



**Request for Bids
(Without Prequalification)**

For the Procurement of

(1) Lot A

Design, Engineering, Supply, Construction, Installation, testing and Commissioning of Battery Energy Storage Systems (BESS) with a minimum of 35MW/140 MWh of usable capacity and energy, including 5 Years Plants Operation and Maintenance Services and the associated Network Integration Equipment at Eskom Melkhout Substations. Koega Local Municipality, Eastern Cape, South Africa

And

(2) Lot B

Design, Engineering, Supply, Construction, and Installation, testing and commissioning of a 2.04 MW Photovoltaic System, Battery Energy Storage Systems (BESS) with a minimum of 1.54 MW/6.16 MWh of usable capacity and energy including 5 Years Plant Operation and Maintenance Services, the associated Network Integration Equipment, Capacitor Banks on the Wessel Klipkop 22kV line, Telecommunications Equipment and a 33kV Loop In-Loop-Out Connection on the existing Rietfontein 33kV line including approximately 700m of new 33kV line to the new Mier

Substation at Mier Rietfontein Near Rietfontein in the ZF Mgcawu District Municipality (Dawid Kruiper Local Municipality), Northern Cape Province, South Africa

RFB No: MWP1698WB

Employer: Eskom Holdings SOC Limited

Project: Eskom Investment Support Project (EISP) and Eskom Renewable Support Project (ERSP)

Country: Republic of South Africa

Issued on: 01 March 2022

SPECIFIC PROCUREMENT NOTICE

Country: Republic of South Africa

Sector: Energy

Employer: Eskom Holdings SOC Limited

Loan No.: IBRD 7820 and CTF TF010690

RFB No: MWP1698WB

Issued on: 01 December 2022

Name of Project

Eskom Investment Support Project (EISP) and Eskom Renewables Support Project (ERSP)

Title of the Request for Bids (RFB)

Design, engineering, supply, construction, installation, testing and commissioning of:

Lot A:

Battery Energy Storage Systems (BESS) with a minimum of 35MW/140 MWh of usable capacity and energy, including 5 Years Plant Operation and Maintenance Services and the associated Network Integration Equipment (NIE) at Eskom Melkhout Substations. Koega Local Municipality, Eastern Cape, South Africa

and

Lot B:

2.04 MW Photovoltaic System and Battery Energy Storage Systems (BESS) with a minimum of 1.5 MW/6 MWh of usable capacity and energy including 5 Years Plant Operation and Maintenance Services, the associated Network Integration Equipment, Capacitor Banks on the Wessel Klipkop 22kV line, Telecommunications Equipment and a 33kV Loop In-Loop-Out

Connection on the existing Rietfontein 33kV line including approximately 700m of new 33kV line to the new Mier Substation at Mier Rietfontein Near Rietfontein in the ZF Mgcawu District Municipality (Dawid Kruijer Local Municipality), Northern Cape Province, South Africa

Duration

Period of 6 months or earlier to a maximum period of 8 months for the design, supply, installation & commissioning and 5 years operations and maintenance services

1. Eskom Holdings SOC Limited (Eskom) has received financing from the African Development Bank (hereinafter called "Bank"), and New Development Bank toward the cost of the Eskom Investment Support Project (EISP) and Eskom Renewables Support Project (ERSP) and it intends to apply part of the proceeds toward payments under the contract for Design, Engineering, Supply, Construction, Erection, testing and Commissioning of Battery Energy Storage System (BESS) Project, using the Direct Payment disbursement method, as defined in the World Bank's Disbursement Guidelines for Investment Project Financing,.
2. Eskom invites sealed Bids from eligible Bidders for the Design, Engineering, Supply, Construction, Installation, testing and Commissioning of the following:

(a) Lot A

Battery Energy Storage Systems (BESS) with a minimum of 35MW/140 MWh of usable capacity and energy, including 5 Years Plants Operation and Maintenance Services and the associated Network Integration Equipment at Eskom Melkhout Substations. Koega Local Municipality, Eastern Cape, South Africa

and

(b) Lot B:

2.04 MW Photovoltaic System and Battery Energy Storage Systems (BESS) with a minimum of 1.5 MW/6 MWh of usable capacity and energy including 5 Years Plant Operation and Maintenance Services, the associated Network Integration Equipment, Capacitor Banks on the Wessel Klipkop 22kV line, Telecommunications Equipment and a 33kV Loop In-Loop-Out Connection on the existing Rietfontein 33kV line including approximately 700m of new 33kV line to the new Mier Substation at Mier Rietfontein Near Rietfontein in the ZF Mgcawu

District Municipality (Dawid Kruiper Local Municipality), Northern Cape Province, South Africa

Pre-bid clarification meetings	Site meeting	Closing date & Time	Contact person
<p>1. Lot A Date: 18-01-2023 Time: 09:00 (SAST) Venue: Ms Team</p> <p>2. Lot B Date: 18-01-2023 Time: 13:00 (SAST) Venue: Ms Team</p>	<p>1. Lot A Date: 24-01-2023 Time: 11:00 (SAST) Venue: Melkhout (Eastern Cape) GPS Coordinates: 34°00'05.4"S 24°46'58.6"E</p> <p>2. Lot B Date: 25-01-2023 Time: 13:00 South African Standard Time (SAST), i.e. 0 hours Place: Rietfontein (Northern Cape) GPS Coordinates: 26° 45' 25" S 20° 00' 02"E</p>	<p>Date: 01-03-2023</p> <p>Time: 10:00 (SAST)</p>	<p>Mr Hector Mabaso +27 13 693 4390 WB_BESS_P04@eskom.co.za</p>

- Both Lot A (Melkhout substation) and Lot B (Rietfontein substation) scope will be financed by the African Development Bank and the New Development Bank. The Bidding process will be governed by the World Bank's Procurement Regulations.
- Bidding will be conducted through international competitive procurement using a Request for Bids (RFB) as specified in the World Bank's "Procurement Regulations for IPF Borrowers" dated July 2016, revised November 2017, August 2018 and November 2020 ("Procurement Regulations"), and is open to all eligible Bidders as defined in the Procurement Regulations.
- Interested eligible Bidders may obtain further information from Hector Mabaso via email address WB_BESS_P04@eskom.co.za during office hours between 09:00am and 16:00pm.

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6. The bidding document in English can be accessed and downloaded, at no cost to the Bidders, from Eskom Tender Bulletin or through the link below

<https://tenderbulletin.eskom.co.za/Tenders/Docs?TENDERID=59744>

7. Bids must be delivered to the address below on or before **10:00AM South African Standard Time (SAST), i.e. GMT+2 hours on Wednesday, 01 March 2023**. Electronic bidding will not be permitted. Late Bids will be rejected. Bids will be publicly opened through online live streaming platform in the virtual presence of the Bidders' designated representatives using the link provided as reflected below and in the bid document on **10:00AM South African Standard Time (SAST), i.e. GMT+2 hours**.

https://teams.microsoft.com/l/meetup-join/19%3ameeting_NTc1ZDdhOTUtYmM1Ni00MWEhLWlwMGEtZjUwNDEzNmQwMGMMy%40thead.v2/0?context=%7b%22Tid%22%3a%2293aedbdc-cc67-4652-aa12-d250a876ae79%22%2c%22Oid%22%3a%221c8c8a39-7551-4ac1-ba66-7b55f518c0ee%22%7d

8. All Bids must be accompanied by a Bid-Securing Declaration form.
9. Attention is drawn to the Procurement Regulations requiring the Borrower to disclose information on the successful bidder's beneficial ownership, as part of the Contract Award Notice, using the Beneficial Ownership Disclosure Form as included in the bidding document."
10. The address referred to in **7** above is:
Physical address for bid submission:

ESKOM HOLDING SOC LIMITED

Megawatt Park, Tender Offices

1 Maxwell Drive, Sunninghill, Sandton, 2191, South Africa

Attention: Hector Mabaso, Senior Procurement Advisor

Telephone Number: +27 13 693 4390

Email address: WB_BEES_P04@eskom.co.za

Standard Procurement Document

Table of Contents

PART 1 – Bidding Procedures	8
Section II - Bid Data Sheet	38
Section III - Evaluation and Qualification Criteria	53
Section IV - Bidding Forms.....	82
Section V - Eligible Countries.....	157
Section VI - Fraud and Corruption	159
Section VII - Employer’s Requirements	162
Scope of Supply of Plant and Installation Services by the Contractor.....	163
PART 3 – Conditions of Contract and Contract Forms.....	195
Section VIII - General Conditions of Contract.....	196
Section IX - Particular Conditions of Contract	303
Section X - Contract Forms.....	333

