

COMPETITIVE BIDDING DOCUMENT

FOR

Implementation of Fibre Optic Terminal Equipment for Connectivity of Upcoming GSS namely 220KV Chaygaon, 220KV Nagaon, 220KV Khumtai , 220KV Agomoni and its connected PGCIL GSS at remote End.

(Design, Engineering, Manufacture, Assembly, Inspection, Testing at Manufacturer's Works before Dispatch, Packing, Supply, Delivery at Site, Including Insurance During Transit, Subsequent Storage, Implementation of Fibre Optic Terminal Equipment for Connectivity of Upcoming GSS namely 220KV Chaygaon, 220KV Nagaon, 220KV Khumtai , 220KV Agomoni and its connected PGCIL GSS at remote End)

SINGLE STAGE TWO ENVELOPE

(e-Tender)

Under

State Share of AIIB



VOLUME I

ASSAM ELECTRICITY GRID CORPORATION LIMITED

Regd. Office, Bijulee Bhawan
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TENDER IDENTIFICATION NO.: AEGCL/MD/AIIB/SS/FOTE/2025/01

ASSAM ELECTRICITY GRID CORPORATION LIMITED

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Section -1

Instructions to Bidders

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

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Section 1 – Instructions to Bidders

1.1.0 General

1.1.1. Scope of Bid

1.1.1.1. In support of the Invitation for Bids indicated in the Bid Data Sheet (BDS), the **Chief General Manager (PP&D)** on behalf of **Assam Electricity Grid Corporation Limited (AEGCL)** (hereinafter referred to as "the Purchaser" or "AEGCL"), issues this Bidding Document for the supply of Goods and Related Services incidental thereto as specified in Section 3 (Employer's Requirements). The name and identification nos. of this Competitive Bidding are provided in the Bid Data Sheet (BDS) attached as Appendix to ITB-1 of this Section.

1.1.1.2. Unless otherwise stated, throughout this Bidding Document definitions of terms shall be as prescribed in **Section 4** (Special Conditions of Contract).

1.1.2. Eligible Bidders

1.1.2.1. Subject to meeting the Qualifying Requirements, a Bidder may be a firm or company. When the bidder is a firm, the names and address of the partners should be indicated and a copy of the certificate of registration with the concerned Registrar of firms should be enclosed with the Bid.

1.1.2.2. When the bidder is a Company, the company registration document along with Memorandum of Association should be submitted.

1.1.2.3. When the bidder is an individual carrying on business in a firm's name, the tender should be submitted by the owner of the firm, who may describe himself as carrying on business in the firm's name.

1.1.2.4. When the bidder is a Joint Venture (JV) of two or more firms as partners, all partners shall be jointly and severally liable. The JV shall legally authorize one of the partners as the lead partner for the purpose of submitting the bid, incur liabilities; receive payments and instructions on behalf of the others. A copy of the registered JV agreement, executed on Non Judicial stamp paper, shall be submitted with the bid. However, in case of successful bid, the agreement shall be signed by all the partners, so as to be legally binding on all the partners.

1.2.0 Contents of Bidding Document

1.2.1. Sections of Bidding Document

1.2.1.1. The Bidding Document consists of following six Sections, and should be read in conjunction with any Addenda issued in accordance with ITB **Clause 1.2.3**.

Section 1 - Instructions to Bidders (ITB) with Appendix-1 and Appendix-2

Section 2 - Bidding Forms (BDF)

Section 3 - Purchaser's Requirements (PRQ)

Section 4 - "General Conditions of Supply and Erection of AEGCL"

Section 5- Special Conditions of Contract (SCC)

Section 6 - Contract Forms (COF)

1.2.1.2. *The completed Section 6 shall constitute "the Contract".*

1.2.1.3. The Invitation for Bids issued by the Purchaser is not part of the Bidding Document.

1.2.1.4. The Purchaser is not responsible for the completeness of the Bidding Document and its addenda, if they were not obtained directly from the source stated by the Purchaser in the Invitation for Bids.

- 1.2.1.5. The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the bid.

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

- 1.2.2.1. A prospective Bidder requiring any clarification of the Bidding Document shall contact the Purchaser in writing at the Purchaser's address indicated in the **BDS** or raise his enquirers during the pre-bid meeting if provided for in accordance with **ITB Clause 1.2.2.4**. The Purchaser's response shall be uploaded in e-tender portal (www.assamtenders.gov.in) & AEGCL's website. Queries to be considered only within the specified days as mentioned in the BDS.
- 1.2.2.2. The Bidder is advised to visit and examine the sites where the works are to be carried out and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for the provision of plant and services. The costs of visiting the sites shall be at the Bidder's own expense.
- 1.2.2.3. The Bidder and any of its personnel or agents may require permission from the Purchaser to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Purchaser and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 1.2.2.4. The Bidder's designated representative is invited to attend a pre-bid meeting, if provided for in the **BDS**. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

1.2.3. Amendment of Bidding Document

- 1.2.3.1. At any time prior to the deadline for submission of bids, the Purchaser may amend the Bidding Document by issuing addenda.
- 1.2.3.2. Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Purchaser in accordance with **ITB Clause 1.2.1.4**.
- 1.2.3.3. To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Purchaser may, at its discretion, extend the deadline for the submission of bids, pursuant to **ITB Clause 1.4.2.2**.

1.3.0 Preparation of Bids

1.3.1. Cost of Bidding

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

1.3.2. Language of Bid

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

1.3.3. Documents Comprising the Bid

1.3.3.1. The Bid shall comprise two envelopes submitted simultaneously, one called the '**Technical Bid**' containing the documents listed in **ITB Clause 1.3.3.2** and the other the **Price Bid** containing the documents listed in **ITB Clause 1.3.3.3**, both envelopes must be submitted online through e-tendering portal <http://assamtenders.gov.in>.

1.3.3.2. The Technical Bid submitted by the Bidder shall comprise the following:

- (a) Letter of Technical Bid;
- (b) Proof of Bid Security paid online in e-tender portal
- (c) Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with **ITB Clause 1.3.10**;
- (d) Documentary evidence in accordance with **ITB Clause 1.3.5** establishing the Bidder's eligibility and qualifications to perform the contract if its Bid is accepted;
- (e) Documentary evidence establishing in accordance with **ITB Clause 1.3.6** that the plant and services offered by the Bidder conform to the Bidding Document;
- (f) Documents as called for in **ITB Clauses 1.1.2.1, 1.1.2.2, and 1.1.2.3**;
- (g) Any other document required in the **BDS**.

1.3.3.3. The Price Bid submitted by the Bidder shall comprise the following:

- (a) Letter of Price Bid;
- (b) Completed schedules as required, including Price Schedules, in accordance with **ITB Clauses 1.3.4 and 1.3.7**; and
- (c) any other document required in the **BDS**

1.3.4. Letter of Bid and Schedules

1.3.4.1. The Letters of Technical Bid and Price Bid, and the Schedules, and all documents listed under **ITB Clause 1.3.3**, shall be prepared using the relevant forms furnished in Section 2 (Bidding Forms). The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

1.3.5. Documents Establishing the Eligibility and Qualifications of the Bidder

1.3.5.1. To establish its eligibility and qualifications to perform the Contract in accordance with Appendix 2 of ITB (Evaluation and Qualification Criteria), the Bidder shall provide the information requested in the corresponding information sheets included in Section 2 (Bidding Forms).

1.3.6. Documents Establishing Conformity of the Goods and Services

1.3.6.1. The documentary evidence of the conformity of the goods and services to the Bidding Document may be in the form of literature, drawings and data, and shall furnish:

- (a) A detailed description of the essential technical and performance characteristics of the goods and services, including the functional guarantees of the Goods, in response to the Specification;
- (b) A commentary on the Purchaser's Specification and adequate evidence demonstrating the substantial responsiveness of the plant and services to those specifications. Bidders shall note that standards for workmanship, materials and equipment designated by the Purchaser in the Bidding Document are intended to be descriptive (establishing standards of quality and performance) only and not restrictive. The Bidder may substitute alternative standards, brand names and/or catalog

numbers in its bid, provided that it demonstrates to the Purchaser's satisfaction that the substitutions are substantially equivalent or superior to the standards designated in the Specification.

1.3.7. Bid Prices

- 1.3.7.1. Unless otherwise specified in the **BDS** and/or Section 3 (Purchaser's Requirements), bidders shall quote for the entire scope of supply and services on a "single responsibility" basis such that the total bid price covers all the Supplier's obligations mentioned in or to be reasonably inferred from the bidding document in respect of the design, manufacture, including procurement, delivery, and completion of the entire scope.
- 1.3.7.2. Bidders are required to quote the price for the commercial, contractual and technical obligations outlined in the bidding document. No deviation in this regard normally, shall be accepted.
- 1.3.7.3. Bidders shall give a breakdown of the prices in the manner and detail called for in the Price Schedules included in Section 2 (Bidding Forms). Separate numbered Schedules included in Section 2 (Bidding Forms) shall be used for each of the following elements. The total amount from each Schedule (1, 1A & 2) shall be summarized in a Grand Summary (Schedule 3, if provided) giving the total bid price(s) to be entered in the Bid Form. In case of e-tender, the bidder shall fill up the Price schedules as provided in the online tender.
- 1.3.7.4. In the Schedules, bidders shall give the required details and a breakdown of their prices as called for in these Schedules.
- 1.3.7.5. The prices shall be either fixed or adjustable as specified in the BDS.
- (a) In the case of Fixed Price, prices quoted by the Bidder shall be fixed during the Bidder's performance of the contract and not subject to variation on any account. A bid submitted with an adjustable price quotation will be treated **as non-responsive and rejected**.
- (b) In the case of Adjustable Price, prices quoted by the Bidder shall be subject to adjustment during performance of the contract to reflect changes in the cost elements such as labor, material, transport and contractor's equipment in accordance with the procedures specified in the corresponding Appendix to the Contract Agreement. A bid submitted with a fixed price quotation will not be rejected, but the price adjustment will be treated as zero. Bidders are required to indicate the source of labor and material indices in the corresponding Form in Section 2 (Bidding Forms).

