, which are in successful operation for at least 3 (three) years during last 7(seven) years as on the date of bid opening. The bidder should list such works executed to substantiate the requirement of this Clause. ii. The manufacturer must have well established testing (including High Voltage Testing) & Service facility in India or an authorized agent in India to perform these activities,	FORM: EXP-3
	Tower Structure	i. The manufacturer must have yearly manufacturing capacity of 6000 MT tower structure during last three years. ii. The manufacturer must have well established testing & Service facility to perform all the required testing activities.	

In the case of a Tenderer who offers to supply and install major items of plant under the contract, which the Tenderer did not manufacture or otherwise produce, the Tenderer shall provide the Manufacturer's authorization using the form provided in Section 4 (Tendering Forms), showing that the Tenderer 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 Tenderer to submit the omitted authorization shall lead to rejection of the Subcontractor or Manufacturer of the item under evaluation in accordance with ITT 35.4.

4.2.1(d) DOCUMENTARY EVIDENCES:

The tenderer shall furnish necessary detailed LOA copies and end user certificates as documentary evidence thereof for the works specified in technical experience criteria.

Important Note:

1. The Commissioning of substations shall mean complete design, supply of equipment's, all civil works, erection of all bays and structures and charging of the substation.
2. Satisfactory operation means certificate issued by the Employer certifying the operation without adverse remark. In case tenderer is a holding company, the technical experience referred above shall be of that holding company only (i.e. excluding its subsidiary/group companies). In case tenderer is a subsidiary of a holding company, the technical experience referred above shall be of that subsidiary company only (i.e., excluding its holding company).
3. The proof for the above experience shall be submitted along with the tender.
4. **Assessment of Present and Past Performance:**
Notwithstanding fulfillment of the prescribed qualification criteria, AEGCL reserves the right to assess the Bidder's present performance and past performance in the

execution of ongoing and completed contracts with AEGCL and/or any other power utility, Government organization, PSU, or other employer.

The assessment shall be based on, but not be limited to, the following factors:

- Timely completion of works within the scheduled contractual period, including adherence to approved milestones.
- Progress of ongoing works under execution.
- Quality of materials supplied and workmanship/services rendered.
- Compliance with contractual obligations, technical specifications, quality standards, and statutory requirements.
- Responsiveness in addressing defects, deficiencies, and warranty obligations.
- History of delays attributable to the Bidder, imposition of liquidated damages, issuance of notices for poor performance, contract termination, debarment, or any other adverse contractual actions.
- Overall execution capability and performance record with AEGCL and/or other utilities.

AEGCL shall have the sole discretion to evaluate the Bidder's present and past performance based on available records, performance reports, employer references, or any other information deemed relevant. If, in the opinion of AEGCL, the Bidder's present performance or past performance indicates unsatisfactory execution capability or poses a risk to the timely and successful completion of the proposed work, AEGCL reserves the right to reject the Bid, notwithstanding that the Bidder may otherwise satisfy the prescribed qualification requirements. The decision of AEGCL in this regard shall be final and binding, and no claim or representation against such decision shall be entertained.

OTHER CONDITIONS:

- a) The Experience as sub-contractor will not be considered for qualifying technical experience criteria and offer of such tenders will be summarily rejected.
- b) The documentary evidences required for satisfying technical experience criteria, financial criteria, performance criteria and other Tenderer's Qualifying Requirements (TQR) shall be furnished along with the offer, otherwise the offers will be summarily rejected.
- c) As regards documentary proof to substantiate experience requirement in regard to erection work, experience in manufacturing capacity, execution of works and satisfactory operation is concerned, the tenderer will have to submit necessary certificates from User Agency clearly specifying the period of experience and other details. All the certificates for proof should be attached)
- d) **It shall be explicitly noted by the tenderers that evaluation of various experience criteria shall be done on the basis of certificates submitted by the tenderer for which responsibility to furnish necessary documentary proof rests on participating tenderer.**

4.2.2 Financial Situation:

- 4.2.2 (a) Historical Financial Performance

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture (Not Allowed)			Submission Requirements
		All Partners Combined	Each Partner	One Partner (Lead Partner)	
Submission of audited financial statements or, if not required by the law of the Tenderer's country, other financial statements acceptable to the Employer, for the last five (5) years to demonstrate the current soundness of the Tenderer's financial position. As a minimum, the Tenderer's net worth for the last year calculated as the difference between total assets and total liabilities should be positive.	Must meet requirement	NA	NA	NA	Form FIN - 1 with attachments

4.2.2 (b) Average Annual Turnover

Criteria	Compliance Requirements	Documents
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Requirement	Single Entity	Joint Venture (Not Allowed)			Submission Requirements
		All Partners Combined	Each Partner	One Partner (Lead Partner)	
Minimum average annual turnover of ₹ 2500 Crore (Rupees Two Thousand Five Hundred Crore) certified payments received for contracts in progress or completed, within the last five (5) years.	Must meet requirement	NA	NA	NA	Form FIN – 2

Note:

1. The tenderer has to furnish the certificate from the chartered Accountant (CA) **registered in India** certifying the Project related Annual turnover of the company only (excluding its Associated Companies on Standalone Basis) based on audited accounts of the last five financial years

4.2.2 (c) Financial Resources

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture (Not Allowed)			Submission Requirements
		All Partners Combined	Each Partner	Lead Partner	
For Single Entities: The Tenderer must demonstrate that its financial resources defined in FIN-3, less its financial obligations for its current contract commitments defined in FIN-4, meet or exceed the total requirement for the Subject Contract of ₹ ₹ 130 Crore (Rupees One Hundred Thirty Crore).	Must meet requirement	Not applicable	Not applicable	Not applicable	Form FIN – 3 and Form FIN – 4

▪

SECTION V

5.1 Scope of Supply of Plant and Services

*Design, Engineering, Manufacture, Assembly, Inspection, Testing at Manufacturer's Works before Dispatch, Packing, Supply, Delivery at Site, Including Insurance During Transit, Subsequent Storage, Erection and Commissioning of GIS, Power Transformers with Associated Switchgears, including Supply & Erection of Substation Steel Structures, Construction of Control Room Building, Erection and Commissioning of new associated Transmission Lines and all other Civil Works on **Turnkey Basis of the following components:***

1. **Construction of 400kV Double Circuit Chapar–Rangia Transmission Line for Evacuation of Power from 3200 MW Chapar Thermal Power Plant**
2. **Construction of 400kV Double Circuit Chapar–Agia Transmission Line for Evacuation of Power from 3200 MW Chapar Thermal Power Plant.**
3. **Upgradation of Existing 220/132kV Agia Air Insulated Substation to 400/220kV, 2x500MVA Gas Insulated Substation for Evacuation of Power from 3200 MW Chapar Thermal Power Plant**

The scope of supply of plant and services in details are covered in **Volume-II (Part-II, Technical Specification)** of this Tendering Document.