PART 1 – Bidding Procedures

Section I - Instructions to Bidders

Contents

A.	General	11
1.	Scope of Bid	11
2.	Source of Funds	12
3.	Fraud and Corruption	12
4.	Eligible Bidders	12
5.	Eligible Plant and Installation Services	15
B.	Contents of Bidding Document.....	15
6.	Sections of Bidding Document.....	15
7.	Clarification of Bidding Document, Site Visit, Pre-Bid Meeting.....	16
8.	Amendment of Bidding Document.....	17
C.	Preparation of Bids.....	17
9.	Cost of Bidding.....	17
10.	Language of Bid	17
11.	Documents Comprising the Bid	17
12.	Letter of Bid and Price Schedules	18
13.	Alternative Bids	19
14.	Documents Establishing the Eligibility of the Plant and Installation Services	19
15.	Documents Establishing the Eligibility and Qualifications of the Bidder.....	19
16.	Documents Establishing the Conformity of the Plant and Installation Services.....	20
17.	Bid Prices and Discounts.....	20
18.	Currencies of Bid and Payment	22
19.	Period of Validity of Bids	23
20.	Bid Security.....	23
21.	Format and Signing of Bid.....	25
D.	Submission and Opening of Bids	26
22.	Submission, Sealing and Marking of Bids	26
23.	Deadline for Submission of Bids	26
24.	Late Bids	26
25.	Withdrawal, Substitution, and Modification of Bids	26
26.	Bid Opening	27
E.	Evaluation and Comparison of Bids	28
27.	Confidentiality	28
28.	Clarification of Bids.....	29
29.	Deviations, Reservations, and Omissions	29
30.	Determination of Responsiveness	29
31.	Nonmaterial Nonconformities.....	30
32.	Correction of Arithmetical Errors	30

33.	Conversion to Single Currency.....	31
34.	Margin of Preference.....	31
35.	Evaluation of Bids.....	31
36.	Comparison of Bids.....	32
37.	Abnormally Low Bids.....	32
38.	Unbalanced or Front Loaded Bids.....	33
39.	Eligibility and Qualification of the Bidder.....	33
40.	Employer’s right to Accept Any Bid and to Reject Any or All Bids.....	34
41.	Standstill Period.....	34
42.	Notification of Intention to Award.....	34
F.	Award of Contract.....	34
43.	Award Criteria.....	34
44.	Notification of Award.....	35
45.	Debriefing by the Employer.....	35
46.	Signing of Contract.....	36
47.	Performance Security.....	36
48.	Procurement Related Complaint.....	37

Section I - Instructions to Bidders

A. General

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

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- 2. Source of Funds**
- 2.1 The Borrower or Recipient (hereinafter called “Borrower”) indicated **in the BDS** has applied for or received financing (hereinafter called “funds”) from the NDB and AFDB (hereinafter called “the Bank”) in an amount specified **in BDS**, toward the project named **in BDS**. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this bidding document is issued.
- 2.2 Payment by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the Loan (or other financing) Agreement. The Loan (or other financing) Agreement prohibits a withdrawal from the loan account for the purpose of any payment to persons or entities, or for any import of goods, equipment, plant, or materials, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. No party other than the Borrower shall derive any rights from the Loan (or other financing) Agreement or have any claim to the proceeds of the Loan (or other financing).
- 3. Fraud and Corruption**
- 3.1 The Bank requires compliance with the Bank’s Anti-Corruption Guidelines and its prevailing sanctions policies and procedures as set forth in the WBG’s Sanctions Framework, as set forth in Section VI.
- 3.2 In further pursuance of this policy, bidders shall permit and shall cause their agents (where declared or not), subcontractors, sub consultants, service providers, suppliers, and their personnel, to permit the Bank to inspect all accounts, records and other documents relating to any initial selection process, prequalification process, bid submission, proposal submission and contract performance (in the case of award), and to have them audited by auditors appointed by the Bank.
- 4. Eligible Bidders**
- 4.1 A Bidder may be a firm that is a private entity, a state-owned enterprise or institution subject to ITB 4.6, or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Bidding process and, in the event the JV is awarded the Contract, during contract execution. Unless specified **in the BDS**, there is no limit on the number of members in a JV.
- 4.2 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this Bidding process, if the Bidder:

- (a). directly or indirectly controls, is controlled by or is under common control with another Bidder; or
 - (b). receives or has received any direct or indirect subsidy from another Bidder; or
 - (c). has the same legal representative as another Bidder; or
 - (d). has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the Bid of another Bidder, or influence the decisions of the Employer regarding this Bidding process; or
 - (e). or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the Plant and Installation Services that are the subject of the Bid; or
 - (f). or any of its affiliates has been hired (or is proposed to be hired) by the Employer or Borrower as Project Manager for the Contract implementation; or
 - (g). would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
 - (h). has a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the preparation of the bidding document or specifications of the Contract, and/or the Bid evaluation process of such Contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the Bidding process and execution of the Contract.
- 4.3 A firm that is a Bidder (either individually or as a JV member) shall not participate as a Bidder or as JV member in more than one Bid except for permitted alternative Bids. Such participation shall result in the disqualification of all Bids in which the firm is involved. However, this does not limit the participation of a Bidder as subcontractor in another Bid or of a firm as a subcontractor in more than one Bid.
- 4.4 A Bidder may have the nationality of any country, subject to the restrictions pursuant to ITB 4.8. A Bidder shall be deemed to have the nationality of a country if the Bidder is constituted, incorporated or registered in and operates in conformity with the provisions of the laws

- of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or subconsultants for any part of the Contract including related Services.
- 4.5 A Bidder that has been sanctioned by the Bank, pursuant to the Bank's Anti-Corruption Guidelines, in accordance with its prevailing sanctions policies and procedures as set forth in the WBG's Sanctions Framework as described in Section VI paragraph 2.2 d., shall be ineligible to be prequalified for, initially selected for, bid for, propose for, or be awarded a Bank-financed contract or benefit from a Bank-financed contract, financially or otherwise, during such period of time as the Bank shall have determined. The list of debarred firms and individuals is available at the electronic address specified in the BDS.
- 4.6 Bidders that are state-owned enterprises or institutions in the Employer's Country may be eligible to compete and be awarded a Contract(s) only if they can establish, in a manner acceptable to the Bank, that they (i) are legally and financially autonomous (ii) operate under commercial law, and (iii) are not under supervision of the Employer.
- 4.7 A Bidder shall not be under suspension from Bidding by the Employer as the result of the operation of a Bid-Securing Declaration or Proposal-Securing Declaration.
- 4.8 Firms and individuals may be ineligible if so indicated in Section V and (a) as a matter of law or official regulations, the Borrower's country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods or the contracting of works or services required; or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country. Where the procurement is implemented across jurisdictional boundaries (and more than one country is a Borrower, and is involved in the procurement), then exclusion of a firm or individual on the basis of ITB 4.8 (a) above by any country may be applied to that procurement across other countries involved, if the Bank and the Borrowers involved in the procurement agree.
- 4.9 A Bidder shall provide such documentary evidence of eligibility satisfactory to the Employer, as the Employer shall reasonably request.

- 4.10 A firm that is under a sanction of debarment by the Borrower from being awarded a contract is eligible to participate in this procurement, unless the Bank, at the Borrower's request, is satisfied that the debarment; (a) relates to fraud or corruption, and (b) followed a judicial or administrative proceeding that afforded the firm adequate due process.
- 5. Eligible Plant and Installation Services**
- 5.1 The Plant and Installation Services to be supplied under the Contract and financed by the Bank may have their origin in any country in accordance with Section V, Eligible Countries.
- 5.2 For purposes of ITB 5.1 above, "origin" means the place where the plant, or component parts thereof are mined, grown, produced or manufactured, and from which the services are provided. Plant components are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is substantially different in its basic characteristics or in purpose or utility from its components.

B. Contents of Bidding Document

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

PART 1. Bidding Procedures

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

PART 2. Employer's Requirements

- Section VII -Employer's Requirements

PART 3. Conditions of Contract and Contract Forms

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

- 6.2 The Specific Procurement Notice-Request for Bids (RFB) issued by the Employer is not part of the bidding document.
- 6.3 Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Bid meeting (if any), or Addenda to the bidding document in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Employer shall prevail.

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

together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the bidding document in accordance with ITB 6.3. If so specified **in the BDS**, the Employer shall also promptly publish the Minutes of the pre-Bid meeting at the web page identified **in the BDS**. Any modification to the bidding document that may become necessary as a result of the pre-Bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITB 8 and not through the minutes of the pre-Bid meeting. Nonattendance at the pre-Bid meeting will not be a cause for disqualification of a Bidder.