1.3.8. Period of Validity of Bids

- 1.3.8.1. Bids shall remain valid for the period specified in the **BDS** after the bid submission deadline date prescribed by the Purchaser. A bid valid for a shorter period **shall be rejected** by the Purchaser as non-responsive.
- 1.3.8.2. In exceptional circumstances, prior to the expiration of the bid validity period, the Purchaser may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with **ITB Clause 1.3.9**, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid.

1.3.9. Bid Security

- 1.3.9.1. The Bidder shall furnish as part of its bid, in original form, a Bid Security as specified in the **BDS**. The amount of Bid Security shall be as specified in the **BDS**.
- 1.3.9.2. The bid security shall be paid online as per e-tender portal(www.assamtenders.gov.in)
- 1.3.9.3. Bids not complying with **ITB Clause 1.3.9.1** and **ITB Clause 1.3.9.2**, **shall be rejected** by the Purchaser as **non-responsive**.

- 1.3.9.4.** The bid security of the successful Bidder shall be returned as per the policies of e-tender portal
- 1.3.9.5.** The bid security of unsuccessful Bidders shall be returned as per the policies of e-tender portal
- 1.3.9.6.** The bid security may be forfeited:
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid Form, except as provided in **ITB Clause 1.3.8.2** or
 - (b) if the successful Bidder fails to:
 - (i) Sign the Contract in accordance with **ITB Clause 1.6.1**; or
 - (ii) Furnish a performance security in accordance with **ITB Clause 1.6.2**.

1.3.10. Format and Signing of Bid

- 1.3.10.1.** The Bidder shall prepare one copy of the Technical Bid and one copy of the Price Bid comprising the Bid as described in **ITB Clause 1.3.3**
- 1.3.10.2.** The Bid shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in Clause 1.5.4.4 and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialised by the person signing the bid.
- 1.3.10.3.** A bid submitted by a JV shall be signed so as to be legally binding on all partners.
- 1.3.10.4.** Any interrelations, erasures, or overwriting shall be valid only if they are signed or initialised by the person signing the bid.

1.4.0 Submission and Opening of Bids

1.4.1. On-line submission of Bids

- 1.4.1.1.** The Technical as well as Price Bid should be submitted through online portal only.
- 1.4.1.2.** For Technical bid, all forms and supporting documents as required by ITB Clause 1.3.2 and duly signed and stamped as per ITB Clause 1.3.10 are to be uploaded to the e-tendering portal. The documents are to be uploaded in pdf format and each file should not exceed 5 MB in size. In case a document is more than 5 MB in size, the same may be split to make the size below 5 MB. Provision for uploading of .rar files is also available.
- 1.4.1.3.** The Price Bid must be submitted in the Price Schedule provided on the e-tendering portal as per the online format.

1.4.2. Deadline for Submission of Bids

- 1.4.2.1.** Bids shall be received **ONLINE** only on or before the date and time indicated in the **BDS**.
- 1.4.2.2.** The Purchaser may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document in accordance with **ITB Clause 1.2.3**, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

1.4.3. Late Bids

- 1.4.3.1.** The e-tendering portal shall allow the bidders to submit bids up to the date and time specified in ITB Clause 1.4.2 as per Server Clock. Bidders are advised to submit their bids well in advance of the deadline for submission of bids to avoid any last-minute difficulties.

1.4.4. Withdrawal, Substitution, and Modification of Bids

1.4.4.1. E-tendering portal shall allow modification of bids any time before the deadline for Bid Submission. A bidder may withdraw its bid, by sending a written notice duly signed by an authorized representative, and shall include a copy of the authorization in accordance with **ITB Clause 1.3.10.1**, Notices must be received by the purchaser prior to the deadline prescribed for submission of bids, in accordance with **ITB Clause 1.4.2**.

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

1.4.5. Bid Opening

1.4.5.1. The Purchaser shall conduct the opening of Technical Bids through online process at the address, date and time specified in the BDS. The Bid Opening Committee shall open the bids received online in the presence of Bidders' designated representatives who choose to attend. The Price Bids will remain unopened until the specified time of their opening.

1.4.5.2. First, physical envelopes marked "WITHDRAWAL" shall be opened and read out and the corresponding bid shall not be considered/ rejected with comments. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal duly signed by an authorized representative and is read out at bid opening.

1.4.5.3. All the Technical Bids shall be opened one at a time, and the following read out and recorded

- a. the name of the Bidder;
- b. the presence of a Bid Security, if required; and
- c. any other details as the Purchaser may consider appropriate.

Only Technical Bids and alternative Technical Bids read out and recorded at bid opening shall be considered for evaluation. No bid shall be rejected at the opening of Technical Bids except for withdrawn bids.

1.4.5.4. The Purchaser shall prepare a record of the opening of Technical Bids that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal and alternate proposals and the presence or absence of a bid security or a bid securing declaration, if one was required. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record

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

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

1.4.5.7. All the Price Bids shall be opened one at a time and the following read out and recorded:

- a) the name of the Bidder;
- b) the Bid Prices, including any discounts and alternative offers; and
- c) any other details as the Purchaser may consider appropriate.

Only Bid Prices and discounts read out and recorded during the opening of Price Bids shall be considered for evaluation. No Bid shall be rejected at the opening of Price Bids.

- 1.4.5.8.** The Purchaser shall prepare a record of the opening of Price Bids that shall include, as a minimum: the name of the Bidder, the Bid Price (per lot if applicable), any discounts. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record

1.5.0 Evaluation and Comparison of Bids

1.5.1. Confidentiality

Information relating to the evaluation of bids and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with such process.

- 1.5.1.1.** Any attempt by a Bidder to influence the Purchaser in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.
- 1.5.1.2.** Notwithstanding **ITB Clause 1.5.1.1**, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Purchaser on any matter related to the bidding process, it should do so in writing duly signed by an authorized representative.

1.5.2. Clarification of Bids

- 1.5.2.1.** To assist in the examination, evaluation, and comparison of the Technical and Price Bids, and qualification of the Bidders, the Purchaser may, at its discretion, ask any Bidder for clarification of its bid or to resubmit any shortfall documents. However, the following may be noted in this regard.
- Any clarification submitted by a Bidder that is not in response to a request by the Purchaser shall not be considered.
 - All clarifications or **shortfall documents shall be submitted through the e-tendering portal only**. No other means of communication shall be considered unless specified otherwise.
 - No change in the substance of the Price Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the evaluation of the bids, in accordance with **ITB Clause 1.5.9**.
 - If a Bidder does not provide clarifications of its bid by the date and time set in the Purchaser's request for clarification, its bid may be rejected.

1.5.3. Deviations, Reservations, and Omissions

- 1.5.3.1.** During the evaluation of bids, the following definitions apply:

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

1.5.4. Preliminary Examination of Technical Bids

- 1.5.4.1.** The Purchaser shall examine the Technical Bid to confirm that all documents and technical documentation requested in **ITB Sub-Clause 1.3.3.2** have been provided, and to determine the completeness of each document submitted. If any of these documents or information is missing, **the Bid may be rejected**.

- a) **Letter of Technical Bid;**
- b) **Written confirmation of authorization to commit the Bidder (i.e. Notarized Power of Attorney)**
- c) **Bid Security**
- d) **Tender Processing Fee to be deposited online via e-tender portal**
- e) **Registered JV agreement (if applicable).**

1.5.4.2. The aforementioned **Power of Attorney in Clause 1.5.4.2 (b)** should be duly signed by:

- CEO/MD/CMD or person designated through Board Resolution in case of **Company**
- Lead Partner in case of Partnership Firm
- Proprietor in case of Proprietorship Firm

1.5.5. Responsiveness of Technical Bid

1.5.5.1. The Purchaser's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in **ITB Clause 1.3.3.**

1.5.5.2. A substantially responsive Technical Bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

- a) if accepted, would:
 - (i). affect in any substantial way the scope, quality, or performance of the plant and services specified in the Contract; or
 - (ii). limit in any substantial way, inconsistent with the Bidding Document, the Purchaser's rights or the Bidder's obligations under the proposed Contract; or
- b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.

1.5.5.3. The Purchaser shall examine the technical aspects of the Bid submitted in accordance with **ITB Clause 1.3.6, Technical Proposal**, in particular to confirm that all requirements of Section 3 (Purchaser's Requirements) have been met without any material deviation or reservation.

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

1.5.6. Non material Nonconformity

1.5.6.1. Provided that a Bid is substantially responsive, the Purchaser may waive any nonconformity in the bid that does not constitute a material deviation, reservation or omission.

1.5.6.2. Provided that a Bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non conformity in the Bid related to documentation requirements. Requesting information or documentation on such non conformity shall not be related to any aspect of the Price Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

1.5.6.3. Provided that a Bid is substantially responsive, the Purchaser shall rectify nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the method indicated in **Appendix-2 of ITB (Evaluation and Qualification Criteria)**.

1.5.7. Detailed Evaluation of Technical Bids

1.5.7.1. The Purchaser will carry out a detailed technical evaluation of the bids not previously rejected as being substantially non-responsive, in order to determine whether the technical aspects are in compliance with the Bidding Document. In order to reach such a determination, the Purchaser will examine and compare the technical aspects of the bids on the basis of the information supplied by the bidders, taking into account the following:

- a) overall completeness and compliance with the Purchaser's Requirements; deviations from the Purchaser's Requirements; conformity of the goods and services offered with specified performance criteria; suitability of the goods and services offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the bid. The bid that does not meet minimum acceptable standards of completeness, consistency and detail will be rejected for non-responsiveness;
- b) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services; and
- c) Other relevant factors, if any, listed in **Appendix to ITB-2 (Evaluation and Qualification Criteria)**.

1.5.8. Eligibility and Qualification of the Bidder

1.5.8.1. The Purchaser shall determine to its satisfaction during the evaluation of Technical Bids whether a Bidder meets the eligibility and qualifying criteria specified in **Appendix to ITB-2 (Evaluation and Qualification Criteria)**.

1.5.8.2. The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to relevant **ITB Clause**.

1.5.8.3. An affirmative determination shall be a prerequisite for the opening and evaluation of a Bidder's Price Bid. A negative determination shall result into the disqualification of the Bid, in which event the Purchaser shall not open the Price Bid of the Bidder.