- a) *The tentative Bill of Quantities are furnished in Price Schedule.*
- b) *The quantities are provisional in nature and for tendering purpose and for tender comparison purpose only. Quantities may vary to the extent of **(+)** 15 % to **(-)** 15% in terms of total Contract Price.*
- c) *If any items which is not specifically mentioned in Price Schedule but required to complete the works as per Specification shall deemed to be included in any of the items of these Annexure. Additions, deletions or modification of these items while preparing the Price Tender by the Tenderer shall render his tender non responsive.*

5.2 Specification

- a. The technical specifications for plant and services are covered in a separate volume (**Volume-II, Technical Specification**) of this Tendering Document.
- b. The following Sections are included in the Technical Specification:
(The Tenderer shall refer to Volume II)

5.3 Drawings

Drawings based on which the facilities shall be built are enclosed in the of the Tendering Document.

Drawings provided in the tender are only indicative in nature and should not be considered as final. The successful tenderer shall have to submit minimum of 5 (five) copies of completed drawings generated by them to the Employer for necessary

approval and consequently undertake construction based on those approved drawings.

5.4 Supplementary Information

For any information regarding the employer's requirements, tenderers shall refer to ***Volume-II*** of the Tendering Document.

SECTION-VI

6. Bidding Forms

6.1 Letter of Technical Bid²

FORM-B1

Letter of Technical Bid

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

Tender Ref. No.: [insert number of bidding process]

To:

The Chief General Manager(PP&D),
O/o The Managing Director, AEGCL,
Bijulee Bhawan, Paltan Bazar, Guwahati-781001

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with **ITB2.10** of Instructions to Bidders ;
- (b) We meet the eligibility and qualification criteria as set out in this Bidding Document;
- (c) We have no Conflict of Interest in accordance with **ITB2.4**.
- (d) We have submitted the required bid security and bid processing fee as per **ITB 2.19 & 2.20**.
- (e) We offer to provide following tendered item(s) in conformity with all terms and conditions as specified in the Bidding Documents including the quantity, quality standard and delivery conditions, etc., as specified in the “**Section-V: Schedule of Requirements**”:
- (f) We have submitted both technical and price bid for above mentioned items and our bid shall be valid for a period of 180 days beyond the bid submission deadline in accordance with the Bidding Documents (ITB 2.18.1), 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 a performance security in accordance with the ITB 2.35 of Bidding Documents.

²The Bidder must prepare the Letter of Bid on its letterhead clearly showing the Bidder's complete name and address.

- (h) We are not participating, as a Bidder, in more than one bid in this bidding process in accordance with ITB 2.4.3(v);
- (i) We, along with any of our, Contractors, producer, or grower, are not debarred by any procuring entity under the State Government, the Central Government or any State Government or any Public Undertaking, Autonomous Body, Authority by whatever name called under them;
- (j) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any activities which is in contravention of the Code of Integrity proscribed in ITB Para 2.3 of the Bidding Documents;
- (k) We hereby certify that we are neither associated nor has been associated directly or indirectly with any personnel/official or any other entity that has prepared the specifications and other documents for the subject matter of procurement;
- (l) We hereby certify that we have fulfilled our obligations to pay all such taxes as payable to the Central Government or the State Government or any local authority;
- (m) We hereby certify that we are not insolvent, in receivership, bankrupt or being wound up, not have its affairs administered by a court or a judicial officer, not have its business activities suspended and must not be the subject of legal proceedings for any of the foregoing reasons;
- (n) We hereby certify that our directors and officers have not been convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract within a period of three years preceding the commencement of the procurement process, or not have been otherwise disqualified pursuant to debarment proceedings;
- (o) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and
- (p) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

Name of the Bidder _____

Name of the person duly
authorized to sign the Bid _____
on behalf of the Bidder

Title of the person signing the Bid _____

Signature of the person named above _____

6.1 (a) Letter of Financial Bid FORM-B1(a)

-- Note --

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

Date:

NCT. No.:

Invitation for Tender No.:

To:
The Chief General Manager(PP&D),
O/o The Managing Director, AEGCL,
Bijulee Bhawan, Paltan Bazar, Guwahati-781001

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Tender Document, including Addenda issued in accordance with Instructions to Bidders (ITB).
- (b) We offer to design, manufacture, test, deliver, install, pre-commission, and commission in conformity with the Tender Document the following Plant and Services: **[insert narrative]**
- (c) The total price of our Tender, excluding any discounts offered in item (d) below is the sum of

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

The total Tender price from the Grand Summary should be entered by the Tenderer inside this box. Absence of the total Tender price in the Letter of Price Tender may result in the rejection of the Tender.

- (d) The discounts offered and the methodology for their application are as follows:
[insert discounts and methodology for their application if any]
- (e) Our Tender shall be valid for a period of 180 days from the date fixed for the submission deadline in accordance with the Tender Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
- (f) If our Tender is accepted, we commit to obtain a performance security in accordance with

the Tender Document.

- (g) We understand that this Tender, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.
- (h) We understand that you are not bound to accept the lowest evaluated Tender or any other Tender that you may receive.

Name

In the capacity of

Signed

.....