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

C. Preparation of Bids

- 9. Cost of Bidding**
- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding process.
- 10. Language of Bid**
- 10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Employer, shall be written in the language specified **in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified **in the BDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern.
- 11. Documents Comprising the Bid**
- 11.1 The Bid shall comprise the following:
- (a) **Letter of Bid** prepared in accordance with ITB12.1;
 - (b) **Price Schedules** completed in accordance with ITB 12 and ITB 17;
 - (c) **Bid Security or Bid Securing Declaration**, in accordance with ITB 20;
 - (d) **Alternative Bid**, if permissible, in accordance with ITB 13;

- (e) **Authorization:** written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 21.3;
 - (f) **Eligibility of Plant and Installation Services:** documentary evidence established in accordance with ITB 14.1 that the Plant and Installation Services offered by the Bidder in its Bid or in any alternative Bid, if permitted, are eligible;
 - (g) **Bidder's Eligibility and Qualifications:** documentary evidence in accordance with ITB 15.1 establishing the Bidder's eligibility and qualifications to perform the Contract if its Bid is accepted;
 - (h) **Conformity:** documentary evidence in accordance to ITB 16 that the Plant and Installation Services offered by the Bidder conform to the bidding document;
 - (i) **Subcontractors:** list of subcontractors in accordance with ITB 16.2; and
 - (j) any other document required **in the BDS.**
- 11.2 In addition to the requirements under ITB 11.1, Bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed Agreement.
- 11.3 The Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid
- 12. Letter of Bid and Price Schedules**
- 12.1 The Letter of Bid and Price Schedules shall be prepared, using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed as instructed in each form without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 21.3. All blank spaces shall be filled in with the information requested.

- 13. Alternative Bids**
- 13.1 Unless otherwise specified **in the BDS**, alternative Bids shall not be considered.
- 13.2 When alternatives to the Time Schedule are explicitly invited, a statement to that effect will be included **in the BDS**, and the method of evaluating different time schedules will be described in Section III, Evaluation and Qualification Criteria.
- 13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the Employer's requirements as described in the bidding document must also provide: (i) a price at which they are prepared to offer a Plant meeting the Employer's requirements; and (ii) all information necessary for a complete evaluation of the alternatives by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed installation methodology and other relevant details. Only the technical alternatives, if any, of the Bidder with the Most Advantageous Bid conforming to the basic technical requirements shall be considered by the Employer.
- 13.4 When Bidders are invited **in the BDS** to submit alternative technical solutions for specified parts of the facilities, such parts will be identified **in the BDS**, as will the method for their evaluation, and described in Section VII, Employer's Requirements.
- 14. Documents**
Establishing the Eligibility of the Plant and Installation Services
- 14.1 To establish the eligibility of the Plant and Installation Services in accordance with ITB 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV, Bidding Forms.
- 15. Documents**
Establishing the Eligibility and Qualifications of the Bidder
- 15.1 To establish its eligibility and qualifications to perform the Contract in accordance with Section III, Evaluation and Qualification Criteria, the Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Bidding Forms.

- 16. Documents Establishing the Conformity of the Plant and Installation Services**
- 16.1 The Bidder shall furnish the information stipulated in Section IV, Bidding Forms in sufficient detail to demonstrate substantial responsiveness of the Bidders’ proposal to the work requirements and the completion time.
- 16.2 For major items of Plant and Installation Services as listed by the Employer in Section III, Evaluation and Qualification Criteria, which the Bidder intends to purchase or subcontract, the Bidder shall give details of the name and nationality of the proposed Subcontractors, including manufacturers, for each of those items. In addition, the Bidder shall include in its Bid information establishing compliance with the requirements specified by the Employer for these items. Quoted rates and prices will be deemed to apply to whichever Subcontractor is appointed, and no adjustment of the rates and prices will be permitted.
- 16.3 The Bidder shall be responsible for ensuring that any Subcontractor proposed complies with the requirements of ITB 4, and that any Plant, or services to be provided by the Subcontractor comply with the requirements of ITB 5 and ITB 16.1.
- 17. Bid Prices and Discounts**
- 17.1 Unless otherwise specified **in the BDS**, Bidders shall quote for the entire Plant and Installation Services on a “single responsibility” basis. The total Bid price shall include all the Contractor’s obligations mentioned in or to be reasonably inferred from the bidding document in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction, installation and completion of the Plant. This includes all requirements under the Contractor’s responsibilities for testing, pre-commissioning and commissioning of the Plant and, where so required by the bidding document, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as specified in the bidding document, all in accordance with the requirements of the General Conditions. Items against which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed to be covered by the prices for other items.
- 17.2 Bidders are required to quote the price for the commercial, contractual and technical obligations outlined in the bidding document.
- 17.3 Bidders shall give a breakdown of the prices in the manner and detail called for in the Price Schedules included in Section IV, Bidding Forms.
- Depending on the scope of the Contract, the Price Schedules may comprise up to the six (6) schedules listed below. Separate numbered

Schedules included in Section IV, Bidding Forms, from those numbered 1 to 4 below, shall be used for each of the elements of the Plant and Installation Services. The total amount from each Schedule corresponding to an element of the Plant and Installation Services shall be summarized in the schedule titled Grand Summary, (Schedule 5), giving the total Bid price(s) to be entered in the Letter of Bid. Bidders shall note that the plant and equipment included in Schedule Nos. 1 and 2 below exclude materials used for civil, building and other construction works. All such materials shall be included and priced under Schedule No. 4, Installation Services. The Schedules comprise:

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

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

Schedule No. 3: Design Services

Schedule No. 4: Installation Services

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

Schedule No. 6: Recommended Spare Parts

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

- (a) Plant to be supplied from abroad (Schedule No. 1):
The price of the Plant shall be quoted on CIP-named place of destination basis as specified **in the BDS**.
- (b) Plant manufactured within the Employer's Country (Schedule No. 2):
 - (i) The price of the plant shall be quoted on EXW INCOTERM basis (such as "ex works", "ex factory," "ex warehouse" or "off-the-shelf," as applicable including all customs duties, sales and other taxes already paid or payable on the components and raw materials used in the manufacture or assembly of the Plant);
 - (ii) Sales tax and all other taxes payable in the Employer's Country on the plant if the contract is awarded to the Bidder;
- (c) Design Services (Schedule No. 3);
- (d) Installation Services shall be quoted separately (Schedule No. 4) and shall include rates or prices for local transportation to named place of final destination as **specified in the BDS**, insurance and other services incidental to delivery of the plant, all labor, contractor's equipment, temporary works, materials, consumables and all matters and things of whatsoever nature,

including operations and maintenance services, the provision of operations and maintenance manuals, training, etc., where identified in the bidding document, as necessary for the proper execution of the installation and other services, including all taxes, duties, levies and charges payable in the Employer's Country as of twenty-eight (28) days prior to the deadline for submission of Bids;

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

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

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

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

17.8 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 labour, 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 labour and material indices in the corresponding Form in Section IV, Bidding Forms.

17.9 If so indicated in ITB 1.1, Bids are being invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer any price reduction (discount) for the award of more than one Contract shall specify in their Letter of Bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package, and the manner in which the price reductions will apply.

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

18. Currencies of Bid and Payment

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

- 18.2 The Bidder may express the Bid price in any currency. If the Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than three foreign currencies in addition to the currency of the Employer's Country.
- 19. Period of Validity of Bids**
- 19.1 Bids shall remain valid until the date specified **in the BDS** or any extended date if amended by the Employer in accordance with ITB 8. A Bid that is not valid until the date specified **in the BDS**, or any extended date if amended by the Employer in accordance with ITB 8, shall be rejected by the Employer as nonresponsive.
- 19.2 In exceptional circumstances, prior to the date of expiration of the Bid validity, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB 20, the Bidder granting the request shall also extend the Bid Security for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid, except as provided in ITB 19.3.
- 19.3 If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial Bid validity specified in accordance with ITB 19.1, the Contract price shall be determined as follows:
- (a). in the case of **fixed price** contracts, the Contract price shall be the Bid price adjusted by the factor or factors specified **in the BDS**;
 - (b). in the case of **adjustable price** contracts, no adjustment shall be made; or
 - (c). in any case, Bid evaluation shall be based on the Bid price without taking into consideration the applicable correction from those indicated above.
- 20. Bid Security**
- 20.1 The Bidder shall furnish as part of its Bid, either a Bid-Securing Declaration or a Bid Security as specified **in the BDS**, in original form and, in the case of a Bid Security, in the amount and currency specified **in the BDS**.
- 20.2 A Bid-Securing Declaration shall use the form included in Section IV Bidding Forms.
- 20.3 If a Bid Security is specified pursuant to ITB 20.1, the Bid security shall be a demand guarantee in any of the following forms at the Bidder's option:

- (a) an unconditional guarantee issued by a bank or non-bank financial institution (such as an insurance, bonding or surety company);
- (b) an irrevocable letter of credit;
- (c) a cashier's or certified check; or
- (d) another security indicated **in the BDS**,

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

- 20.4 If a Bid Security or a Bid-Securing Declaration is specified pursuant to ITB 20.1, any Bid not accompanied by a substantially responsive Bid Security or Bid-Securing Declaration shall be rejected by the Employer as nonresponsive.
- 20.5 If a Bid Security is specified pursuant to ITB 20.1, the Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the Performance Security pursuant to ITB 47.
- 20.6 The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required Performance Security.
- 20.7 The Bid Security may be forfeited:
 - (a) if a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder on the Letter of Bid or any extended date provided by the Bidder; or
 - (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB 46; or
 - (ii) furnish a Performance Security in accordance with ITB 47.
- 20.8 The Bid Security or the Bid-Securing Declaration of a JV shall be in the name of the JV that submits the Bid. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, the

Bid Security or the Bid Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITB 4.1 and ITB 11.2.