1.5.9. Correction of Arithmetical Errors

1.5.9.1. During the evaluation of Price Bids, the Purchaser shall correct arithmetical errors on the following basis:

- a) where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly;
- b) where there are errors between the total of the amounts of Price Schedule the former shall prevail and the latter will be corrected accordingly; and
- c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetical error, in which case the amount in figures shall prevail subject to (a) and (b) above.

1.5.9.2. If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be disqualified and its bid security may be forfeited.

1.5.10. Evaluation of Price Bids

1.5.10.1. The Purchaser shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be used.

1.5.10.2. To evaluate a Price Bid, the Purchaser shall consider the following:

- a) the bid price, including taxes, as quoted in the Price Schedules;

- b) price adjustment for correction of arithmetical errors in accordance with **ITB Clause**1.5.9.1; and
 - c) the evaluation factors if any indicated in Appendix 2 (Evaluation and Qualification Criteria).
- 1.5.10.3. If price adjustment is allowed in accordance with **ITB Clause**1.3.7.5, the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.
- 1.5.11. **Comparison of Bids**
 - 1.5.11.1. The Purchaser shall compare all substantially responsive Bids to determine the lowest evaluated bid, in accordance with **ITB Clause** 1.5.10.2.
- 1.5.12. **Purchaser's Right to Accept Any Bid, and to Reject Any or All Bids**
 - 1.5.12.1. The Purchaser reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.
- 1.6.0 **Award of Contract**
- 1.6.1. **Award Criteria**
 - 1.6.1.1. The Purchaser shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be eligible and qualified to perform the Contract satisfactorily.
- 1.6.2. **Notification of Award**
 - 1.6.2.1. Prior to the expiration of the period of bid validity, the Purchaser shall notify the successful Bidder, in writing, that its bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the "Letter of Acceptance") shall specify the sum that the Purchaser will pay the Contractor in consideration of the execution and completion of the plant and services (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price").
 - 1.6.2.2. Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 1.6.3. **Signing of Contract**
 - 1.6.3.1. Within **fifteen (15) days** of receipt of the Letter of Acceptance, the successful Bidder shall be required to sign the Contract Agreement and upon submission of performance BG.
 - 1.6.3.2. The contract signing shall take place at the premises of the Purchaser.
- 1.6.4. **Performance Security**
 - 1.6.4.1. Within **Ten (10) days** of the receipt of notification of award from the Purchaser, the successful Bidder shall furnish the performance security in accordance with the conditions of contract, using for that purpose the Performance Security Form included in **Appendix – 4, Section 6 (Contract Forms)**, or another form acceptable to the Purchaser.
 - 1.6.4.2. 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 Purchaser may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily.

APPENDIX TO ITB – 1

Bid Data Sheet (BDS)

A. Introduction

ITB 1.1.1.1	The number of the IFB is: AEGCL/MD/AIIB/SS/FOTE/02
	The Purchaser is: <i>Assam Electricity Grid Corporation Limited.</i>
	<p>The name of the Bid is:</p> <p><i>“Implementation of Fibre Optic Terminal Equipment for Connectivity of Upcoming GSS namely 220KV Chaygaon, 220KV Nagaon, 220KV Khumtai , 220KV Agomoni and its connected PGCIL GSS at remote End”</i></p>
ITB 1.2.2.1	<p>For <u>clarification purposes</u> only, the Purchaser's address is:</p> <p>The Chief General manager (PP&D) O/o The Managing Director, AEGCL Street Address: 1st Floor, Bijulee Bhawan, Paltanbazar City: Guwahati PIN Code: 781001 Country: India Telephone: +91 361 2739520 Facsimile number: +91 361 2739513 Electronic mail address: pd.aiib@aegcl.co.in</p> <p>Queries of the tenderer should reach to email address: PD.AIIB@AEGCL.CO.IN before 18th September 2025 at 12:00 Hrs, after which no queries from the tenderer shall be entertained.</p>
ITB 1.2.2.4	<p>Date and time of pre-bid meeting: 18th September 2025 at 14:00hrs</p> <p>Place: Conference Room, O/o the Managing Director, AEGCL, Bijulee Bhawan, Paltan bazar, Guwahati or may be done through video conferencing mode.</p> <p>The interested tenderer who seeks to visit the site, should intimate the Project Director, AEGCL in writing three days in advance, to enable him to instruct field officials to allow their site visit. The interested tenderer may visit the site at their own cost.</p>
ITB 1.3.3.2(g)	<p>The Bidder shall submit with its Technical Bid the following additional documents:</p> <ol style="list-style-type: none"> 1. Guaranteed and other Technical Particulars as required in Section 3, 'Purchaser's Requirements' 2. Manufacturer's Authorization (if applicable). 3. The hard copy of Bid Security shall be submitted by the bidder in separate envelope before one hour of tender submission closing time.
ITB 1.3.7.5	The prices quoted by the Bidder shall be FIXED for entire period of the Contract.

ITB 1.3.8.1	The bid validity period shall be 180 (One Hundred and Eighty) days.
ITB 1.3.9.1	<p>The Tenderer shall furnish a Tender security in the amount of ₹ 6,00,000/- (Rupees Six Lakhs only) in the form of Bank Guarantee/RTGS/DD/FIXED DEPOSIT from Nationalized Bank (India) in favour of ASSAM ELECTRICITY GRID CORPORATION LIMITED, AEGCL payable at Guwahati, Assam. The tender security in the form of Bank Guarantee or Fixed Deposit shall be valid for a period of 210 days from the last day of tender submission.</p> <p>Tenderer should submit hard copy of the Tender Security in a physical envelope one hour prior to tender submission deadline otherwise tender of the tenderer shall not be opened</p>
ITB 1.3.10.1	The bidding is through E-tendering portal and received online, a bidder has to submit any document in hard copy if asked by the Purchaser.
ITB 1.3.10.1	The written confirmation of authorization to sign on behalf of the Bidder shall consist of a written confirmation of Authorization to sign on behalf of the Bidder shall consist of Notarized Power of Attorney .
ITB 1.4.2.1	<p>For bid submission purposes only, (E-tenders shall be accepted through online portal http://assamtenders.gov.in only) The purchaser's address is: Attention: The Chief General manager (PP&D) O/o The Managing Director, AEGCL Street Address: 1st Floor, Bijulee Bhawan, Paltanbazar City: Guwahati PIN Code: 781001</p> <p>The deadline for bid submission is Date: 08.10.2025 Time: - 12.00 Hours</p>
ITB 1.4.5.1	<p>The bid opening of Technical Bids shall take place at Office of The CGM (PP&D) O/o The Managing Director, AEGCL Street Address: 1st Floor, Bijulee Bhawan, Paltanbazar City: Guwahati PIN Code: 781001 Country: India Date: 09.10.2025 Time: 14:00 Hours</p>

Appendix to ITB-2

Evaluation and Qualification Criteria (ECQ)

This Appendix contains all the criteria that the Purchaser shall use to evaluate bids and qualify Bidders. In accordance with ITB 1.5.7 and ITB 1.5.8, no other methods, criteria and factors shall be used. The Bidder shall provide all the information requested in the forms included in Section 2 (Bidding Forms).

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1. Evaluation

1.1 Technical Evaluation

In addition to the criteria listed in ITB 1.5.7.1 (a) – (c), no other factor shall apply.

1.2 Economic Evaluation

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

1.2.1 Quantifiable Deviations and Omissions

Quantifiable Deviations and Omissions from the contractual obligations: No financial assessment shall be made by the Purchaser for deviations and omissions from the requirements of the Bidding Document. All such deviations, omissions or reservations shall be dealt with in accordance with ITB Clauses 1.5.5.2, 1.5.5.3, 1.5.5.4, 1.5.6.1, 1.5.6.2, 1.5.6.3, 1.5.7.1(a) and 1.5.9.

1.3 Time Schedule

Time to complete Works from the Commencement Date specified in **Article 3** of the Contract Agreement for determining time for completion of the works from date of signing the contract are as per below.

Sl No	Scope	Time line of completion from the contract commencement date
1.	Connectivity of 220KV Chaygaon GSS	3 months
2.	Connectivity of 220KV Nagaon GSS	3 months
3	Connectivity of 220KV Agamoni GSS and its connected PGCIL GSS at remote End	6 months
4	Connectivity of 220KV Khumtai GSS	6 months

Bids not meeting the above time schedule shall be rejected. However, no credit will be given for earlier completion.

1.4 Specific additional criteria

The bidder shall submit documentary evidence in support of the qualifying requirement stipulated as above.

2.0 Qualification

Qualification of bidder will be based on meeting the minimum pass / fail criteria specified below

2.1 General

The Bidder must satisfy the requirement of ITB Sub-Clause 1.1.2 and shall submit necessary document as per the said Clause.

2.1.1

The Bidder who is not a manufacturer of equipment(s) as required for in this bid for execution of the works shall submit a certificate of being an authorised dealer/distributor/agent of the manufacturer. ***In case, the Bidder is an authorised dealer/distributor/agent, the bidder must submit with the bid, an undertaking using 'Form-MA' (Manufacturer's Authorisation), Section-2 (Bidding Form).***

2.2 Pending Litigation:

Using the 'Form LIT- 1' (Section 4, Bidding Form), bidder shall list all Pending Litigation.

All pending litigation shall be treated as resolved against the Bidder and bidders liability shall be treated as **50% percent** of the Bidder's net worth.