Duly authorized to sign the Tender for and on behalf of

Date

6.2 Bidder Information Form

Form ELI - 1: Tenderer's Information Sheet

Tenderer's Information	
Tenderer's legal name	
In case of a Joint Venture, legal name of each partner	NA
Tenderer's country of constitution	
Tenderer's year of constitution	
Tenderer's legal address in country of constitution	
Tenderer's authorized representative (name, address, telephone number(s), fax number(s), e-mail address)	
Attached are copies of the following documents:	
☐ 1. In case of a single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITT 2.5	
☐ 2. Authorization to represent the firm named above, in accordance with ITT 2.5	
☐ 4. In case of a government-owned enterprise, any additional documents not covered under 1 above required to comply with ITT 2.5 and ITT 2.6	

**Signature of the Bidder/ Authorised Signatory
(Name, Address & Designation)**

Form LIT - Pending Litigation

Each Tenderer must fill in this form

Pending Litigation

- ☐ No pending litigation in accordance with Section 4 (Evaluation and Qualification Criteria)
- ☐ Pending litigation in accordance with Section 4 (Evaluation and Qualification Criteria)

Year	Matter in Dispute	Value of Pending Claim in Rupees	Value of Pending Claim as a Percentage of Net Worth

**Signature of the Bidder/ Authorised Signatory
(Name, Address & Designation)**

Form CON – 1: Historical Contract Nonperformance

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

Table 1: History of Nonperforming Contracts

Choose one of the following:

- ☐ No nonperforming contracts.
☐ Below is a description of nonperforming contracts involving the Tenderer

Year	Description	Amount of Nonperformer Portion of Contract (\$ equivalent)	Total Contract Amount (\$ equivalent)
<i>[insert year]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for nonperformance: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>	<i>[insert amount]</i>

Table 2: Pending Litigation and Arbitration

Choose one of the following:

- ☐ No pending litigation and arbitration.
☐ Below is a description of all pending tx and arbitration against the Tenderer

Year	Matter in Dispute	Value of Pending Claim in \$ Equivalent	Value of Pending Claim as a Percentage of Net Worth
<i>[insert year]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Matter of Dispute: <i>[indicate full description of dispute]</i> Party who initiated the dispute: <i>[indicate "Employer" or "Contractor"]</i> Status: <i>[indicate status of dispute]</i>	<i>[insert amount]</i>	<i>[insert amount]</i>

Form FIN - 1: Historical Financial Performance

Each Tenderer must fill out this form.

Financial Data for Previous _____ Years [INR Equivalent]				
Year 1:	Year 2:	Year 3:	Year 4:	Year 5:

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;
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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 _____ years, as indicated above, complying with the following conditions.
- Unless otherwise required by Section 3 of the Tender Documents, all such documents reflect the financial situation of the legal entity or entities comprising the Tenderer and not the Tenderer's parent companies, subsidiaries or affiliates.
 - Historical financial statements must be audited by a certified accountant.
 - Historical financial statements must be complete, including all notes to the financial statements.
 - Historical financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

FIN - 2: Average Annual Turnover

Each Tenderer must fill out this form.

The information supplied should be the Annual Turnover of the Tenderer in terms of the amounts billed to clients for each year for work in progress or completed, converted to US dollars at the rate of exchange at the end of the period reported.

Annual Turnover Data for the Last ____ Years			
Year	Amount Currency	Exchange Rate	\$ Equivalent

Average Annual Turnover

Form FIN – 3: Availability of Financial Resources

Tenderers must demonstrate sufficient financial resources, usually comprising of Working Capital supplemented by credit line statements or overdraft facilities and others to meet the Tenderer's financial requirements for

- (a) its current contract commitments, and
- (b) the subject contract.

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	
Total Available Financial Resources		

^a *To be substantiated by a letter from the bank issuing the line of credit.*

Form FIN- 4: Financial Requirements for Current Contract Commitments

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

Current Contract Commitments						
No .	Name of Contract	Employer's Contact (Address, Tel, Fax)	Contract Completi on Date	Outstandi ng Contract Value (X) ^a	Remaining Contract Period in months (Y) ^b	Monthly Financial Resources Requirement (X / Y)
1						
2						
3						
4						
Total Monthly Financial Requirement for Current Contract Commitments						\$

^a Remaining outstanding contract values to be calculated from 28 days prior to the Tender submission deadline (\$ equivalent based on the foreign exchange rate as of the same date).

Form FIN - 5: Self-Assessment Tool for Tenderer's Compliance to Financial Resources

This form requires the same information submitted in Forms FIN - 3 and FIN - 4. All conditions of "Available Financial Resources Net of CCC $\geq$ 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 Current Contract Commitments (CCC) from FIN – 4 (C)	Available Financial Resources Net of CCC $D = (B - C)$	Requirement for the Subject Contract (E)	Results: Yes or No [D must be greater than or equal to E] (F)
_____ (Name of Tenderer)					

All partners combined	$\sum D$ = Sum of available financial resources net of current contract commitments for all partners	$\sum D =$ _____		
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Form FIN – 5 is made available for use by the Tenderer 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 4.2.2. Failure to submit Form FIN - 5 by the Tenderer shall not lead to Tender rejection.

Form EXP – 1: Contracts of Similar Size and Nature

Fill out one (1) form per contract.

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 national bank on the date of the contract.

Contract of Similar Size and Nature		
Contract No of	Contract Identification	
Award Date		Completion Date
Role in Contract	☐ Contractor ☐ Management Contractor ☐ Subcontractor	
Total Contract Amount	\$	
Employer's name Address Telephone number Fax number E-mail		
Description of the Similarity in Accordance with Criterion 2.4.1 of Section 3 (Evaluation and Qualification Criteria)		

Form EXP - 2: Experience in Key Activities provided in Section VI: Bidding Forms (Form- EXP- 2)

Fill out one (1) form per contract.

Each Tenderer must fill out this form.

If complied by Specialist Subcontractor, 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	INR	
Employer's name Address Telephone number Fax number E-mail		
Description of the Key Activities in Accordance with Criterion 2.4.2 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	\$	
Employer's name Address Telephone number Fax number E-mail		
Description of the Major Items in Accordance with Criterion 2.5 of Section 3 (Evaluation and Qualification Criteria)		

6.3 Bank Guarantee Format for Bid Security

FORMAT-B3

Bank Guarantee (Bid Security)

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

Beneficiary: *[Insert its name and address of Authority/Entity in whose favour the Guarantee shall be Issued]*

Tender Ref. No.: *[To insert reference number for the Invitation for Bids]*

Date: *[Insert date of issue]*

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

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

We have been informed that *[insert name of the Bidder,]* (hereinafter called "the Applicant") will submit to the Beneficiary its bid (hereinafter called "the Bid") for supply of <broad description of the goods> under Tender Ref. No("Bidding Document").