- 20.9 If a Bid Security is not required **in the BDS**: and
- (a). if a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder on the Letter of Bid , except as provided in ITB 19.2; or
 - (b). if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB 46; or
 - (ii) furnish a Performance Security in accordance with ITB 47;
- the Borrower may, if provided for **in the BDS**, declare the Bidder disqualified to be awarded a contract by the Employer for a period of time as stated **in the BDS**.

21. Format and Signing of Bid

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

D. Submission and Opening of Bids

- 22. Submission, Sealing and Marking of Bids**
- 22.1 The Bidder shall deliver the Bid in a single, sealed envelope (one (1) envelope process). Within the single envelope the Bidder shall place the following separate, sealed envelopes:
- (a) in an envelope marked “ORIGINAL”, all documents comprising the Bid, as described in ITB 11; and
 - (b) in an envelope marked “COPIES”, all required copies of the Bid; and
 - (c) if alternative Bids are permitted in accordance with ITB 13, and if relevant:
 - (i) in an envelope marked “ORIGINAL–ALTERNATIVE BID” the alternative Bid; and
 - (ii) in the envelope marked “COPIES – ALTERNATIVE BID” all required copies of the alternative Bid.
- 22.2 The inner and outer envelopes shall:
- (a) bear the name and address of the Bidder;
 - (b) be addressed to the Employer in accordance with ITB 23.1;
 - (c) bear the specific identification of this Bidding process indicated in accordance with ITB 1.1; and
 - (d) bear a warning not to open before the time and date for Bid opening.
- 22.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.
- 23. Deadline for Submission of Bids**
- 23.1 Bids must be received by the Employer at the address and no later than the date and time indicated **in the BDS**. When so specified **in the BDS**, Bidders shall have the option of submitting their Bids electronically. Bidders submitting Bids electronically shall follow the electronic Bid submission procedures specified **in the BDS**.
- 23.2 The Employer may, at its discretion, extend the deadline for the submission of Bids by amending the bidding document in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 24. Late Bids**
- 24.1 The Employer shall not consider any Bid that arrives after the deadline for submission of Bids, in accordance with ITB 23. Any Bid received by the Employer after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.
- 25. Withdrawal, Substitution, and**
- 25.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in

Modification of Bids

accordance with ITB 21.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be:

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

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

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

26. Bid Opening

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

26.2 First, the written notice of withdrawal in the envelopes marked “Withdrawal” shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Bid opening.

26.3 Next, envelopes marked “Substitution” shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Bid opening.

26.4 Next, envelopes marked “Modification” shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening.

- 26.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Bidder and the Bid Price(s), including any discounts and alternative Bids, and indicating whether there is a modification; the presence or absence of a Bid Security or Bid-Securing Declaration, if required; and any other details as the Employer may consider appropriate.
- 26.6 Only Bids, alternative Bids and discounts that are opened and read out at Bid opening shall be considered further. The Letter of Bid and the Price Schedules are to be initialed by representatives of the Employer attending Bid opening in the manner specified **in the BDS**.
- 26.7 The Employer shall neither discuss the merits of any Bid nor reject any Bid (except for late Bids, in accordance with ITB 24.1).
- 26.8 The Employer shall prepare a record of the Bid opening that shall include, as a minimum:
 - (a) the name of the Bidder and whether there is a withdrawal, substitution, or modification;
 - (b) the Bid Price, per lot if applicable, including any discounts;
 - (c) any alternative Bids; and
 - (d) the presence or absence of a Bid Security or a Bid-Securing Declaration.
- 26.9 The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

E. Evaluation and Comparison of Bids

27. Confidentiality

- 27.1 Information relating to the evaluation of Bids and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with the Bidding process until information on Intention to Award the Contract is transmitted to all Bidders in accordance with ITB 42.
- 27.2 Any effort by a Bidder to influence the Employer in the evaluation of the bids or Contract award decisions may result in the rejection of its Bid.
- 27.3 Notwithstanding ITB 27.2, from the time of Bid opening to the time of Contract Award, if any Bidder wishes to contact the Employer on any matter related to the Bidding process, it should do so in writing.

- 28. Clarification of Bids**
- 28.1 To assist in the examination, evaluation, and comparison of the Bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids, in accordance with ITB 32.
- 28.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Employer's request for clarification, its Bid may be rejected.
- 29. Deviations, Reservations, and Omissions**
- 29.1 During the evaluation of Bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the bidding document;
 - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the bidding document; and
 - (c) "Omission" is the failure to submit part or all of the information or documentation required in the bidding document.
- 30. Determination of Responsiveness**
- 30.1 The Employer's determination of a Bid's responsiveness is to be based on the contents of the Bid itself, as defined in ITB11.
- 30.2 A substantially responsive Bid is one that meets the requirements of the bidding document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:
- (a) if accepted, would:
 - (i) affect in any substantial way the scope, quality, or performance of the Plant and Installation Services specified in the Contract; or
 - (ii) limit in any substantial way, inconsistent with the bidding document, the Employer's rights or the Bidder's obligations under the proposed Contract; or
 - (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.
- 30.3 The Employer shall examine the technical aspects of the Bid in particular, to confirm that all requirements of Section VII, Employer's Requirements have been met without any material deviation, reservation, or omission.

- 30.4 If a Bid is not substantially responsive to the requirements of the bidding document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 31. Nonmaterial Nonconformities**
- 31.1 Provided that a Bid is substantially responsive, the Employer may waive any nonconformity in the Bid that does not constitute a material deviation, reservation or omission.
- 31.2 Provided that a Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.
- 31.3 Provided that a Bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only to reflect the price of a missing or non-conforming item or component, by adding the average price of the item or component quoted by substantially responsive Bidders. If the price of the item or component cannot be derived from the price of other substantially responsive Bids, the Employer shall use its best estimate.
- 32. Correction of Arithmetical Errors**
- 32.1 Provided that the Bid is substantially responsive, the Employer shall correct arithmetical errors on the following basis:
- (a). where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly;
 - (b). where there are errors between the total of the amounts of Schedule Nos. 1 to 4 and the amount given in Schedule No. 5 (Grand Summary), the former shall prevail and the latter will be corrected accordingly; and
 - (c). if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.
- 32.2 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 32.1, shall result in the rejection of the Bid.

- 33. Conversion to Single Currency**
- 33.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as specified **in the BDS**.
- 34. Margin of Preference**
- 34.1 No margin of domestic preference shall apply.
- 35. Evaluation of Bids**
- 35.1 The Employer shall use the criteria and methodologies listed in this ITB and Section III, Evaluation and Qualification criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the Employer shall determine the Most Advantageous Bid. This is the Bid of the Bidder that meets the qualification criteria and that has been determined to be:
- (a) substantially responsive to the bidding document; and
 - (b) the lowest evaluated cost.
- 35.2 **Technical Evaluation.** The Employer will carry out a detailed technical evaluation of the Bids not previously rejected to determine whether the technical aspects are in compliance with the bidding document. The Bid that does not meet minimum acceptable standards of completeness, consistency and detail, and the specified minimum (or maximum, as the case may be) requirements for specified functional guarantees, will be rejected for non-responsiveness. In order to reach its determination, the Employer will examine and compare the technical aspects of the Bids on the basis of the information supplied by the Bidders, taking into account the following:
- (a) overall completeness and compliance with the Employer's Requirements; conformity of the Plant and Installation Services offered with specified performance criteria, including conformity with the specified minimum (or maximum, as the case may be) requirement corresponding to each functional guarantee, as indicated in the Specification and in Section III, Evaluation and Qualification Criteria; suitability of the Plant and Installation Services offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the Bid;
 - (b) type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services; and
 - (c) other relevant factors, if any, listed in Section III, Evaluation and Qualification Criteria.
- 35.3 Where alternative technical solutions have been allowed in accordance with ITB 13, and offered by the Bidder, the Employer will

make a similar evaluation of the alternatives. Where alternatives have not been allowed but have been offered, they shall be ignored.