2.3 Financial Situation

2.31 Historical Financial Performance

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each partner	One partner	
Submission of audited balance sheets or other financial statements acceptable to the Purchaser, for the last 3 (three) years to demonstrate the current soundness of the Bidders financial position and its prospective long-term profitability. As a minimum, a Bidder's net worth calculated as the difference between total assets minus outside liabilities should be positive.	Must Meet Requirement	Not Applicable	Must Meet Requirement	Not Applicable	Form ' FIN-1 ' With attachments

2.3.1 Average Annual Turnover.

Minimum average annual turnover of Rs.4,00,00,000/- (Rupees Four Crore) calculated as total certified payments received for contracts in progress or completed, for the last three years.	Must Meet Requirement	Must Meet Requirement	25% Minimum	Must meet 40% of the requirement (lead partner)	Form ' FIN-2 '
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2.3.2 Financial Resources/Cash Flow

Using Forms FIN – 3 Section 4 (Bidding Forms) the Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet the cash-flow requirement, of Rs.1,60,00,000/- (Rupees One Crore Sixty Lakhs). <i>Cash-flow statement must be submitted in the format prescribed by the ICAI in addition to FIN-3.</i>	Must Meet Requirement	Must Meet Requirement	25% Minimum	Must meet 40% of the requirement (lead partner)	Form ' FIN-3 '
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2.4 Experience

2.4.1 General Experience

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each partner	One partner	
Experience as a contractor/Partner in a JV work(s)/ contract(s) in last 5 (FIVE) years as on bid submission deadline.	Must meet requirement	Must Meet Requirement	NA	NA	Form EXP- 1

2.4.2 Specific Experience

(a) Contracts of Similar Size and Nature

<p>The vendor should have completed at least</p> <p>a. Three similar completed works costing not less than the amount equal to 1 Crore.</p> <p>Or</p> <p>b. Two similar completed works costing not less than the amount equal to 1.5 Crore.</p> <p>Or</p> <p>c. One similar completed work costing not less than the amount equal to 2.5 Crore</p>	Must meet requirement	Must meet requirement	NA	NA	Form EXP – 2
--	-----------------------	-----------------------	----	----	--------------

The following are the specific qualification requirement:

(i) The PDH/SDH equipment shall be offered from a manufacturer(s).

(a) who has been manufacturing PDH/SDH equipment for the last three (3) years and at least five (05) nos of PDH/SDH Equipments manufactured by such manufacturer (s) shall be in satisfactory operation in one or more projects in any government utility\PSU\Railways in India for at least one (01) year as on the date of opening of

tender enquiry.

OR

- (b) who has established production line in India for manufacturing of PDH/SDH/MPLS-TP equipment based on technological support of a parent company (principal) or collaborator or subsidiary and has been manufacturing PDH/SDH/MPLS-TP equipment for last three (03) years and at least five (05) PDH/SDH/MPLS-TP equipment manufactured by such manufacturer are in operation for at least one (01) year as on the date of opening of tender enquiry.
- (ii) The installation of communication equipment shall be done by a firm who has previous experience of installation, testing and commissioning of at least 30 nodes of Fibre Optic Transmission System based on PDH/SDH/MPLS-TP technology in a single project in power utility and at least 15 no. of these nodes must be in satisfactory operation for at least one (1) year as on the date of opening of tender enquiry.
- (iii) The vendor has to be an authorized distributor/reseller/system integrator. Ink signed letter of Authorization from the Original Equipment Manufacturer, of SDH, Drop Insert Multiplexer, MPLS-TP specific to this tender has to be provided.
- (iv) Ink Signed undertaking from Original Equipment Manufacturer regarding the Warranty of the items to be supplied has to be provided.
- (v) The vendor has to provide an undertaking mentioning Non-Black-Listing by any Government organizations / PSUs.
- (vi) The bidder has to have Service Centre in India. Undertaking regarding the same has to be provided.

Note: Satisfactory Operation means certificate issued by employer certifying the operation (Completion Certificate) without any adverse remarks.

2.4.3 Manufacturers/Subcontractors :

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

Item No	Description of Item	Minimum Criteria to be met	Documents Submissions Requirements
1	Fibre Optic Terminal Equipment (FOTE)	The manufacturer or supplier must have designed, manufactured, type tested and supplied listed equipment, which are in successful operation for at least 5 (five) years as on the date of Tender opening. The Tenderer should list such works executed to substantiate the requirement of this Clause.	Form EXP-3

2.5 PERSONNEL CAPABILITY

The personnel engaged by the Bidder for execution of the work must be suitably qualified to fill positions required for contract implementations. The Bidder shall supply information of the key personnel, design & engineering staff, support staff, field staff.

2.6 EQUIPMENT CAPABILITY

The bidder should have experience in supply and commissioning of all types of **WAN Network Solution in form of SDH/PDH/MPLS-TP/DTPC supply and commissioning**

Section - 2

BIDDING FORMS

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

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1 Letter of Technical Bid

[Bidder's Letterhead]

Date:

Bid Identification No (s):

:

:

:

Invitation for Bid No.:

To:.....

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB) 1.2.3;
- (b) We offer to design, manufacture, test and deliver, in conformity with the Bidding Document the following Goods and Related Services:
- (c) Our Bid consisting of the Technical Bid and the Price Bid shall be valid for a period of days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period

Name

In the capacity of

Signed

Duly authorized to sign the Bid for and on behalf of

Date

.....

2 Letter of Price Bid**(NOT REQUIRED FOR E-TENDERING)**

[Bidder's Letterhead]

Date:

Bid Identification No:

Invitation for Bid No.:

To:.....

We, the undersigned, declare that:

- (i). We have examined and have no reservations to the Bidding Document, including Addenda issued in accordance with Instructions to Bidders (ITB) 1.2.3;
- (ii). We offer to design, manufacture, test and deliver in conformity with the Bidding Document the following Goods and Related Services: ;
- (iii). The total price of our Bid is the sum of:,
- (iv). Discount offered (if any) for (i) Supply (Schedule 1)%, and (ii) Related Services (Schedule 2, F& I,).....%
- (v). Our bid shall be valid for a period of days from the date fixed for the submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (vi). If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Document;
- (vii). 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
- (viii). We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

Name

In the capacity of

Signed

Duly authorized to sign the Bid for and on behalf of

Date

3 Price Schedules

PREAMBLE

General

1. The Price Schedules are divided into separate Schedules as follows:
Schedule No. 1: Schedule of Quantity
2. The entered rates and prices shall be deemed to cover the full scope as specified in the bidding document, including overheads and profit.
3. If bidders are unclear or uncertain as to the scope of any item, they shall seek clarification in accordance with **ITB** 1.2.2 prior to submitting their bid.

Pricing

4. Prices shall be filled in indelible ink/on-line and no alterations shall be allowed after bid submission.
5. Bid prices shall be quoted on-line in the manner indicated in Schedules.
As specified in the Bid Data Sheet and Special Conditions of Contract, prices shall be fixed and firm for the duration of the Contract, or prices shall be subject to adjustment in accordance with the corresponding Appendix (Price Adjustment) to the Contract Agreement.
Prices given in the Schedules against each item shall be for the scope covered by that item as detailed in Section 6 (Purchaser's Requirements) or elsewhere in the Bidding Document.

NOTE:

1. The Price Schedules as mentioned above, have been provided in the Volume 2 of this bidding document.
2. For E-Tendering these forms are indicative only. All prices to be filled in the price schedule provided in the e-tendering portal only.

4 Format of Bid Security (NOT APPLICABLE, TO BE PAID ONLINE)

5 Contract Execution Schedule

The Bidder shall indicate here his proposed Contract Execution Schedule in the form of Bar chart/pert chart showing the critical milestones. The Schedule shall match with the time for completion specified in clause no. 1.3 (Time Schedule) of APPENDIX TO ITB – 2, Evaluation and Qualification Criteria (ECQ.

6 Bidders Qualification

To establish its qualifications to perform the contract in accordance with Appendix 2 of ITB (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding Information Sheets included hereunder.

6.1 Form ELI - 1: Bidder's Information Sheet

Bidder's Information	
Bidder's legal name	
Bidder's country of constitution	
Bidder's year of constitution	
Bidder's legal address	
Bidder's authorized representative (name, address, telephone numbers, fax numbers, e-mail address)	
Attached are copies of the following original documents. <input type="checkbox"/> 1. In case of single entity/firm, documents, in accordance with ITB 1.1.2.1. <input type="checkbox"/> 2. In case of single Company, documents, in accordance with ITB 1.1.2.2.	

6.2 Form LIT - Pending Litigation

Each Bidder must fill in this form

Pending Litigation			
<input type="checkbox"/> No pending litigation in accordance with Criteria 2.1.3 of Appendix 2 of ITB (Evaluation and Qualification Criteria)			
<input type="checkbox"/> Pending litigation in accordance with Criteria 2.1.3 of Appendix 2 of ITB(Evaluation and Qualification Criteria)			
Year	Matter in Dispute	Value of Pending Claim in Rupees	Value of Pending Claim as a Percentage of Net Worth

6.3 Form FIN - 1: Financial Situation

Each Bidder must fill in this form

Financial Data for Previous 3 Years [Rupees]		
Year 1:	Year 2:	Year 3:

Information from Balance Sheet

Total Assets			
Total Liabilities			
Net Worth			
Current Assets			
Current Liabilities			

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 three years, as indicated above, complying with the following conditions.
- All such documents reflect the financial situation of the Bidder or partner to a JV, and not sister or parent companies.
 - Historic financial statements must be audited by a certified accountant.
 - Historic financial statements must be complete, including all notes to the financial statements.
 - Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

6.4 Form FIN - 2: Average Annual Turnover

Each Bidder must fill in this form

Annual Turnover Data for the Last 3 Years	
Year	Amount (Rupees)
Average Annual Turnover	

The information supplied should be the Annual Turnover of the Bidder in terms of the amounts billed to clients for each year for contracts in progress or completed.

6.5 Form FIN – 3: Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total cash flow demands of the subject contract or contracts as indicated in **Appendix 2 of ITB** (Evaluation and Qualification Criteria) with necessary supporting documents.

Financial Resources		
No.	Source of financing	Amount (Rupees)
1		
2		
3		

6.6 Form EXP – 1: General Experience

Each Bidder must fill in this form

General Experience				
Starting Month Year	Ending Month Year	Years	Contract Identification and Name Name and Address of Purchaser Brief Description of the Works Executed by the Bidder	Role of Bidder

6.7 Form EXP – 2: Specific Experience

Fill up one (1) form per contract.