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

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

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

This guarantee will expire: (a) if the Applicant is the successful bidder, upon our

receipt of copies of the contract agreement signed by the Applicant and the performance security issued to the Beneficiary in relation to such contract agreement; or (b) if the Applicant is not the successful bidder, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the bidding process; or (ii) twenty-eight days after the end of the Bid Validity Period.

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

[Signature(s)]

Note:

- (i) *All italicized text is for use in preparing this form and shall be deleted from the final product.*

6.4 Manufacturer's Letter of Authorization³

FORM-B4

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

NCT No.: *[insert number of Tender process]*

To:

The Chief General Manager(PP&D),
O/o The Managing Director, AEGCL,
Bijulee Bhawan, Paltan Bazar, Guwahati-781001

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 Tenderer]*** to submit a Tender 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.

We hereby confirm that the necessary spares and service for equipment/materials/accessories shall be available for the period for 10years from the date of commissioning of substation.

Further, we also hereby declare that we and, ***[insert: name of the Tenderer]*** have entered into a formal relationship in which, during the duration of the Contract **(including related services and warranty / defects liability)** we, the Manufacturer or Producer, will make our technical and engineering staff fully available to the technical and engineering staff of the successful Tenderer to assist that Tenderer, on a reasonable and best effort basis, in the performance of all its obligations to the Employer under the Contract.

In the capacity of ***[insert: title of position or other appropriate designation]*** **(and this should be signed by a person having the power of attorney to legally bind the manufacturer).**

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

³*[The Bidder (if not the manufacturer of the goods offered) shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization should be on the letterhead of the Manufacturer of the Goods offer and 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]*

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]*

Notes:

*1. The letter of Undertaking should be on the letterhead of the Manufacturer and should be signed by a person competent and having **Power of Attorney to sign on behalf of the Manufacturer** (to be attached with this MA) to legally bind the Manufacturer. It shall be included by the tenderer in its tender.*

2. Above undertaking shall be notarized so as to be legally enforceable. Notarized Power of attorney should also be provided along with the notarized MA.

3. Alteration/deletion of the writing as per prescribed formats shall lead to rejection.

**Manufacturer's Authorization for 400KV and 220 KV GIS Equipment being offered)
(MA shall be submitted by tenderer for each manufacturer)**

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

NCT No.: [insert number of Tender process]

To,

The Chief General Manager(PP&D),
O/o The Managing Director, AEGCL,
Bijulee Bhawan, Paltan Bazar, Guwahati-781001

We, _____ who are established and reputed
manufacturer, meeting the Qualifying requirement of Supply of **400KV and 220KV** GIS
equipment as per your tender specification having, factories in

.....do hereby authorize M/s___
to offer our equipment for tender Against NCT

NO.....

dated.....& Tender Specification-----

We hereby undertake that **400KV and 220KV** GIS equipment being offered will meet the
relevant technical specification (as per technical specification in Volume II) including
supervision of erection, testing and commissioning of the offered equipment at site which
will be carried out under your supervision. We hereby confirm that the necessary spares
for GIS shall be available for the period for 10 years from the date of commissioning of
substation.

(Signature of Authorized Representative)

Name:

Design Common Seal of the Company:

Witness Signature with address

1.

2.

Notes:-

*1. The manufacturer authorization shall be submitted from the GIS equipment
manufacturer, which should be filled in non-judicial stamp paper of worth Rs.100/-and
duly Notarized. The signatory of the manufacturer authorization should have the
authorization from their Board of Director of the concerned Firm (notarized PoA) & a copy
of the same also to be submitted along with the tender. The tenderer shall submit the
manufacturer authorization from any GIS manufacturers who meets the requirements as
stated above for GIS equipment.*

2. Alteration/deletion of the writing as per prescribed formats shall lead to rejection.

6.5. Power of Attorney for Signing of Bid

FORM-B7

Format for Power of Attorney for Signing of Application (On a Stamp Paper of Rs 100/-)

Power of Attorney

We, [name and address of the registered office] do hereby constitute, appoint and authorize Mr. / Ms.(name and residential address) who is presently employed with us and holding the position ofas our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our response to the Tender for supply of [insert brief description of the goods] including signing and submission of all documents and providing information to the Client (i.e. [insert name of the Bid Inviting Entity]) and its officials or representatives, representing us in all matters before Client, and generally dealing with Client in all matters in connection with our bid response.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us. Dated this the _____ day of _____ 200_

For _____
(Signature)
(Name, Designation and Address)

Accepted
_____(Signature)
(Name, Title and Address of the Attorney)

Date: _____

Note:

- i. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, as laid down by the applicable law and the charter documents of the executants(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.
- ii. In case an authorized Director or key officials of the Applicant signs the Application, a certified copy of the appropriate resolution/ document conveying such authority may be enclosed in lieu of the Power of Attorney.

- iii. In case the Application is executed outside India, the Applicant must get necessary authorization from the Consulate of India. The Applicant shall be required to pay the necessary registration fees at the office of Inspector General of Stamps.*

6.6. Undertaking by the Bidder

FORM-B8

Affidavit

(To be submitted on non-judicial stamp paper of minimum Rs 50/- duly certified by Notary)

We, M/s. (the Bidder), (the names and addresses of the registered office) hereby certify and confirm that:

- (i) We or any of our promoter(s) / director(s) / partner(s) are not blacklisted or otherwise disqualified pursuant to any debarment proceedings by any Central or State Government, Local Government or Public Sector Undertaking in India from participating in any bidding process, either individually or as member of a consortium as on the _____ (Date of Signing of Bidder).
- (ii) We are not insolvent, in receivership, bankrupt, being wound up, having our affairs administered by a court or a judicial officer, having our business activities suspended or subject of legal proceedings for any of the foregoing reason;
- (iii) We or any of our promoter(s), director(s), partner(s) and officers are not convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract within a period of *three years* preceding the commencement of the procurement process.
- (iv) There is no conflict of interest in submitting this Bid.
- (v) We shall abide by the clauses/ conditions of Bidding Documents issued by the Procuring Entity and any amendment made thereafter.