- 35.4 **Economic Evaluation.** To evaluate a Bid, the Employer shall consider the following:
- (a). the Bid price, excluding provisional sums and the provision, if any, for contingencies in the Price Schedules;
 - (b). price adjustment for correction of arithmetic errors in accordance with ITB 32.1;
 - (c). price adjustment due to discounts offered in accordance with ITB 17.1;
 - (d). price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 31.3;
 - (e). converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 33; and
 - (f). the evaluation factors specified **in the BDS** and in Section III, Evaluation and Qualification Criteria.
- 35.5 If price adjustment is allowed in accordance with ITB 17.7, the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in Bid evaluation.
- 35.6 If this bidding document allows Bidders to quote separate prices for different lots (contracts), and the award to a single Bidder of multiple lots (contracts), the methodology to determine the lowest evaluated cost of the lot (contract) combinations, including any discounts offered in the Letter of Bid, is specified in Section III, Evaluation and Qualification Criteria.
- 36. Comparison of Bids**
- 36.1 The Employer shall compare the evaluated costs of all substantially responsive Bids established in accordance with ITB 35.4 to determine the Bid that has the lowest evaluated cost.
- 37. Abnormally Low Bids**
- 37.1 An Abnormally Low Bid is one where the Bid price, in combination with other elements of the Bid, appears so low that it raises material concerns as to the capability of the Bidder to perform the Contract for the offered Bid Price.
- 37.2 In the event of identification of a potentially Abnormally Low Bid, the Employer shall seek written clarifications from the Bidder, including detailed price analyses of its Bid price in correlation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the bidding document.
- 37.3 After evaluation of the price analyses, in the event that the Employer determines that the Bidder has failed to demonstrate its capability

to deliver the contract for the offered tender price, the Employer shall reject the Bid.

38. Unbalanced or Front Loaded Bids

38.1 If the Bid that is evaluated as the lowest evaluated cost is, in the Employer's opinion, seriously unbalanced or front loaded the Employer may require the Bidder to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the Bid prices with the scope of works, proposed methodology, schedule and any other requirements of the bidding document.

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

- (a) accept the Bid; or
- (b) if appropriate, require that the total amount of the Performance Security be increased, at the expense of the Bidder, to a level not exceeding twenty percent (20%) of the Contract Price; or
- (c) reject the Bid.

39. Eligibility and Qualification of the Bidder

39.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated cost and substantially responsive Bid is eligible and meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

39.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 15.1. The determination shall not take into consideration the qualifications of other firms such as the Bidder's subsidiaries, parent entities, affiliates, subcontractors (other than Specialized Subcontractors if permitted in the bidding document) or any other firm(s) different from the Bidder.

39.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the Bid, in which event the Employer shall proceed to the Bidder who offers a substantially responsive Bid with the next lowest evaluated cost to make a similar determination of that Bidder's qualifications to perform satisfactorily.

39.4 The capabilities of the manufacturers and subcontractors proposed in its Bid to be used by the Bidder with the Most Advantageous Bid for identified major items of supply or services will also be evaluated for acceptability in accordance with Section III, Evaluation and Qualification Criteria. Their participation should be confirmed with a letter of intent between the parties, as needed. Should a manufacturer or subcontractor be determined to be unacceptable,

the Bid will not be rejected, but the Bidder will be required to substitute an acceptable manufacturer or subcontractor without any change to the Bid price. Prior to signing the Contract, the corresponding Appendix to the Contract Agreement shall be completed, listing the approved manufacturers or subcontractors for each item concerned.

- 40. Employer’s right to Accept Any Bid and to Reject Any or All Bids** 40.1 The Employer reserves the right to accept or reject any Bid, and to annul the Bidding process and reject all Bids at any time prior to Contract Award, without thereby incurring any liability to Bidders. In case of annulment, all Bids submitted and specifically, Bid securities shall be promptly returned to the Bidders.
- 41. Standstill Period** 41.1 The Contract shall not be awarded earlier than the expiry of the Standstill Period. The Standstill Period shall be ten (10) Business Days unless extended in accordance with ITB 45. The Standstill Period commences the day after the date the Employer has transmitted to each Bidder the Notification of Intention to Award the Contract. Where only one Bid is submitted, or if this contract is in response to an emergency situation recognized by the Bank, the Standstill Period shall not apply.
- 42. Notification of Intention to Award** 42.1 The Employer shall send to each Bidder the Notification of Intention to Award the Contract to the successful Bidder. The Notification of Intention to Award shall contain, at a minimum, the following information:
- (a) the name and address of the Bidder submitting the successful Bid;
 - (b) the Contract price of the successful Bid;
 - (c) the names of all Bidders who submitted Bids, and their Bid prices as readout, and as evaluated;
 - (d) a statement of the reason(s) the Bid (of the unsuccessful Bidder to whom the notification is addressed) was unsuccessful, unless the price information in c) above already reveals the reason;
 - (e) the expiry date of the Standstill Period; and
 - (f) instructions on how to request a debriefing and/or submit a complaint during the standstill period.

F. Award of Contract

- 43. Award Criteria** 43.1 Subject to ITB 40, the Employer shall award the Contract to the successful Bidder. This is the Bidder whose Bid has been determined to be the Most Advantageous Bid. This is the Bid of the Bidder that meets the qualification criteria and whose Bid has been determined to be:
- 43.1.1. substantially responsive to the bidding document; and
 - 43.1.2. the lowest evaluated cost.

44. Notification of Award

- 44.1 Prior to the expiration of the Bid Validity Period, and upon expiry of the Standstill Period, specified in ITB 41.1 or any extension thereof, and upon satisfactorily addressing any complaint that has been filed within the Standstill Period, the Employer shall notify the successful Bidder, in writing, that its Bid has been accepted. The notification of award (hereinafter and in the Contract Forms called the “Letter of Acceptance”) shall specify the sum that the Employer will pay the Contractor in consideration of the execution of the contract (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”).
- 44.2 Within ten (10) Business Days after the date of transmission of the Letter of Acceptance, the Employer shall publish the Contract Award Notice which shall contain, at a minimum, the following information:
- (a). name and address of the Employer;
 - (b). name and reference number of the contract being awarded, and the selection method used;
 - (c). names of all Bidders that submitted Bids, and their Bid prices as read out at Bid opening, and as evaluated;
 - (d). names of all Bidders whose Bids were rejected either as nonresponsive or as not meeting qualification criteria, or were not evaluated, with the reasons therefor;
 - (e). the name of the successful Bidder, the final total contract price, the contract duration and a summary of its scope; and
 - (f). successful Bidder’s Beneficial Ownership Disclosure Form, if specified in BDS ITB 46.1.
- 44.3 The Contract Award Notice shall be published on the Employer’s website with free access if available, or in at least one newspaper of national circulation in the Employer’s Country, or in the official gazette. The Employer shall also publish the contract award notice in UNDB online.
- 44.4 Until a formal contract is prepared and executed, the Letter of Acceptance shall constitute a binding Contract

45. Debriefing by the Employer

- 45.1 On receipt of the Employer’s Notification of Intention to Award referred to in ITB 42, an unsuccessful Bidder has three (3) Business Days to make a written request to the Employer for a debriefing. The Employer shall provide a debriefing to all unsuccessful Bidders whose request is received within this deadline.
- 45.2 Where a request for debriefing is received within the deadline, the Employer shall provide a debriefing within five (5) Business Days, unless the Employer decides, for justifiable reasons, to provide the debriefing outside this timeframe. In that case, the standstill period

shall automatically be extended until five (5) Business Days after such debriefing is provided. If more than one debriefing is so delayed, the standstill period shall not end earlier than five (5) Business Days after the last debriefing takes place. The Employer shall promptly inform, by the quickest means available, all Bidders of the extended standstill period.

45.3 Where a request for debriefing is received by the Employer later than the three (3)-Business Day deadline, the Employer should provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of Public Notice of Award of contract. Requests for debriefing received outside the three (3)-day deadline shall not lead to extension of the standstill period.

45.4 Debriefings of unsuccessful Bidders may be done in writing or verbally. The Bidder shall bear their own costs of attending such a debriefing meeting.

46. Signing of Contract

46.1 The Employer shall send to the successful Bidder the Letter of Acceptance including the Contract Agreement, and, if specified in the BDS, a request to submit the Beneficial Ownership Disclosure Form providing additional information on its beneficial ownership. The Beneficial Ownership Disclosure Form, if so requested, shall be submitted within eight (8) Business Days of receiving this request.

46.2 The successful Bidder shall sign, date and return to the Employer, the Contract Agreement within twenty-eight (28) days of its receipt.

46.3 Notwithstanding ITB 46.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Employer, to the country of the Employer, or to the use of the Plant and Installation Services to be supplied, where such export restrictions arise from trade regulations from a country supplying those Plant and Installation Services, the Bidder shall not be bound by its Bid, always provided, however, that the Bidder can demonstrate to the satisfaction of the Employer and of the Bank that signing of the Contract Agreement has not been prevented by any lack of diligence on the part of the Bidder in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the Plant and Installation Services under the terms of the Contract.