Contract of Similar Size and Nature			
Contract No.of.....	Contract Identification		
Award Date		Completion Date	
Role in Contract	<input type="checkbox"/> Contractor		<input type="checkbox"/> Subcontractor
Total Contract Amount	(Rupees)		
Purchaser's Name Address Telephone/Fax Number E-mail			
Description of the similarity in accordance with Criteria 2.4.2 /2.5 of Section 3			
1. Brief Specification of Goods supplied 2. Date of commissioning.			
Attached are copies of the following original documents. <input type="checkbox"/> 1. Type Test Certificates. (Not older than five years on the date of Technical Bid opening) <input type="checkbox"/> 2. Recent performance certificates (Not older than five years on the date of Technical Bid opening) <input type="checkbox"/> 3. Copy of the Contract Document.			

7 Manufacturer's Authorization

(MA shall be submitted for FOTE only)

[The Bidder, in pursuant to ECQ Clause 2.1.2 (if applicable) shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. Please refer to notes at bottom]

(Manufacturer's Letterhead)

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

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

To: *[Insert: full name of Purchaser]*

WE *[insert: name of Manufacturer]* who are established and reputable manufacturers of *[insert: name and/or description of the Goods]* having production facilities at *[insert: address of factory]* do hereby authorize *[insert: name & address of Bidder]* (hereinafter, the "Bidder") to submit a bid the purpose of which is to provide the following goods, manufactured by us, and to subsequently negotiate and sign the Contract:

1. _____
2. _____
- _____

We hereby extend our full guarantee and warranty in accordance with **Clause 5.9.0** of the Special Conditions of Contract, for the above specified Goods supporting the Supply of specified Goods and fulfilling the Related Services by the Bidder against this Bidding Documents, and duly authorize said Bidder to act on our behalf in fulfilling these guarantee and warranty obligations. We hereby declare that the spare part shall be available for a period of 10 years. We also hereby declare that, we will furnish the Performance Guarantee in accordance with **SCC Clause 5.8.0**.

Further, we also hereby declare that we and, *[insert: name of the Bidder]* 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 Bidder to assist that Bidder, on a reasonable and best effort basis, in the performance of all its obligations to the Purchaser under the Contract.

For and on behalf of the Manufacturer

Signed: _____

Date: _____

- The Manufacturer's Authorization may be produced as in the format above or as per Manufacturer's Standard format mentioning our terms.

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).*

Date:.....

Place:.....

(Signature).....

(Printed Name).....

(Designation).....

(Common Seal).....

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 bidder in its bid.
2. Above undertaking shall be registered or notarized so as to be legally enforceable.
3. Any mismatch of wordings from the MA format shall lead to rejection of bid.

Section - 3

Employer's Requirements

(This Section contains the Technical Requirements and supplementary information that describe the Goods and Related Services)

1. **Section** 3
Scope of Supply of Plant and Services
The scope of supply of plant and services in details are covered in **Volume-II (Part-II, Technical Specification)** of this Tendering Document.
 - 1.1. *The tentative Bill of Quantities are furnished in Price Schedule.*
 - 1.2. *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.*
 - 1.3. *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.*
2. **Specification**
 - 2.1. The technical specifications for plant and services are covered in a separate volume (**Volume-II, Technical Specification**) of this Tendering Document.
 - 2.2. The following Sections are included in the Technical Specification:
(The Tenderer shall refer to Volume II & III)
3. **Drawings**
 - 3.1. Drawings based on which the facilities shall be built are enclosed in the **Volume-III** 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.
4. **Supplementary Information**
 - 4.1. For any information regarding the employer's requirements, tenderers shall refer to **Volume-II & III** of the Tendering Document.

5. Certificates

5.1 Form of Completion Certificate

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

Date:

Certificate No.:

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

Dear Ladies and/or Gentlemen,

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

1. Description of the Facilities or part thereof: [. . . . **description**]
2. Date of Completion: [. . . . **date**]

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

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

Very truly yours,

[. . . . **Signature**]

Project Manager

Form of Operational Acceptance Certificate

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

Date:

Certificate No.:

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

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

1. Description of the Facilities or part thereof: [**description**]
2. Date of Operational Acceptance: [**date**]

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

Very truly yours,

[. . . . **Signature**]

Project Manager

Section - 4

General Conditions of Contract (GCC)

The GCC contain general clauses to be applied on all contracts. The GCC in this section, read in conjunction with the Special Conditions of Contract in Section 5 and other documents listed therein, should be a complete document expressing all the rights and obligations of the contracting parties. The General Conditions herein shall not be altered.

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) “The Bank” means the financing institution named in the SCC.
- (q) “Contract Price” means the sum specified in Article 2.1 (Contract Price) of the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (r) “Facilities” means the Plant to be supplied and installed, as well as all the Installation Services to be carried out by the Contractor under the Contract.
- (s) “Plant” means permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Facilities by the Contractor under the Contract (including the spare parts to be supplied by the Contractor under GCC Subclause 7.3 hereof), but does not include Contractor’s Equipment.
- (t) “Installation Services” means all those services ancillary to the supply of the Plant for the Facilities, to be provided by the Contractor under the Contract, such as transportation and provision of marine or other similar insurance, inspection, expediting, site preparation works (including the provision and use of Contractor’s Equipment and the supply of all construction materials required), installation, testing, pre-commissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc. as the case may require.
- (u) “Contractor’s Equipment” means all facilities, equipment, machinery, tools, apparatus, appliances, or things of every kind required in or for installation, completion and maintenance of Facilities that are to be provided by the Contractor, but does not include Plant, or other things intended to form or forming part of the Facilities.
- (v) “Country of Origin” means the countries and territories eligible under the rules of the Bank as further elaborated in the SCC.
- (w) “Site” means the land and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the Contract as forming part of the Site.
- (x) “Effective Date” means the date of fulfillment of all conditions stated in Article 3 (Effective Date) of the Contract Agreement, upon which the period until the Time for Completion shall be counted from.
- (y) “Time for Completion” means the time within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained, as referred to in GCC Clause 8 and in accordance with the relevant provisions of the Contract.
- (z) “Completion” means that the Facilities (or a specific part thereof where specific parts are specified in the Contract) have been completed operationally and structurally and put in a tight and clean condition, that all work in respect of Pre-commissioning of the Facilities or such specific

part thereof has been completed, and that the Facilities or specific part thereof are ready for Commissioning as provided in GCC Clause 24 (Completion) hereof.

- (aa) "Pre-commissioning" means the testing, checking and other requirements specified in the Employer's Requirements that are to be carried out by the Contractor in preparation for Commissioning as provided in GCC Clause 24 (Completion) hereof.
- (bb) "Commissioning" means operation of the Facilities or any part thereof by the Contractor following Completion, which operation is to be carried out by the Contractor as provided in GCC Subclause 25.1 (Commissioning) hereof, for the purpose of carrying out Guarantee Test(s).
- (cc) "Guarantee Test(s)" means the test(s) specified in the Employer's Requirements to be carried out to ascertain whether the Facilities or a specified part thereof is able to attain the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement in accordance with the provisions of GCC Subclause 25.2 (Guarantee Test) hereof.
- (dd) "Operational Acceptance" means the acceptance by the Employer of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts), which certifies the Contractor's fulfillment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GCC Clause 28 (Functional Guarantees) hereof and shall include deemed acceptance in accordance with GCC Clause 25 (Commissioning and Operational Acceptance) hereof.
- (ee) "Defect Liability Period" means the period of validity of the warranties given by the Contractor commencing at Completion of the Facilities or a part thereof, during which the Contractor is responsible for defects with respect to the Facilities (or the relevant part thereof) as provided in GCC Clause 27 (Defect Liability) hereof.

2. Contract Documents

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

3. Interpretation

- 3.1 In the Contract, except where the context requires otherwise,
- (a) words indicating one gender include all genders;
 - (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
 - (c) provisions including the word "agree," "agreed," or "agreement" require the agreement to be record in writing;
 - (d) the word "tender" is synonymous with "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. Code of integrity for procuring entity and bidders

As per Section 11 in Assam Public Procurement Act, 2017

- (1) No officer or employee of a procuring entity or a person participating in a procurement process shall act in contravention of the code of integrity

prescribed by the State Government.

- (2) The code of integrity referred to sub-section (1) shall include provisions for, prohibiting,-

(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 behaviour 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 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.

- (3) Without prejudice to the provisions of Chapter IV, in case of any breach of the code of integrity by a bidder or prospective bidder, as the case may be, the procuring entity after giving a reasonable opportunity of being heard, may take appropriate measures including, -

(a)exclusion of the bidder from the procurement process;

(b)calling off of pre-contract negotiations and forfeiture or encashment of bid security;

(c)forfeiture or encashment of any other security or bond relating to the procurement;

(d)recovery of payments made by the procuring entity along with interest thereon at bank rate;

(e)cancellation of the relevant contract and recovery of compensation for

loss incurred by the procuring entity;

(f) debarment of the bidder from participation in future procurements of the procuring entity for a period not exceeding three years under section 46.

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 The Contractor shall permit AIIB to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by AIIB, if so required by AIIB.
- 9.7 If the Contractor is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfilment of the provisions of the Contract and shall designate one of such persons to act as a leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Employer.
- 9.8 Protection of the Environment
- (a) The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise, and other results of his operations.
 - (b) The Contractor shall ensure that emissions, surface discharges, and effluent from the Contractor's activities shall not exceed the values stated in the Specification or prescribed by applicable Laws.

**10. Employer's
Responsibilities**

- 10.1 All information and/or data to be supplied by the Employer as described in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement shall be deemed to be accurate, except when the Employer expressly states otherwise.
- 10.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in that Appendix.
- 10.3 The Employer shall acquire and pay for all permits, approvals, and/or

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

- 10.4 If requested by the Contractor, the Employer shall use its best endeavor to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals, and/or licenses necessary for the execution of the Contract from all local, state, or national government authorities, or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.
- 10.5 Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature, including those required by the Contractor to properly carry out Pre-commissioning, Commissioning, and Guarantee Tests, all in accordance with the provisions of the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement at or before the time specified in the program furnished by the Contractor under GCC Subclause 18.2 hereof and in the manner thereupon specified or as otherwise agreed upon by the Employer and the Contractor.
- 10.6 The Employer shall be responsible for the continued operation of the Facilities after Completion, in accordance with GCC Subclause 24.8, and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with GCC Subclause 25.2.
- 10.7 All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Employer, except those incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GCC Subclause 25.2.
- 10.8 In the event that the Employer shall be in breach of any of his obligations imposed by the Contract, then the additional cost reasonably incurred by the Contractor in consequence thereof shall be added to the Contract Price.