We further confirm that, we are aware of the fact that, our Bid submitted in response of the Tender Ref. No. *[insert number & date]* for supply of *[insert the name of the Goods/subject matter of the Tender]*, would be liable for rejection in case any material misrepresentation is made or discovered at any stage of Bid evaluation or thereafter during the agreement period.

Signature of the Bidder/Authorized Representatives
Name of the Bidder/Authorised Representatives

6.7. Price Bid/ BoQ

PRICE BID⁴ ***(To be submitted online only)***

Note:

- (i) The quoted price shall be on FOR destination basis.*
- (ii) GST, as applicable shall be paid separately on actuals.*
- (iii) Price Bid (BoQ) format shall download from e-Procurement Portal in “xls” file and submitted online. Other price information, if required to be submitted as per the bidding document, shall be submitted online in the given format in “pdf” file and which shall form part of the price bid.*

⁴ This is for reference only. The BoQ is available in the e-Procurement portal for download.

**6.10 Checklist of Documents Submitted along with Technical Bid
FORM-B10**

CHECKLIST

S.No	Description of the Document	Page		Remarks
		From	To	
1				
2				
3				
4	<i>(To be furnished by the bidder as per ITT2.11)</i>			
5				
6				
7				
8				
9				
10				
11				

SECTION-VII

7. General Conditions of Contract

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 sub-contracted 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) "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.
- (q) "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.
- (r) "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.
- (s) "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.
- (t) "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.
- (u) "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.
- (v) "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.
- (w) "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.

- (x) "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.
- (y) "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.
- (z) "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).
- (aa) "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.
- (bb) "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.
- (cc) "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 “Tender,” “tenderer” with “Tenderer,” and “tender documents” with “Tendering 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 1^{er}, 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 is substantially in its basic characteristics or in purpose or utility from its components.

4. Communications

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

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

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

5. Law and Language

5.1 The Contract shall be governed by and interpreted in accordance with laws of the 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. Prohibited Practices

6.1 In pursuance of this provision AEGCL, defines, for the purposes of this provision, the terms set forth below as follows:

- (i) “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;
 - (ii) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
 - (iii) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
 - (iv) “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;
 - (i) “theft” means the misappropriation of property belonging to another party.
- (b) will reject a proposal for award if it determines that the Tenderer recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;

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, pre-commissioning 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 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 Tender 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 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 endeavour 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.

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 if specified in SCC.
- 13.2.2 The security shall be in the form provided in the Tendering 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 Tendering 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, imposed by the law of the country where the Site is located on the Plant 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 Tender 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 Contractors 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. 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 pre-commission 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; and (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken.

18.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the program referred to in 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. Such approval by the Employer for any of the Subcontractors shall not relieve the Contractor from any of its obligations, duties, or responsibilities under the Contract.
- 19.2 The Contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GCC Sub-clause 19.1.
- 19.3 For items or parts of the Facilities not specified in the Appendix (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 sub-contract to be assigned to the Employer under GCC 19.5 (if and when applicable), or in event of termination by the Employer under GCC 42.2.
- 19.5 If a Sub-contractor's obligations extend beyond the expiry date of the relevant Defects Liability Period and the Project Manager, prior to that date, instructs the Contractor to assign the benefits of such obligations to the Employer, then the Contractor shall do so.

20. Design and Engineering

- 20.1 Specifications and Drawings
- 20.1.1 The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.
- The Contractor shall be responsible for any discrepancies, errors, or omissions in the specifications, drawings, and other technical documents that it has prepared, whether such specifications, drawings, and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors, or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer.
- 20.1.2 The Contractor shall be entitled to disclaim responsibility for

any design, data, drawing, specification, or other document, or any modification thereof provided or designated by or on behalf of the Employer, by giving a notice of such disclaimer to the Project Manager.

20.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date 28 days prior to date of Tender 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 a Dispute Board

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

22.2.16 Prohibition of Harmful Child Labor

The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

22.3 Contractor's Equipment

22.3.1 All Contractor's Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Contract.

22.3.2 Unless otherwise specified in the Contract, upon completion of the Facilities, the Contractor shall remove from the Site all Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.

22.3.3 The 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 therefor. If the work done or caused to be done by the Employer is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Employer in connection therewith shall be paid by the Contractor to the Employer. Otherwise, the cost of such remedial work shall be borne by the Employer.

22.7 Site Clearance

22.7.1 Site Clearance in Course of Performance

In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store, or remove any surplus materials, clear away any wreckage, rubbish, or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of the Contract.

22.7.2 Clearance of Site after Completion

After Completion of all parts of the Facilities, the Contractor shall clear away and remove all wreckage, rubbish, and debris of any kind from the Site, and shall leave the Site and Facilities in a clean and safe condition.

22.8 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 Pre-Commissioning and/or Guarantee Test

25.5.1 In the event that the Contractor is unable to proceed with the Pre-commissioning 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 non availability 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 co-insureds under all such policies. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Employer shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than 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 Tender 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.

39.2 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 sub-contractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this 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 non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities.

42.1.3 In the event of termination of the Contract under GCC 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) below;
- (c) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination;
- (d) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; 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

45. Disputes and Arbitration

45.1 The Employer and the Contractor shall make every effort to resolve amicably any disagreement or dispute arising between them under or in connection with the Contract.

45.2 Dispute Redress Mechanism: 2-tier (Procuring Entity Level Dispute Redress Committee headed by the Managing Director or State Redress Committee).

45.3 If, the dispute is not settled through dispute settlement mechanism and if after sixty (60) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Employer or the Contractor may give notice to the other party of its intention to commence arbitration wherever applicable, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure **specified in the SCC.**

45.4 Notwithstanding any reference to arbitration herein,

the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and

the Employer shall not be required to pay the Contractor any monies to the Contractor in respect of the matter related to the arbitration unless otherwise agreed.

The Employer and the Contractor shall make every effort to resolve amicably any disagreement or dispute arising between them under or in connection with the Contract.