47. Performance Security

48.1 Within twenty-eight (28) days of the receipt of the Letter of Acceptance from the Employer, the successful Bidder shall furnish the Performance Security in accordance with the General Conditions GCC 13.3, subject to ITB 38, using for that purpose the Performance Security Form included in Section X, Contract Forms, or another form

48.

acceptable to the Employer. If the Performance Security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Employer's Country, unless the Employer has agreed in writing that a correspondent financial institution is not required.

48.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Employer may award the Contract to the Bidder offering the next Most Advantageous Bid.

**49. Procurement
Related
Complaint**

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

Section II - Bid Data Sheet

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

A. General	
ITB 1.1	<p>The reference number of the Request for Bids (RFB) is: MWP1698WB</p>
	<p>The Employer is: Eskom Holding SOC Ltd “hereinafter referred to as Eskom or Eskom Holding Ltd”</p>
	<p>The name of the RFB is: Procurement of</p> <p>(1) Lot A: Design, Engineering, Supply, Construction, Installation, testing and Commissioning of Battery Energy Storage Systems (BESS) with a minimum of 35MW/140 MWh of usable capacity and energy, including 5 Years Plants Operation and Maintenance Services and the associated Network Integration Equipment at Eskom Melkhout Substations. Koega Local Municipality, Eastern Cape, South Africa</p> <p>And</p> <p>(2) Lot B: Design, Engineering, Supply, Construction, and Installation, testing and commissioning of a 2.04 MW Photovoltaic System, Battery Energy Storage Systems (BESS) with a minimum of 1.5 MW/6 MWh of usable capacity and energy including 5 Years Plant Operation and Maintenance Services, the associated Network Integration Equipment, Capacitor Banks on the Wessel/KlipKop 22kV line, Telecommunications Equipment and a 33kV Loop-In-Loop-Out Connection on the existing Rietfontein 33kV line including approximately 700m of the 33kV line to the new Mier Substation at Mier Rietfontein Near Rietfontein in the ZF Mgcawu District Municipality (Dawid Kruiper Local Municipality), Northern Cape Province, South Africa</p>

	<p>The number and identification of lots (contracts) comprising this RFB is: Two (2)</p> <p>Lot A: Eskom Melkhout Substation, Koega Local Municipality, Eastern Cape, South Africa</p> <p>and</p> <p>Lot B : Eskom Mier Rietfontein Near Rietfontein in the ZF Mgcawu District Municipality (Dawid Kruiper Local Municipality), Northern Cape Province, South Africa</p> <p>Bidders may bid for one or more lot(s). Bidders can be awarded both lots. Bids shall be evaluated to establish the lowest evaluated price of the lot(s) taking into consideration any discount offered for any lot.</p>
ITB 1.2 (a)	Electronic –Procurement System: Not Applicable
ITB 2.1	<p>The Borrower is: Eskom Holdings SOC Ltd, Johannesburg, South Africa</p> <p>The amount of the financing is: US\$ 406M for Phase 1 of the Battery Energy Storage System Project (The quoted financing value for Phase 1 excludes the amount for Phase 2, which is subject to further approval by various stakeholders).</p>
ITB 2.1	<ul style="list-style-type: none"> • The Procurement of Design, Engineering, Supply, Construction, Installation, testing and Commissioning of Battery Energy Storage System (BESS) at Melkhout (Eastern Cape) and Photovoltaic (PV) System and Battery Energy Storage Systems (BESS) at Rietfontein (Northern Cape) including 5 Years Plant Operation and Maintenance Services is part of Phase 1 planned to achieve installation of 800MWh of distributed battery energy storage at various sites situated in the Eastern Cape, Northern Cape, Western Cape, Northern Cape and Kwa-Zulu Natal. • Phase 2 of the project is planned to achieve an installation of 640MWh of distributed battery storage with 60 MW of Photovoltaic to be implement at various sites.
ITB 2.1	The name of the Project is: Eskom Investment Support Project (EISP) and Eskom Renewable Support Project (ERSP).

ITB 4.1	<p>Maximum number of members in the Joint Venture (JV) shall be: Three (3) Add the following at the end of ITB Clause 4.1</p> <p>(a) The bid, and, in case of successful bid, the specified Form of Joint Venture Agreement shall be signed as to be legally binding on all partners and all partners shall be jointly and severally liable.</p> <p>In case a bid is submitted by a JV with the intent to enter into a JV agreement, the bidder shall submit a Letter of Intent (LOI), and in case of successful bid, the specified Form of LOI shall be signed as to be legally binding on all partners and all partners shall be jointly and severally liable.</p>
ITB 4.1	<p>Amend ITB 4.1 and add the following as a second paragraph</p> <p>“The joint venture agreement or LOI should indicate precisely the responsibility of all members of JV in respect of planning, design, manufacturing, supply, Installation, commissioning and training including the Operating and Maintenance Services for duration of 5 years. All members of JV should have active participation in executing the Contract. This should not be varied or modified subsequently without prior approval of the Employer.”</p>
ITB 4.5	<p>A list of debarred firms and individuals is available on the Bank’s external website: http://www.worldbank.org/debarr.</p>
B. Bidding Document	
ITB 7.1	<p>For Clarification of Bid purposes only, the Employer’s contact details are: Contact name: Hector Mabaso Telephone: +27 13 693 4390 Electronic mail address: WB_BESS_P04@eskom.co.za Requests for clarification should be received by the Employer no later than: 15 days before closing date of the bid submission. The Web page to publish responses to clarification, provide any relevant information and issue addendum to the bid is : https://tenderbulletin.eskom.co.za/Tenders/Docs?TENDERID=59744</p>
ITB 7.4	<p>A Virtual audio Pre-Bid clarification meetings will take place at the following dates, times and online platform:</p> <p>1. Lot A (Melkhout)</p> <p>Date: 18-01-2023 Time: 09:00am, South African Standard Time (SAST), i.e. GMT+2 hours Online Platform: Microsoft Teams. Bidders may join the pre-bid meeting through the link as provided below: https://teams.microsoft.com/l/meetup-join/19%3ameeting_YjRkYzFmYTItODZmZC00M2M0LThhMDktZTBhZmQ0M</p>

	<p>2YzM2I5%40thread.v2/0?context=%7b%22Tid%22%3a%2293aedbdc-cc67-4652-aa12-d250a876ae79%22%2c%22Oid%22%3a%221c8c8a39-7551-4ac1-ba66-7b55f518c0ee%22%7d</p> <p>2. Lot B (Rietfontein) Date: 13h00 Time: 13:00am; South African Standard Time (SAST), i.e. GMT+2 hours Online Platform: Microsoft Teams.</p> <p>Bidders may join the pre-bid meeting through the link as provided below:</p> <p>https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZWJjNDlhZWEtNTkzMS00MjQyLTgxN2ltM2MzMTVIMThhODY3%40thread.v2/0?context=%7b%22Tid%22%3a%2293aedbdc-cc67-4652-aa12-d250a876ae79%22%2c%22Oid%22%3a%221c8c8a39-7551-4ac1-ba66-7b55f518c0ee%22%7d</p> <p>Bidders are encouraged to submit their queries and/or request for clarification prior to the pre-bid clarification meeting.</p> <p>Two non-compulsory site visits, subject to South African Government’s declared COVID-19 restrictions, will take place at the following date, time and place:</p> <p>1. Lot A (Melkhout) Date: 24-02-2023 Time: 11:00 South African Standard Time (SAST), i.e. GMT+2 hours Place: Melkhout (Eastern Cape) GPS Coordinates 34°00’05.4”S 24°46’58.6”E</p> <p>2. Lot B (Rietfontein) Date: 25-01-2023 Time: 13:00 South African Standard Time (SAST), i.e. GMT+2 hours Place: Rietfontein (Northern Cape) GPS Coordinates 26° 45’ 25” S 20° 00’ 02” E</p> <p>Coordinator’s Name: Hector Mabaso Telephone: +27 13 693 4390 Electronic mail address: WB_BEES_P04@eskom.co.za</p>
ITB 7.6	<p>Web page for publishing of minutes of pre-bid meeting: Eskom website http://mp2vmsa957.elec.eskom.co.za:81/Tenders/Docs?TENDERID=59744</p>