C. Payment

- 11. Contract Price**
- 11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.
- 11.2 Unless an adjustment clause is provided for in the SCC, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise provided in the Contract.
- 11.3 Subject to GCC Subclauses 9.2, 10.1, and 35 hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.
- 12. Terms of Payment**
- 12.1 The Contract Price shall be paid as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement and in the Appendix (Terms and Procedures of Payment) to the Contract Agreement, which also outlines the procedures to be followed in making application for and processing payments.
- 12.2 No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Facilities or any part(s) thereof.
- 12.3 The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in the Appendix (Terms and Procedures of Payment) to the Contract Agreement, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contractor's Tender.
- 13. Securities**
- 13.1 Issuance of Securities
- The Contractor shall provide the securities specified below in favor of the Employer at the times, and in the amount, manner, and form specified below.
- 13.2 Advance Payment Security
- 13.2.1 The Contractor shall, within 28 days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with the Appendix (Terms and Procedures of Payment) to the Contract Agreement, and in the same currency or currencies.
- 13.2.2 The security shall be in the form provided in the 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, e.g., a value-added tax (VAT), imposed by the law of the country where the Site is located on the Plant specified in Price Schedule No. 1 and that are to be incorporated into the Facilities.

- 14.3 If any tax exemptions, reductions, allowances, or privileges may be available to the Contractor in the country where the Site is located, the Employer shall use its best endeavors to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.
- 14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies, and charges prevailing at the date 28 days prior to the date of 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 suppliers of materials, the copyright in such materials shall remain vested in such third party.

16. Confidential Information

- 16.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third

party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during, or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data, and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GCC Clause 16.

- 16.2 The Employer shall not use such documents, data, and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the Contractor shall not use such documents, data, and other information received from the Employer for any purpose other than the design, procurement of Plant, construction, or such other work and services as are required for the performance of the Contract.
- 16.3 The obligation of a party under GCC Subclauses 16.1 and 16.2 above, however, shall not apply to that information, which
- (a) now or hereafter enters the public domain through no fault of that party;
 - (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto; and
 - (c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 16.4 The above provisions of this GCC Clause 16 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.
- 16.5 The provisions of this GCC Clause 16 shall survive termination, for whatever reason, of the Contract.

E. Execution of the Facilities

17. Representatives 17.1 Project Manager

If the Project Manager is not named in the Contract, then within 14 days of the Effective Date, the Employer shall appoint and notify the

Contractor in writing of the name of the Project Manager. The Employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Employer at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals, and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.

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

17.2 Contractor's Representative and Construction Manager

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

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

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

The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some

other person as the Contractor's Representative, pursuant to the procedure set out in GCC Subclause 17.2.1.

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

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Subclause 17.2.3 shall be deemed to be an act or exercise by the Contractor's Representative.

17.2.4 From the commencement of installation of the Facilities at the Site until Completion, the Contractor's Representative shall appoint a suitable person as the Construction Manager. The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick, or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, the Contractor's Representative or the Construction Manager shall appoint a suitable person to act as the Construction Manager's deputy.

17.2.5 The Employer may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC Subclause 22.4. 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 10 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 for determination in accordance with GCC Subclause 45.3 hereof. If such dispute or difference is referred to a Dispute Board, the Project Manager shall give instructions as to whether and, if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Dispute Board upholds the Contractor's view on the dispute and if the Employer has not given notice under Subclause 45.3 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the

instructions as the Dispute Board shall decide, and the Time for Completion shall be extended accordingly.

20.3.6 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.

20.3.7 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GCC Subclause 20.3.

If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 39 shall apply to such request.

21. Procurement

21.1 Materials

Subject to GCC Subclause 14.2, the Contractor shall procure and transport all materials in an expeditious and orderly manner to the Site.

21.2 Employer-Supplied Materials

If the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement provides that the Employer shall furnish any specific items to the Contractor, the following provisions shall apply:

21.2.1 The Employer shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the parties and make such item available to the Contractor at the time specified in the program furnished by the Contractor, pursuant to GCC Subclause 18.2, unless otherwise mutually agreed.

21.2.2 Upon receipt of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect, or default. The Employer shall immediately remedy any shortage, defect, or default, or the Contractor shall, if practicable and possible, at the request of the Employer, remedy such shortage, defect, or default at the Employer's cost and expense. After inspection, such item shall fall under the care, custody, and control of the Contractor. The provision of this GCC Subclause 21.2.2 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items that have been repaired.

21.2.3 The foregoing responsibilities of the Contractor and its obligations of care, custody, and control shall not relieve the Employer of liability for any undetected shortage, defect, or default, nor place the Contractor under any liability for any such shortage, defect or default whether under GCC Clause 27 or under any other provision of Contract.

21.3 Transportation

21.3.1 The Contractor shall at its own risk and expense transport all the materials and the Contractor's Equipment to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances.

21.3.2 Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the materials and the Contractor's Equipment.

21.3.3 Upon dispatch of each shipment of materials and the Contractor's Equipment, the Contractor shall notify the Employer by telex, cable, facsimile, or electronic means, of the description of the materials and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Contractor shall furnish the Employer with relevant shipping documents to be agreed upon between the parties.

21.3.4 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the materials and the Contractor's Equipment to the Site. The Employer shall use its best endeavors in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any claim for damage to roads, bridges, or any other traffic facilities that may be caused by the transport of the materials and the Contractor's Equipment to the Site.

21.4 Customs Clearance

The Contractor shall, at its own expense, handle all imported materials and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Employer's obligations under GCC Subclause 14.2, provided that if applicable laws or regulations require any application or act to be made by or in the name of the Employer, the Employer shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs

clearance that are not the fault of the Contractor, the Contractor shall be entitled to an extension in the Time for Completion, pursuant to GCC Clause 40.

22. Installation

22.1 Setting Out/Supervision

22.1.1 Benchmark

- (a) The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to 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**

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,

**Workers;
Indemnification**

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.

39.1.4 The procedure on how to proceed with and execute Changes is specified in GCC Subclauses 39.2 and 39.3, and further details and forms are provided in the Employer’s Requirements (Forms and Procedures).

39.2 Changes Originating from Employer

39.2.1 If the Employer proposes a Change pursuant to GCC Subclause 39.1.1, it shall send to the Contractor a “Request for Change Proposal,” requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a “Change

Proposal,” which shall include the following:

- (a) brief description of the Change,
- (b) effect on the Time for Completion,
- (c) estimated cost of the Change,
- (d) effect on Functional Guarantees (if any),
- (e) effect on the Facilities, and
- (f) effect on any other provisions of the Contract.

39.2.2 Prior to preparing and submitting the “Change Proposal,” the Contractor shall submit to the Project Manager an “Estimate for Change Proposal,” which shall be an estimate of the cost of preparing and submitting the Change Proposal.

Upon receipt of the Contractor’s Estimate for Change Proposal, the Employer shall do one of the following:

- (a) accept the Contractor’s estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal,
- (b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate
- (c) advise the Contractor that the Employer does not intend to proceed with the Change.

39.2.3 Upon receipt of the Employer’s instruction to proceed under GCC Subclause 39.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Subclause 39.2.1.

39.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.

39.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this GCC Clause 39

would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than 15%, the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor's objection, the Employer shall withdraw the proposed Change and shall notify the Contractor in writing thereof.

The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.

39.2.6 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within 14 days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.

If the Employer is unable to reach a decision within 14 days, it shall notify the Contractor with details of when the Contractor can expect a decision.

If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of 14 days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GCC Subclause 39.2.2.

39.2.7 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order."

Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the Change

Proposal.

If the parties cannot reach agreement within 60 days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Dispute Board in accordance with the provisions of GCC Subclause 45.3.

39.3 Changes Originating from Contractor

39.3.1 If the Contractor proposes a Change pursuant to GCC Subclause 39.1.2, the Contractor shall submit to the Project Manager a written “Application for Change Proposal,” giving reasons for the proposed Change and including the information specified in GCC Subclause 39.2.1.

Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Subclauses 39.2.6 and 39.2.7. However, should the Employer choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

40. Extension of Time for Completion

40.1 The Time(s) for Completion specified in the SCC shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- (a) any Change in the Facilities as provided in GCC Clause 39;
- (b) any occurrence of Force Majeure as provided in GCC Clause 37, unforeseen conditions as provided in GCC Clause 35, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Subclause 32.2;
- (c) any suspension order given by the Employer under GCC Clause 41 hereof or reduction in the rate of progress pursuant to GCC Subclause 41.2; or
- (d) any changes in laws and regulations as provided in GCC Clause 36; or
- (e) any default or breach of the Contract by the Employer, or any activity, act or omission of the Employer, or the Project Manager, or any other contractors employed by the Employer; or
- (f) any other matter specifically mentioned in the Contract; or
- (g) any delay on the part of a 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

- 44. Contractor's Claims** 44.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall submit a notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Subclause shall apply.

The Contractor shall also submit any other notices, which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Employer's liability, the Project Manager may, after receiving any notice under this Subclause, monitor the record keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim, which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect,

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and
- (c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on

the principles of the claim within such time.

Each payment certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The Project Manager shall agree with the Contractor or estimate: (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with GCC Clause 40, and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

The requirements of this Subclause are in addition to those of any other Subclause, which may apply to a claim. If the Contractor fails to comply with this or another Subclause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Subclause.

In the event that the Contractor and the Employer cannot agree on any matter relating to a claim, either party may refer the matter to the Dispute Board pursuant to GCC 45 hereof.

45. Disputes and Arbitration

45.1 Appointment of the Dispute Board

Disputes shall be referred to a Dispute Board for decision in accordance with GCC Subclause 45.3. The Parties shall appoint a Dispute Board by the date stated in the SCC.

The Dispute Board shall comprise, as stated in the SCC, either one or three suitably qualified persons ("the members"), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of activities involved in the performance of the Contract and with the interpretation of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the Dispute Board shall comprise three persons, one of whom shall serve as chairman.