SECTION VIII

7 Special Conditions of Contract⁵

⁵Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC

1. Definitions	
	The Employer is: Assam Electricity Grid Corporation Limited. Country of Origin: India
5. Law and Language	
	5.1 The Contract shall be interpreted in accordance with the laws of: India
	5.2 The ruling language is: English
	5.3 The language for communications is: English.
7	Scope of Facilities
7.3	The Contractor agrees to supply spare parts for a period of years: Ten (10) Years. An undertaking to the effect that the spare parts shall be made available to AEGCL by the contractor for a period of ten (10) years should be furnished by the contractor. The undertaking shall be under ought by the contractor executed through non-judicial stamp paper of Rs. 100/- or above to be notarized in India. 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. 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 28 (Twenty Eight) days from the Notice to Proceed which will be issued from Employer upon effectiveness of contract,
	8.2 The Time for Completion of the whole of the Facilities shall be 36 (Thirty-Six) months from the Effective Date as described in the Contract Agreement. Contractor shall have to complete the part of the facilities within the Work schedule finalized as per the Appendix-4, Section-9 (Contract Form). The employer has the right to award the uncompleted part of the facilities which by the contractor at the scheduled timeline to next lowest quoted tenderer by Pre-closing of the contract.

11.	Contract Price
	11.2 (a) The Contract Price shall be firm.
13.	Securities
	13.3.1 The amount of performance security, as a percentage of the Contract Price for the Facility shall be: ten (10) percent of the contract price.
	13.3.2 The performance security shall be in the form of the DD/banker cheque drawn on any Nationalised Bank of India in the favour of Assam Electricity Grid Corporation Limited, payable at Guwahati or Fixed Deposit (FD) or through RTGS or Bank Guarantee (BG) as per form included in Section 9 (Contract Forms). 13.3.3 Extended guarantee for the GIS equipment shall be for five (5) years beyond the defect liability period of the contract. For GIS equipment the tenderer shall have to extend the Performance Security within one month prior to expiry of the Performance Security furnished for the main contract to cover the extended defect liability period plus two months as part of the contract performance to cover the Contractor's extended defect liability in accordance with the provision in the SCC, pursuant to GCC Subclause 27.10. The amount of the Security shall be 20% of the GIS equipment cost and the bank guarantee to be submitted in non-judiciary stamp papers of worth minimum Rs. 100/- However, BG period may be split up subject to the condition that BG would be extended from time to time to cover the warranty period. Moreover, before one month (i.e. 30 days) of expiry of the BG, renewal is to be done by the contractor, to avoid forfeiture. The performance security shall not be reduced on the date of the Operational Acceptance.
19	Subcontracting In addition to the clause no. 19.1, 19.2 and 19.3 of GCC; following clause is added: 19.4 The Turnkey contractor shall be under obligation to provide information to AEGCL regarding the credentials of the sub-contractor(s) and sub-vendor intended to be deployed by the turnkey contractor as per clause 2.4.2 (b) of section 3 (EQC) for execution of any part of the project. Such information must be furnished to AEGCL before the deployment of the sub-contractor(s) and sub-vendor 19.5 The information on the sub-contractors including sub-vendor intended to be deployed shall include (but not limited to) on the Experience & financial capability of the sub-contractor(s), and the identity, address & the professional qualification of the employees to be engaged by the turnkey contractor. 19.6 AEGCL shall thoroughly scrutinize the credentials of the sub-contractor(s) as well as sub vendor and give its consent for such deployment by the turnkey contractor. The turnkey contractor shall deploy the sub-contractor(s) only after getting written approval from AEGCL

22. Installation

22.2 Labor

22.2.5 Working Hours

(a) Normal working hours are: **As per Labour Act applicable in the State of Assam.**

22.2.7 Health and Safety

Following point is added

- (d) 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 Subcontractors 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 Gender-based violence/Sexual exploitation (GBV/SE) and 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.

22.2.8 Funeral Arrangements

Funeral arrangements: **Contractor's Responsibility.**

22.2.17 Respectful Work Environment

The Contractor shall ensure that its employees and Subcontractors observe the highest ethical standards and refrain from any form of bullying, discrimination, misconduct, and harassment, 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 in line with the code of conduct. 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. The Tenderer shall also refer to Chapter 7 of Volume II for Health, Safety and Environmental clause.
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.
26. Completion Time Guarantee	
	26.2 Applicable rate for liquidated damages shall not exceed: ½% (half percent) per week. Maximum deduction for liquidated damages: 10 (ten) percent of contract price.
	26.3 No bonus will be given for earlier Completion of the Facilities or part thereof.
27. Defect Liability	
	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 hundred (100) hours from the time of reporting of the incident, 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. The recovery of cost for this defect liability period shall also be applicable for the extended defect liability period.
	27.10 a) The critical components covered under the extended defect liability are Power Transformers and the period shall be 180 (one hundred eighty) days beyond the defect liability period (as per clause 27.2 of GCC). b) The other critical components covered under the extended defect liability period are GIS equipments and the period shall be for five (5) years beyond the defect liability period of the contract (as per clause 27.2 of GCC). The Tenderer shall furnish performance guarantee for an amount of 20% of the ex-works cost of GIS equipment(s) for a period of five (5) years to cover the extended defect liability period.
30. Limitation of Liability	

	30.1 (b) The multiplier of the Contract Price is: 1.
45.	Disputes and Arbitration
	The rules of procedure for arbitration proceedings pursuant to GCC Clause 45.1 shall be as follows: i) In case of Dispute or difference arising between the Employer and a Contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The arbitral tribunal shall consist of 3 arbitrators one each to be appointed by the Employer and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties and shall act as presiding arbitrator. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed in accordance with the provisions of the Arbitration and Conciliation Act 1996. ii) If one of the parties fails to appoint its arbitrator in pursuance of sub clause (a) above, within 30 days after receipt of the notice of the appointment of its arbitrator by the other party, then the appointment of the Arbitrator shall be made in accordance with the provisions of the Arbitration and Conciliation Act 1996. iii) The venue of Arbitration shall be Guwahati and the language of the arbitration proceedings and that of all councils and communications between the parties shall be in English. iv) The decision of the majority of arbitrators shall be final and binding upon parties. The cost and expenses of Arbitration proceedings will be paid as determined by the arbitral tribunal. However, the expenses incurred by each party in connection with the preparation, presentation, etc. of its proceedings as also the fees and expenses paid to the arbitrator appointed by such party or on its behalf shall be borne by each party itself. v) The provisions of the Arbitration and Conciliation Act of 1996 along with the Rules herewith and any statutory modification or reenactment thereof shall apply to arbitration proceedings. iv) If a dispute under the Contractor Contract raises the same issues as those in respect of a related dispute with another Contractor contract, the Employer will have the option of having the arbitration proceedings joined.
46.	Eligibility
	46.1 The Contractor shall have the nationality of any country as listed in Section-5 : Eligible Countries. The Contractor shall be deemed to have the nationality of a country if the Contractor 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 Contractors for any part of the Contract including related services.
46.2	The materials, equipment and services to be supplied under the Contract shall have their origin in eligible source countries and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Employer's request, the Contractor may be required to provide evidence of the origin of materials, equipment and services.
46.3	For purposes of SCC 46.2, "origin" means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment 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.