C. Preparation of Bids	
ITB 10.1	<p>The language of the Bid is: English.</p> <p>All correspondence exchange shall be in English.</p> <p>Language for translation of supporting documents and printed literature is English.</p>
ITB 11.1 (j)	<p>The Bidder shall submit the following additional documents:</p> <p>Note:</p> <ul style="list-style-type: none"> • Bidder’s failure to submit, with its bid, information required for <i>evaluation purposes</i> will prejudice the bidder and may result in disqualification of the Bidder’s submission; and • Bidder’s failure to submit, with its bid, information required for <i>contract award purposes</i> will prejudice the bidder and may result in withdrawal of letter of acceptance or contract award if the successful bidder fails to submit the required information or document within 28 days after receipt and acknowledgement of notification of contract award. <p>1. Code of Conduct for Contractor’s Personnel (ES) (Required for evaluation purposes)</p> <p>The Bidder shall submit its Code of Conduct that will apply to the Contractor’s Personnel (as defined in GCC Sub- Clause 1) employed for the execution of Installation Services (defined in GCC Sub- Clause 1) at the Site (or other places in the country where the Site is located), to ensure compliance with the Contractor’s Environmental and Social (ES) obligations under the Contract. The Bidder shall use for this purpose the Code of Conduct form provided in Section IV. No substantial modifications shall be made to this form, except that the Bidder may introduce additional requirements, including as necessary to take into account specific Contract issues/risks.</p> <p>2. Management Strategies and Implementation Plans (MSIP) to manage the (ES) risks (Required for evaluation purposes)</p> <p>2.1. The Bidder shall submit Management Strategies and Implementation Plans (MSIPs) to manage the following key Environmental and Social (ES) risks:</p> <ul style="list-style-type: none"> • Draft Construction Layout drawing as per section 6.9.1 of the Environmental Specifications for Melkhout (document number 240-156822595), and for Rietfontein (document number : BESS_Dx-SE-C89) • Site Establishment Procedure as per section 6.9.2 viii) of the Environmental Specifications for Melkhout (document number 240-156822595), and for Rietfontein (document number : BESS_Dx-SE-C89)

	<ul style="list-style-type: none"> • Waste Management Plan as per section 6.34.1 of the Environmental Specifications for Melkhout (document number 240-156822595), for Rietfontein (document number : BESS_Dx-SE-C89) • Water Management Plan including storm water • Vegetation Management Plan • Environmental Incident Management Procedure (including emergency situations) • Training Procedure for Environmental Management • Compliance monitoring and auditing Procedure • Method statement related to hazardous substance/dangerous goods as per section 6.9.2 ii) of the Environmental Specification for Melkhout (document number 240-156822595), and for Rietfontein (document number BESS_Dx-SE-C89) COVID 19 management plan to ensure measures required by COVID-19 directives and guidelines are complied with • Occupational Health and Safety (OHS) demonstrate compliance with good OHS practices and requirements. This includes standards to prevent and manage associated risks of Gender Based Violence, Sexual Exploitation and Abuse, Violence Against Children, COVID-19 and HIV/AIDS. <p>2.2. Environmental Management System (EMS) Implementation Plan <i>(Required for evaluation purpose)</i></p> <p>Formulate a detailed plan on how you are going to implement the EMS ISO14001:2015 during the design and construction of the BESS (refer to section 6.4 of the Environmental Specifications for Melkhout (document number 240-156822595), and for Rietfontein (document number BESS_Dx-SE-C89156088485)</p> <p>2.3. Aspects and Impacts register for the technology solution</p> <p>Formulate an aspect and impacts register as defined in the ISO14001:2015 for the works and specific technology solution to be installed (refer to Hazard Identification in section 6.5 4 of the Environmental Specifications for Melkhout (document number 240-156822595), and for Rietfontein (document number BESS_Dx-SE-C89)</p> <p>3. Central Supplier Database (CSD) compliance report for Bidders registered in South Africa <i>(Required for contract award purposes)</i></p> <p>The South African Bidders (single or JV member) are required to be registered on the National Treasury Central Supplier Database (CSD) at bid closing and the respective CSD number must be provided with all bids. Responses that do not comply with the CSD requirement will be regarded as</p>
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	<p>non-responsive for contract award (except foreign bidders). Website for CSD registration: https://secure.csd.gov.za/</p> <p>4. National Industrial Participation Programme (NIPP) (<i>Required for contract award purpose</i>)</p> <p>“NIPP is a programme that seeks to leverage economic benefits and support the development of South African industry by effectively utilizing the instrument of government procurement. The NIPP programme is mandatory on all government and parastatal purchases or lease contracts (goods and services) with an imported content equal to or exceeding US\$5 million.</p> <p>The programme is targeted at the South African and foreign industries, enterprises, and suppliers of goods and services to government / parastatals, where the imported content of such goods and services equals to or exceeds US\$5 million. The first customer of NIPP is the South African industry that benefits through the NIPP business plans which, when implemented generate new or additional business activities through one or more of the following: investment, export opportunities, job creation, increased local sales, SMME and BEE promotion, R & D and technology transfer if feasible and agreed upon by both the winning Bidder and the Client.</p> <p>Companies with a NIPP obligation are required to sign this obligation agreement with The Department of Trade, Industry and Competition (the DTIC) before the contract with Eskom Holdings SOC Ltd, as a purchasing entity, is signed. The obligation agreement governs the relationship between the DTIC and the supplier. It defines the NIPP obligation value/s, requirements to fulfil the NIPP obligation, performance milestones, performance monitoring processes and the NIPP credit allocation criteria</p> <p>Bid submissions with an import content that is equal to or exceeds the threshold of US\$5 million, compels the winning bidder to negotiate and enter into a NIPP obligation agreement with the DTIC before signing the contract with Eskom.”</p> <p>5. Original Letter of Good Standing (COIDA) or proof of registration issued by a Compensation Fund or a Mutual Assurer (<i>Required for evaluation purposes</i>)</p> <p>Original Letter of Good Standing (COIDA) or proof of registration issued by a Compensation Fund or a Mutual Assurer for South African Bidders (Single bidder or member of a JV) or equivalent thereof for International bidders.</p>
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	<p>6. Compliance with the Employment Equity report <i>(Required for evaluation purposes)</i></p> <p>To the extent that the bidder falls within the definition of a “designated Employer” as contemplated in the Employment Equity Act 55 of 1998 of South Africa, the South African bidders (Single Bidder or member of a JV) are required to submit with their bid, a proof of compliance with the Employment Equity Act, including proof of submission of the Employment Equity report to the Department of Labour.</p> <p>7. Certified copy of a Valid original Broad-Based Black Economic Empowerment (BBBEE) Certificate for Bidders registered in South Africa (Single Bidder or member of a JV).</p> <p>The successful bidder is expected to comply with South African laws including the BEE Act of 2003. The Employer will assist the successful Bidder on the method and time of compliance once a contract is awarded..</p> <p>8. Construction Industry Development Board (CIDB) registration of subcontractors <i>(Required for contract award)</i></p> <p>The Bidder (South African or Foreign) shall submit, with its bid, a valid proof of the South African subcontractor’s Construction Industry Development Board (CIDB) registration of 6CE.</p> <p>9. Tax Compliance <i>(Required for evaluation purposes)</i></p> <p>All Bidders are required to submit, with their bids, a fully completed SBD 1 form (Section IV, Bidding Forms). South African Bidders must submit e-filing pin number/ copy of tax clearance certificate as evidence of their tax compliance status.</p> <p>Foreign bidders with existing Tax obligation in South Africa must provide proof of tax compliance status with the SBD1 and the e-filing Pin.</p> <p>Foreign bidders with no existing tax obligation in South Africa must complete a pre-award questionnaire (Section IV – Bidding Forms). If such bidder is selected for contract award, the Employer will request the preferred bidder to submit the below listed information to SARS via email address Governmentinstitute@sars.gov.za;</p> <ul style="list-style-type: none"> • Details of the foreign company • Description of the goods and services being provided to the Employer • Name of the South African Government institution the Bidder will be providing the goods and/or services to.
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	<p>10. Procurement spend within South Africa (Required for contract award)</p> <p>Bidders (OEMs/EPC Contractors) are required to provide a written confirmation by completing the SDL&I indicating at least a minimum of 20% of the proposed contract value will be Procurement Spend within South Africa. This will also include subcontracting to previously disadvantaged groups and associated skills development within the vicinity of the Project. Compliance to this requirement can be achieved through the SDL&I and BBBEE programs outline under Sustainable Procurement, Section III, 1.2(e). Failure to comply with SDL&I socio-economic transformation will NOT result in disqualification of a bidder, However it is a Condition for Contract Award</p>
ITB 13.1	Alternative Bids shall not be considered.
ITB 13.2	<p>Alternatives to the Time Schedule shall be permitted.</p> <p>The evaluation method is specified in Section III, Evaluation and Qualification Criteria.</p>
ITB 13.4	Alternative technical solutions shall not be permitted.
ITB 17.1	<p>Delete ITB 17.1 and replace it with the following:</p> <p>Bidders shall quote for the following on a single responsibility basis: Procurement of</p> <p>(1) Lot A:</p> <p>Design, Engineering, Supply, Construction, Installation, testing and Commissioning of Battery Energy Storage Systems (BESS) with a minimum of 35MW/140 MWh of usable capacity and energy, including 5 Years Plants Operation and Maintenance Services and the associated Network Integration Equipment at Eskom Melkhout Substations. Koega Local Municipality, Eastern Cape, South Africa</p> <p>And</p> <p>(2) Lot B:</p> <p>Design, Engineering, Supply, Construction, and Installation, testing and commissioning of 2.04 MW Photovoltaic System and Battery Energy Storage Systems (BESS) with a minimum of 1.5 MW/6 MWh of usable capacity and energy including 5 Years Plant Operation and Maintenance Services, the associated Network Integration Equipment (NIE), Capacitor Banks on the Wessel/Klipkop 22kV line, Telecommunications Equipment and a 33kV Loop-In-Loop-Out Connection on the existing Rietfontein 33kV line including approximately 700m of new 33kV line to the new Mier Substations at Mier Rietfontein Near Rietfontein in the ZF Mgawu District Municipality (Dawid Kruiper Local Municipality), Northern Cape Province, South Africa</p>