If the Parties have not jointly appointed the Dispute Board 21 days before the date stated in the SCC and the Dispute Board is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.

However, if a list of potential members is included in the SCC, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the Dispute Board.

The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Board Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the Dispute Board consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment of the member or such expert (as the case may be). Each Party shall be responsible for paying one-half of this remuneration.

If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Subclause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the Dispute Board (including each member) shall expire when the Operational Acceptance Certificate has been issued in accordance with GCC Clause 25.3.

45.2 Failure to Agree Dispute Board

If any of the following conditions apply, namely:

the Parties fail to agree upon the appointment of the sole member of the Dispute Board by the date stated in the first paragraph of GCC Subclause 45.1;

either Party fails to nominate a member (for approval by the other Party) of a Dispute Board of three persons by such date;

the Parties fail to agree upon the appointment of the third member (to act as chairman) of the Dispute Board by such date; or

the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation, or termination of appointment;

then the appointing entity or official named in the SCC shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the Dispute Board. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

45.3 Obtaining Dispute Board's Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with the performance of the Contract, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Project Manager, either

Party may refer the dispute in writing to the Dispute Board for its decision, with copies to the other Party and the Project Manager. Such reference shall state that it is given under this Subclause.

For a Dispute Board of three persons, the Dispute Board shall be deemed to have received such reference on the date when it is received by the chairman of the Dispute Board.

Both Parties shall promptly make available to the Dispute Board all such additional information, further access to the Site, and appropriate facilities, as the Dispute Board may require for the purposes of making a decision on such dispute. The Dispute Board shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or within such other period as may be proposed by the Dispute Board and approved by both Parties, the Dispute Board shall give its decision, which shall be reasoned and shall state that it is given under this Subclause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the performance of the Facilities in accordance with the Contract.

If either Party is dissatisfied with the Dispute Board's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the Dispute Board fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.

In either event, this notice of dissatisfaction shall state that it is given under this Subclause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in GCC Subclauses 45.6 and 45.7, neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Subclause.

If the Dispute Board has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the Dispute Board's decision, then the decision shall become final and binding upon both Parties.

45.4 Amicable Settlement

Where notice of dissatisfaction has been given under GCC Subclause 45.3 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction and intention to commence arbitration was

given, even if no attempt at amicable settlement has been made.

45.5 Arbitration

Unless settled amicably, any dispute in respect of which the Dispute Board's decision (if any) has not become final and binding shall be finally settled by international arbitration. Unless otherwise agreed by both Parties,

- (a) arbitration proceedings shall be conducted as stated in the Special Conditions;
- (b) if no arbitration proceedings is so stated, the dispute shall be finally settled by institutional arbitration under the Rules of Arbitration of the International Chamber of Commerce;
- (c) the dispute shall be settled by three arbitrators; and
- (d) the arbitration shall be conducted in the language for communications defined in GCC Subclause 5.3.

The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, and any decision of the Dispute Board, relevant to the dispute. Nothing shall disqualify the Project Manager from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the Dispute Board to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the Dispute Board shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Project Manager and the Dispute Board shall not be altered by reason of any arbitration being conducted during the progress of the Works.

45.6 Failure to Comply with Dispute Board's Decision

In the event that a Party fails to comply with a Dispute Board decision which has become final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under GCC Subclause 45.5. GCC Subclauses 45.3 and 45.4 shall not apply to this reference.

45.7 Expiry of Dispute Board's Appointment

If a dispute arises between the Parties in connection with the performance of the Contract, and there is no Dispute Board in place, whether by reason of the expiry of the Dispute Board's appointment or otherwise,

- (a) GCC Subclauses 45.3 and 45.4 shall not apply, and
- (b) the dispute may be referred directly to arbitration under GCC Subclause 45.5.

APPENDIX A

General Conditions of Dispute Board Agreement

1 Definitions

Each "Dispute Board Agreement" is a tripartite agreement by and between

- (a) the "Employer";
- (b) the "Contractor"; and
- (c) the "Member" who is defined in the Dispute Board Agreement as being
 - (i) the sole member of the "Dispute Board" and, where this is the case, all references to the "Other Members" do not apply; or
 - (ii) one of the three persons who are jointly called the "Dispute Board" (or "dispute board") and, where this is the case, the other two persons are called the "Other Members".

The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Board Agreement, which incorporates this Appendix. In the Dispute Board Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

2 General Provisions

Unless otherwise stated in the Dispute Board Agreement, it shall take effect on the latest of the following dates:

- (a) the Commencement Date defined in the Contract;
- (b) when the Employer, the Contractor and the Member have each signed the Dispute Board Agreement; or
- (c) when the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a dispute board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days' notice of resignation to the Employer and to the Contractor, and the Dispute Board Agreement shall terminate upon the expiry of this period.

3 Warranties

The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor and the Project Manager. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the Employer and the Contractor relied upon the Member's representations that he/she is

- (a) experienced in the work, which the Contractor is to carry out under the Contract,
- (b) experienced in the interpretation of contract documentation, and
- (c) fluent in the language for communications defined in the Contract.

4 General Obligations of the Member

The Member shall

- (a) have no interest financial or otherwise in the Employer, the Contractor or the Project Manager, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;
- (b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor, or the Project Manager, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;
- (c) have disclosed in writing to the Employer, the Contractor, and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer, or employee of the Employer, the Contractor, or the Project Manager, and any previous involvement in the overall project of which the Contract forms part;
- (d) not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor, or the Project Manager, except as may be agreed in writing by the Employer, the Contractor, and the Other Members (if any);
- (e) comply with the annexed procedural rules and with GCC Subclause 45.3;
- (f) not give advice to the Employer, the Contractor, the Employer's Personnel, or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
- (g) not while a Member enter into discussions or make any agreement with the Employer, the Contractor, or the Project Manager regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;
- (h) ensure his/her availability for all site visits and hearings as are necessary;
- (i) become conversant with the Contract and with the progress of the Facilities (and of any other parts of the project of which the Contract forms part) by studying all documents received, which shall be maintained in a current working file;
- (j) treat the details of the Contract and all the Dispute Board's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor, and the Other Members (if any); and

- (k) be available to give advice and opinions on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

5 General Obligations of the Employer and the Contractor

The Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the Dispute Board's activities under the Contract and the Dispute Board Agreement. The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member and the Other Members (if any)

- (a) be appointed as an arbitrator in any arbitration under the Contract;
- (b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or
- (c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

The Employer and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.

Whenever the Employer or the Contractor refers a dispute to the Dispute Board under GCC Subclause 45.3, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

6 Payment

The Member shall be paid as follows, in the currency named in the Dispute Board Agreement:

- (a) a retainer fee per calendar month, which shall be considered as payment in full for
 - (i) being available on 28 days' notice for all site visits and hearings;
 - (ii) becoming and remaining conversant with all project developments and maintaining relevant files;
 - (iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and
 - (iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Dispute Board Agreement becomes effective; until the last day of the calendar month in which the Taking-Over Certificate is issued for the whole of the Works.

With effect from the first day of the calendar month following the month in which Taking-Over Certificate is issued for the whole of the Works, the retainer fee shall be reduced by one-third. This reduced fee shall be paid until the first day of the calendar month in which the Member resigns or the Dispute Board Agreement is otherwise terminated.

- (b) a daily fee, which shall be considered as payment in full for
 - (i) each day or part of a day up to a maximum of 2 days' travel time in each direction for the journey between the Member's home and the site, or another location of a meeting with the Other Members (if any);
 - (ii) each working day on site visits, hearings, or preparing decisions; and
 - (iii) each day spent reading submissions in preparation for a hearing.
- (c) all reasonable expenses, including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, facsimiles, and telexes, and use of the internet: a receipt shall be required for each item in excess of 5% of the daily fee referred to in sub-paragraph (b) of this Clause;
- (d) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The retainer and daily fees shall be as specified in the Dispute Board Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months, and shall thereafter be adjusted by agreement between the Employer, the Contractor and the Member, at each anniversary of the date on which the Dispute Board Agreement became effective.

If the parties fail to agree on the retainer fee or the daily fee, the appointing entity or official named in the SCC shall determine the amount of the fees to be used.

The Member shall submit invoices for payment of the monthly retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay each of the Member's invoices in full within 56 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the Dispute Board; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer

shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in accordance with GCC Subclause 12.3.

If the Member does not receive payment of the amount due within 70 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice under Clause 7.

7 Termination

At any time: (i) the Employer and the Contractor may jointly terminate the Dispute Board Agreement by giving 42 days' notice to the Member, or (ii) the Member may resign as provided for in Clause 2.

If the Member fails to comply with the Dispute Board Agreement, the Employer and the Contractor may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

If the Employer or the Contractor fails to comply with the Dispute Board Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the Employer and the Contractor. The notice shall take effect when received by them both.

Any such notice, resignation and termination shall be final and binding on the Employer, the Contractor and the Member. However, a notice by the Employer or the Contractor, but not by both, shall be of no effect.

8 Default of the Member

If the Member fails to comply with any of his obligations under Clause 4 concerning his impartiality or independence in relation to the Employer or the Contractor, he/she shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the Dispute Board which are rendered void or ineffective by the said failure to comply.

9 Disputes

Any dispute or claim arising out of or in connection with this Dispute Board Agreement, or the breach, termination or invalidity thereof, shall be finally settled by institutional arbitration. If no other arbitration institute is agreed, the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.