SECTION – IX

Notification of Award

[Employer's letterhead]

Letter of Acceptance

[date]

To: *[Name and address of the contractor]*

This is to notify you that your Tender dated *[date]* for execution of the *[name of the contract and identification number, as given in the Tender 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 Tenderers 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 Tender, using for that purpose one of the Performance Security Forms included in Section 9 (Contract Forms) of the Tender Document.

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

Contract Agreement

THIS 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:

- (a) This Contract Agreement and the Appendixes hereto
- (b) Letter of Tender and Price Schedules submitted by the Contractor
- (c) Special Conditions of Contract
- (d) General Conditions of Contract
- (f) Specifications
- (g) Drawings
- (h) Other completed Tender Forms submitted with the Letter of Tender
- (i) Any other documents forming part of the Employer's Requirements
- (j) Any other documents shall be added here

1.2 Order of Precedence (Reference GCC Clause 2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.

1.3 Definitions (Reference GCC Clause 1)

Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions.

Article 2 Contract Price and Terms of Payment	2.1 Contract Price (Reference GCC Clause 11) The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of [<i>amounts of local currency in words</i>], [<i>amounts in figures</i>] as specified in Price Schedule No. 5 (Grand Summary), [<i>amounts of local currency in words</i>], [<i>amounts in figures</i>], 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. In the event that the amount payable under Schedule No. 1/Schedule No. 2 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 Each party shall use its best efforts to fulfil the above conditions for which it is responsible as soon as practicable. 3.2 If the conditions listed under 3.1 are not fulfilled within 2 months from the date of this Contract notification because of reasons not attributable to the Contractor, the parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Completion and/or other relevant conditions of the Contract.
Article 4 Communications	4.1 The address of the Employer for notice purposes, pursuant to GCC 4.1 is: [<i>Employer's address</i>]. 4.2 The address of the Contractor for notice purposes, pursuant to GCC 4.1 is: [<i>Contractor's address</i>].
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 Agreement to be duly executed by their duly authorized representatives the day and year first above written.

Signed by, for and on behalf of the Employer

[*Signature*]

[*Title*]

in the presence of

[*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-**not applicable**

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 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 Tenderer 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 & 2 - Plant and Mandatory Spare Parts Supplied from Abroad and Within the Employer's Country respectively.

In respect of plant and mandatory spare supplied from abroad and within the Employer's country, the following payments shall be made:

A. Progressive payments for supply items:

1. Within 60 (sixty) days from the date of submission of the invoice against supply, not more than **75% (seventy percent)** payment of the total supply invoice value would be made, on receipt and acceptance of materials in full and good conditions (subject to availability of fund). However, GST amount on invoice would be paid 100% or as per Govt. Rules.
2. Remaining 25% (Twenty Five percent), retention amount of that item would be released subject to fulfillment of the following conditions –
 - (a) 15% supply amount would be paid on completion of 50% of the total erection works of that particular item.
 - (b) within 60 (sixty) days after receipt of invoice out of remaining 10% of the supply amount 5% would be paid upon issue of the Completion Certificate and balance 5% upon issue of the Operational Acceptance Certificate as per clause 25, 26 & 27 of GCC, which should be certified by the Project Authority

Schedule No. 3 – Installation, ESMP and Other Services (Installation, commissioning and stringing services including Civil Works)

In respect of installation services, the following payments shall be made:

A. Progressive payments for Erection Works:

1. Within 60 (sixty) days from the date of submission of invoice against foundation, erection & civil works, not more than 90% (ninety percent) of the total verified invoice would be made. However, GST amount on invoice would be paid 100% or as per Govt. Rules.
2. Within 60 (sixty) days after receipt of invoice out of remaining 10% of the supply amount 5% would be paid upon issue of the Completion Certificate and balance 5% upon issue of the Operational Acceptance Certificate as per clause 25, 26 & 27 of GCC, which should be certified by the Project Authority.

In the event that the Employer fails to make any payment on its respective due date, the Employer shall not pay any interest to the Contractor.

(B) Payment Procedures

When applying for certification and making payments, the procedures shall be as follows:

The procedures to be followed in applying for certification and making payments shall be as follows:

- i. **Progressive Payment for Plant and Equipment (CIP/CIF/EXW value):**
Plant and Equipment supplied from inside the Employer's Country (Schedule-2):
 - (a) Upon receipt of plants and equipment at site, the contractor shall notify the Employer and submit the following documents to the Employer
 - (i) Application for payment
 - (ii) Contractor's invoice (one original+ 5 copies) showing LOA reference, Goods' description, quantity shipped, unit price, total amount, and amount payable on dispatch.
 - (iii) Packing list & Manufacturer's /contractor's copy of challan
 - (iv) Railway receipt/LR/E-way bill
 - (v) Copies of packing list identifying contents of each package (6 copies)
 - (vi) Insurance certificate (3 Copies)
 - (vii) Manufacturer's / Contractor's Guarantee Certificate of quality.
 - (viii) Material Inspection & clearance Certificate (MICC)for dispatch issued by the Employer's representative and the Contractor's factory Inspection report (3 Copies) and
 - (ix) Certificate of origin
 - (x) Physical verification certificate of material received at site by Employer/Employer's site representative.

Documents mentioned above (SI no i-ix) shall be received by the Employer before arrival of the Goods and if not, the contractor will be responsible for any consequent expenses.

ii. Final payment for Plant and Equipment (CIP/EXW value):

Amount due after 'Completion' shall be paid on receipt of Payment Application after issue of 'Completion Certificate.

Amount due after issue of 'Operational Acceptance Certificate' shall be paid on receipt of the Payment Application along with proof of submission of the required numbers of as build drawings, O&M manuals, technical pamphlets and manual of spares, maintenance & testing equipment etc.

5. Installation and other Services (Schedule-4):

(A) Progressive Payment for Installation (Schedule-4):

Ninety percent (90%) of the total installation component of the Contract price shall be paid as mentioned in "Terms of Payment" on receipt of Payment Application and on certification by Project Authority/ his site representative, on

certificate for the quantum of work done successfully.

(B) Final Payment for Installation (Schedule-4):

Ten percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Completion Certificate and receipt of Payment Application.

Ten 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 and receipt of Payment Application.

6. Taxes and Duties (Schedule-1 & 2):

Taxes & Duties (only GST) in respect of transaction between Employer and the Contractor and octroi /entry tax as applicable for destination site/state on all items of supply including bought-out finished items (as identified in the Contract), which shall be dispatched directly from the sub-vendor's works to the Employer's site (sale-in-transit) will be paid after each shipment against documentary evidence. This payment shall be released by Employer directly to the Contractor against invoices to be submitted by the Contractor after necessary deduction of tax as per Law of the Land.

7. Taxes and Duties (Schedule-4):

Employer will not bear any liability on account of any taxes applicable on the Services. Employer shall, however, deduct such taxes at source as per the rules and issue necessary Certificate to the Contractor.

Appendix 2: Price Adjustment -NOT APPLICABLE**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 Contractor's or manufacturer's works or stores until arrival at the Site, to the Facilities (including spare parts therefore) and to the construction equipment to be provided by the Contractor or its Subcontractors.

Amount (INR)	Deductible limits (INR)	Parties insured [names]	From [place]	To [place]
110% of total supply amount	Rs.5,000	Insured: Contractor Co-insured: Employer	Start Date of Agreement	Arrival Date in India

(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 (INR)	Deductible limits (INR)	Parties insured [names]	From [place]	To [place]
110% of total contract amount	Rs.50,000/-	Insured: Contractor Co-insured: Employer	Start Date of Agreement	Upto 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 (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 (INR)	Deductible limits (INR)	Parties insured [names]	From [place]	To [place]
4Cr.	NIL	Contractor/ Sub- contractor	Commencement of work	Upto Defect Liability period

(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.

Statutory limits apply under the Workers Compensation Act of 1923 as amended by the Act of 1995. Purchase is not compulsory. Includes EL. If WC not purchased, PA becomes a requirement and EL must be added to Third Party Liability

Workers Compensation (WC)	Employers Liability (EL)	Personal Accident (PA)	General Third Party Liability	Professional Liability
Statutory limits apply under the Workers Compensation Act of 1923 as amended by the Act of 1995. Purchase is not compulsory. Includes EL. If WC not purchased, PA becomes a requirement and EL must be added to Third Party Liability	Either included in WC or added to General Liability	Minimum Death Benefit 3 x Annual Salary if WC not purchased	Rs. 1,77,50,000	Rs. 35,00,000

(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]
NIL				

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC, 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, 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.

Details:

Amount [in currency(ies)]	Deductible limits [in currency(ies)]	Parties insured [names]	From [place]	To [place]
NIL				

Appendix 4: Time Schedule

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, Sub-vendor and Manufacturers	Nationality
GIS equipment		
Power Transformer		
Control and Relay Panel and Substation Automation System		
Tower Parts		

Appendix 6: Scope of Works and Supply by the Employer

No personnel, facilities, works and supplies will be provided/ supplied by the Employer, for performance of this Contract.

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.....
- 2.....
- 3.....

(B) Review

- 1.....
- 2.....
- 3.....

Note :

Tenderer shall furnish the exhaustive list, which shall be discussed and finalized for incorporation into the Contract Agreement.

Appendix 8: Functional Guarantees

The equipment offered shall meet the rating and performance requirements stipulated in Technical Specification for various equipment or indicated in Data requirements.

Acceptance of Routine, Type and other tests as applicable and as specified in the technical Specification (Employer's Requirements) for various equipment shall deemed have fulfilled the requirement of GCC clause 28 (Functional Guarantee). As the equipment and materials shall be acceptable only after successful testing as per requirements of the Specification and applicable Standards and Codes as referred to in the Specification, the GCC clause 38.4 shall not be applicable.

Notification of Award

Letter of Acceptance

[on letterhead of the Procuring Entity]

..... **date.**

To: *[insert name and address of the Contractor]*

Subject: **Award of Contract**

This is to notify that your Bid dated _____ *[insert date of bid submitted by the bidder]* for the execution of _____ *[insert brief description of Goods and related services]* against Bid Invitation Ref.No. _____
_____ *(Insert Tender Ref. No.)* is hereby accepted by us for the Contract Amount of Rs. *[insert amount in numbers and words]*, as corrected and modified in accordance with the Instructions to Bidders.

You are requested to furnish the Performance Security in accordance with the Conditions of Contract and sign the contract within 28 days from issue of this letter. The format for Performance Bank Guarantee is given in “**Section-IX: Contract Forms**” of this Bidding Documents.

Authorized Signature:

.....

Name and Designation of Signatory:

.....

Name of Employer:

.....

Bank Guarantee Format for Performance Security

Bank Guarantee

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

Beneficiary: *[insert name and Address of Employer]*

Date: *_ [Insert date of issue]*

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

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

We have been informed that the bid submitted by *[insert name of Contractor]* (hereinafter called "the Applicant") in response to the Tender *[insert reference no & date]* has been accepted by *[Insert name of the Procuring Entity]* (hereinafter called "the Beneficiary") vide *[insert letter No. & Date]* and the Applicant has to enter in to a contract with the Beneficiary, for the supply of *_ [insert name of contract and brief description of Goods and related 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 Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures] () [insert amount in words]*, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the Day of, 2..., and any demand for payment under it must be received by us at this office indicated above on or before that date.

[signature(s)]

Note:

- a) *The Guarantor shall insert an amount representing the percentage of the*

Accepted Contract Amount specified in the Letter of Acceptance.

- b) *Insert the date twenty-eight days after the expected completion dates described in GCC and SCC Clause 8.2. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one- time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”*
- c) ***All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***