Annex - DISPUTE BOARD GUIDELINES

1. Unless otherwise agreed by the Employer and the Contractor, the Dispute Board shall visit the site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor, and the Dispute Board, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.
2. The timing of and agenda for each site visit shall be as agreed jointly by the Dispute Board, the Employer, and the Contractor, or in the absence of agreement, shall be decided by the Dispute Board. The purpose of site visits is to enable the Dispute Board to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to prevent potential problems or claims from becoming disputes.
3. Site visits shall be attended by the Employer, the Contractor, and the Project Manager and shall be coordinated by the Employer in cooperation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the Dispute Board shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.
4. The Employer and the Contractor shall furnish to the Dispute Board one copy of all documents which the Dispute Board may request, including Contract documents, progress reports, variation instructions, certificates, and other documents pertinent to the performance of the Contract. All communications between the Dispute Board and the Employer or the Contractor shall be copied to the other Party. If the Dispute Board comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.
5. If any dispute is referred to the Dispute Board in accordance with GCC Subclause 45.3, the Dispute Board shall proceed in accordance with GCC Subclause 45.3 and these Guidelines. Subject to the time allowed to give notice of a decision and other relevant factors, the Dispute Board shall
 - (a) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case; and
 - (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.
6. The Dispute Board may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.
7. Except as otherwise agreed in writing by the Employer and the Contractor, the Dispute Board shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor, and the Project Manager, and to proceed in the absence of any party who the Dispute Board is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.
8. The Employer and the Contractor empower the Dispute Board, among other things, to
 - (a) establish the procedure to be applied in deciding a dispute;

- (b) decide upon the Dispute Board's own jurisdiction, and as to the scope of any dispute referred to it;
 - (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Guidelines;
 - (d) take the initiative in ascertaining the facts and matters required for a decision;
 - (e) make use of its own specialist knowledge, if any;
 - (f) decide upon the payment of financing charges in accordance with the Contract;
 - (g) decide upon any provisional relief such as interim or conservatory measures;
 - (h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute; and
 - (i) appoint, should the Dispute Board so consider necessary and the Parties agree, a suitable expert at the cost of the Parties to give advice on a specific matter relevant to the dispute.
9. The Dispute Board shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the Dispute Board shall make and give its decision in accordance with GCC Subclause 45.3, or as otherwise agreed by the Employer and the Contractor in writing. If the Dispute Board comprises three persons
- (a) it shall convene in private after a hearing, in order to have discussions and prepare its decision;
 - (b) it shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
 - (c) if a Member fails to attend a meeting or hearing, or to fulfil any required fuNCTion, the other two Members may nevertheless proceed to make a decision, unless
 - (i) either the Employer or the Contractor does not agree that they do so, or
 - (ii) the absent Member is the chairman and he/she instructs the other Members to not make a decision.

Section - 5

Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC. The clause number of the SCC is the corresponding clause number of the GCC.

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1. Definitions

The Employer is: **Assam Electricity Grid Corporation Limited.**

The Bank is: **Asian Infrastructure Investment Bank**

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 **10 (Ten) 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 **3 (Three) months** from the Effective Date as described in the Contract Agreement.

11. Contract Price

11.2 (a) The Contract Price is **Fixed**.

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 Scheduled Bank of India in the favour of Assam Electricity Grid Corporation Limited, payable at Guwahati or or through RTGS or Bank Guarantee (BG) as per form included in Section 9 (Contract Forms).

.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.

19**Subcontracting**

19.1 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

19.2 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.

19.3 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.**

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 IEDs 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 equipment 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 **10% 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

45.1 The DB shall be appointed within twenty-eight (28) days after the signing of contract.

The DB shall be sole/three member as mutually agreed upon.

45.3 Rules of procedure for arbitration proceedings:

Dispute Resolution shall be in accordance with the provisions of Indian contract Act, 1872 and Arbitration and Conciliation Act, 1996, or any statutory amendment thereof.

Jurisdiction:

The dispute resolution shall be under the jurisdiction of Guwahati High Court.

Notwithstanding anything anywhere in this tender, in the event of any ambiguity or any contradiction, or any dispute, the clauses incorporated in “Special Condition of the Contract (SCC)” shall prevail or take precedence over others.

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 suppliers 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 - 6

Contract Forms

(This Section contains the Letter of Acceptance, the Contract Agreement and Appendices to the Contract Agreement which, once completed, will form the Contract along with the Section 4 and Section 5. The Bidder should note that this Section shall be completed fully at the time of Contract signing)

Section 6 - Contract Forms

This Section contains the Letter of Acceptance, the Contract Agreement and Appendices to the Contract Agreement which, once completed, will form the Contract along with the Section 4 and Section 5. The Bidder should note that this Section shall be completed fully at the time of Contract signing.

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Notification of Award

[AEGCL's letter head]

Letter of Acceptance**Supply of Goods and Related Services**

[date]

To: [Name and address of the Supplier]

This is to notify you that your Bid dated [date] for execution of the [name of the Contract and identification number, as given in the Contract Data] for the Contract Price in the aggregate of [amounts in numbers and words] [name of currency] (as per Price Schedule-1), as corrected and modified in accordance with the Instructions to Bidders is hereby accepted, and it is decided to award on you the 'Supply and Delivery Contract' covering inter-alia Ex-works supply and Delivery of all Goods including Related Services.

You are requested to furnish the Performance Security within ten (10) days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms included in Section 8 (Contract Forms) of the Bidding Document

[Authorized Signature]

[Name and Title of Signatory]

Assam Electricity Grid Corporation Limited

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”).). ***[in case of JV insert name and address of the Lead Partner as well as other Partners]***

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

1.1 Contract Documents (Reference GCC Clause 2)

Contract Documents

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) List of Eligible Countries that was specified in Section 5 of the Tender Document
- (e) 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 here¹

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.

¹Tables of Adjustment Data may be added if the contract provides for price adjustment (see GCC 11).

Article 2**2.1 Contract Price** (Reference GCC Clause 11)**Contract Price and
Terms of Payment**

The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of [*amounts of foreign currency in words*], [*amounts in figures*] as specified in Price Schedule, [*amounts of local currency in words*], [*amounts in figures*], or such other sums as may be determined in accordance with the terms and conditions of the Contract.

2.2 Terms of Payment (Reference GCC Clause 12)

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

In the event that the amount payable under Schedule 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**3.1 Effective Date** (Reference GCC Clause 1)**Effective Date**

The Effective Date upon which the period until the Time for Completion of the Facilities shall be counted from is the date when all of the following conditions have been fulfilled:

- (a) This Contract Agreement has been duly executed for and on behalf of the Employer and the Contractor.
- (b) The Contractor has submitted to the Employer the performance security and the advance payment guarantee.
- (c) The Contractor has been advised that the documentary credit referred to in Article 2.2 above has been issued in its favor.

Each party shall use its best efforts to fulfil the above conditions for which it is responsible as soon as practicable.

²Or Uniform Customs and Practice for Documentary Credits 2007 Revision, ICC Publication No. 600 (or the latest version).

**Article 4
Communications**

- 4.1 The address of the Employer for notice purposes, pursuant to GCC 4.1 is: *[Employer's address]*.
- 4.2 The address of the Contractor for notice purposes, pursuant to GCC 4.1 is: *[Contractor's address]*.

**Article 5.
Appendixes**

- 5.1 The Appendixes listed in the attached List of Appendixes shall be deemed to form an integral part of this Contract Agreement.
- 5.2 Reference in the Contract to any Appendix shall mean the Appendixes attached hereto, and the Contract shall be read and construed accordingly.

IN WITNESS WHEREOF the Employer and the Contractor have caused this 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]

APPENDICES

- Appendix 1 - Terms and Procedures of Payment
- Appendix 2 - Time Schedule
- Appendix 3 - Performance Security.
- Appendix 4- Price Schedules.
- Appendix 5- Guaranteed and Other Technical Particulars.

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

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. Advance Payment: Not Applicable

B. Progressive payments for supply items:

1. Within 60 (sixty) days from the date of submission of the invoice against supply, not more than 60% (sixty 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 40% (forty percent) retention amount of that item would be released subject to fulfillment of the following conditions –
 - (a) 20% supply amount would be paid on completion of 50% of the total erection works of that particular item.
 - (b) Next 10% of the supply amount of that supply item would be payable on completion of 100% of the total erection, testing, commissioning works of that particular item.
 - (c) 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

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 erection 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.

Local Transport (Freight) & Insurance (F&I):

Amount of F&I is inclusive with Supply (Schedule 1).

(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-):**

- (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. Taxes and Duties (Supply):

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.

6. Taxes and Duties (Service):

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 supplier'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]
3Cr.	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.	Rs.

(f) Employer's Liability

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(g) Other Insurances

The Contractor is also required to take out and maintain at its own cost the following 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 Subclause 34.1, except for the Third Party Liability, Workers' Compensation, and Employer's Liability Insurance, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GCC Subclause 34.1, except for the Cargo, Workers' Compensation and Employer's Liability Insurance. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

(B) Types of Insurance to Be Taken Out by the Employer

The Employer shall at its expense take out and maintain in effect during the performance of the Contract the following insurance policies.

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

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 finalised 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 equipments 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 equipments shall deemed have fulfilled the requirement of GCC clause 28 (Functional Guarantee). As the equipments 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.

Performance Security

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

Beneficiary:[Name and address of the Employer]

Date:

Performance Guarantee No.:

We have been informed that [name of the contractor] (hereinafter called "the Contractor") has entered into Contract No. [reference number of the contract] dated [date] with you, for the execution of [name of contract and brief description of plant and services] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we [name of the bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [name of the currency and amount in words]²[amount in figures] such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire no later than the earlier of

(a) 6 months after our receipt of

- (i) a copy of the Completion Certificate; or
- (ii) a registered letter from the Contractor, attaching a copy of the notice to the project manager that the Facilities are ready for commissioning, and stating that 14 days have elapsed from receipt of such notice (or 7 days have elapsed if the notice was a repeated notice) and the project manager has failed to issue a Completion Certificate or inform the Contractor in writing of any defects or deficiencies; or
- (iii) a registered letter from the Contractor stating that no Completion Certificate has been issued but the Employer is making use of the Facilities; or

(b) the [date] day of [month], [year].

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

²

The guarantor shall insert an amount representing the percentage of the contract price specified in the contract and denominated either in the currency(ies) of the contract or a freely convertible currency acceptable to the Employer.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458 [or ICC Publication No. 758 as applicable], except that subparagraph (ii) of Sub-Article 20(a) is hereby excluded.³

.....
[Signature(s) and seal of bank (where appropriate)]

-- Note to Tenderer --

If the institution issuing the performance security is located outside the country of the Employer, it shall have a correspondent financial institution located in the country of the Employer to make it enforceable.

Date _____

³ Or the same or similar to this clause specified in the Uniform Rules for Demand Guarantees, ICC Publication No. 758, where applicable.