	<p>The number and identification of lots (contracts) comprising this RFB is: Two (2) and Lot A (Melkhout substation) & Lot B (Eskom Mier Rietfontein Substation Near Rietfontein)</p> <p>Bidders may bid for one or more lot(s). Bidders can be awarded both lots. Bids shall be evaluated to establish the lowest evaluated price of the lot(s) taking in to consideration any discount offered for any lot.</p> <p>This includes all requirements under the Contractor’s responsibilities for testing, pre-commissioning, and commissioning of the plant and, where so required by the bidding document, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as specified in the bidding document, all in accordance with the requirements of the General Conditions. Items against which no price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed to be covered by the prices for other items.</p>
<p>ITB 17.3</p>	<p>Delete ITB 17.3 and replace with the following:</p> <p>The Price Schedules will comprise the schedules listed below for each lot (Lots A & B). Separate numbered Schedules included in Section IV, Bidding Forms, as mentioned below, shall be used for each of the elements of the Plant and Installation Services. The total amount from each Schedule corresponding to an element of the Plant and Installation Services shall be summarized in the schedule titled Grand Summary totals, (Schedule 10), giving the total bid price(s) to be entered in the Letter of Bid.</p> <p>(1) Lot A – Melkhout The total amount from each Schedule corresponding to an element of the Plant and Installation Services shall be summarized in the schedule titled Grand Summary totals, (Schedule 10) for Lot A, giving the total bid price(s) to be entered in the Letter of Bid for Lot A- Melkhout.</p> <p>(2) Lot B – Rietfontein The total amount from each Schedule corresponding to an element of the Plant and Installation Services shall be summarized in the schedule titled Grand Summary totals, (Schedule 10) for Lot B, giving the total bid price(s) to be entered in the Letter of Bid for Lot B- Rietfontein.</p> <p>Each Site Comprises the following Price Activity Schedule Listed below:</p> <p>Schedule No. 1. Plant and Equipment Supplied from Abroad Schedule No. 2. Plant and Equipment Supplied from Within the Employer’s Country Schedule No.3. Design Services. Schedule No. 4. Installation and Other Services</p>

	<p>Schedule No. 5. Mandatory Spare Parts Schedules No. 6. Augmentation Equipment Supplied from Abroad Schedule No. 7. Augmentation Equipment Supplied from Within the Employer’s Country Schedule No. 8. Augmentation Services only</p> <p>Bidders shall note that Schedule No’s. 6 – 8 are for Augmentation purposes and for calculations of Life cycle costs (LCC) for 20 years.</p> <p>Schedule No. 9. Operating & Maintenance Schedule No. 10. Grand Total</p>
<p>ITB 17.4</p>	<p>Amend ITB 17.4 as follows</p> <p>Delete sub-paragraph (a) and replace with the following:</p> <p>(a) Plant to be supplied from abroad (Schedule No. 1 and 6): The price of the Plant shall be quoted on CIP-named place of destination basis as specified in the BDS.</p> <p>Delete sub-paragraph (e) and replace with the following:</p> <p>(e). The Battery Energy Storage Systems mandatory spares parts for 5 years O&M period for the Plant facility is to be quoted in Schedule No 5/Schedule of Mandatory spares (SOR-5) as specified in either subparagraph (a) or (b) above in accordance with the origin of the spare parts.</p> <p>Insert the following subparagraphs (f), (g),(h), (i) and (j)</p> <p>(f). The Photovoltaic Systems mandatory spares parts for 5 years O&M period for the Plant facility is to be quoted in Schedule No 5/Schedule of Mandatory spares (SOR-5) as specified in either subparagraph (a) or (b) above in accordance with the origin of the spare parts.</p> <p>(g). The Battery Energy Storage Augmentation Equipment, material and Services for Augmentation of the Plant facility is to be quoted in Schedule No 6 – 8 of Augmentation Abroad, Augmentation Local and Augmentation Services (SOR-6-8) as specified in either subparagraph (a) or (b) above in accordance with the origin of the Augmentation Equipment, materials, and services. Battery Energy Storage Augmentation refers to equipment, material and services required to ensure the BESS meets the functional guarantees and specifications listed for 20-year life cycle.</p>

	<p>(h). The Battery Energy Storage Systems Comprehensive Operating and Maintenance (O&M) costs for total of 5 years for the Plant facility is to be quoted in Schedule No 9/Schedule of Operating and Maintenance (SOR-9) as specified in either subparagraph (a) or (b) above in accordance with the origin of the O&M costs.</p> <p>(i). The Photovoltaic Systems Comprehensive Operating and Maintenance (O&M) costs for total of 5 years for the Plant facility is to be quoted in Schedule No 9/Schedule of Operating and Maintenance (SOR-9) as specified in either subparagraph (a) or (b) above in accordance with the origin of the O&M costs.</p> <p>(j). The Battery Energy Storage Systems Grand Total Summary in Schedule No 10/Schedule of Grande Total (SOR-10) for Lot A – Melkhout and Lot B – Rietfontein</p>
<p>ITB 17.4 (a) and (d)</p>	<p>Place of and final destination (Project Sites):</p> <p>(1) Lot A: Eskom Melkhout Substation, Koega Local Municipality, Eastern Cape, South Africa and</p> <p>(2) Lot B: Eskom Site at Mier Rietfontein Substation, near Rietfontein in the ZF Mgcawu District Municipality (Dawid Kruiper Local Municipality), Northern Cape, South Africa</p>
<p>ITB 17.5</p>	<p>The terms CIP (Eskom’s Project Sites: Lot A – Melkhout and Lot B - Rietfontein) , EXW and other similar terms shall be governed by the rules prescribed in the 2020 edition of Incoterms, published by the International Chamber of Commerce.</p>
<p>ITB 17.7</p>	<p>(1) The prices quoted by the Bidder for the Procurement of Design, Engineering, Supply, Construction, Installation, testing and Commissioning of the Battery Energy Storage System (BESS), Photo Voltaic (PV) System, Network Integration Equipment, Capacitor Banks, Telecommunications Equipment and 33kV lines shall not be subject to price adjustment during the performance of the contract.</p> <p>(2) The prices quoted by the Bidder for the 5 Years Plant Operation and Maintenance Services of the Battery Energy Storage System (BESS) and Photo Voltaic (PV) System shall not be subject to price adjustments for the first eighteen (18) months of the performance of the Plant Operation and Maintenance Services.</p>

	(3) The prices quoted by the Bidder for the 5 Years Plant Operation and Maintenance Services of the Battery Energy Storage System (BESS) and Photo Voltaic (PV) System shall be subject to price adjustments from month nineteen (19) of the performance of the Plant Operation and Maintenance Services..
ITB 18.1	The Bidder is required to quote in the currency of the Employer's Country the portion of the Bid price that corresponds to expenditures incurred in that currency.
ITB 19.1	The Bid validity period shall be One Hundred and fifty (150) days .
ITB 19.3 (a)	The Bid price for the fixed portion of the Procurement of Design, Engineering, Supply, Construction, Installation, Testing and Commissioning of the Battery Energy Storage System (BESS), Photo Voltaic (PV) System, Network Integration Equipment, Capacitor Banks, Telecommunications Equipment and 33kV lines shall be adjusted by the following factor(s): The local currency portion of the Contract price shall be adjusted by a factor reflecting local inflation (Consumer Price Index) during the period of extension, and the foreign currency portion of the Contract price shall be adjusted by a factor reflecting the international inflation i.e. Production Price Index (in the country of the foreign currency) during the period of extension.
ITB 20.1	A Bid Securing Declaration shall be required.
ITB 20.3 (d)	Other types of acceptable securities: Not applicable
ITB 20.9	If the Bidder performs any of the actions prescribed in ITB 20.9 (a) or (b), the Borrower will declare the Bidder ineligible to be awarded a contract by the Employer for a period of 5 years
ITB 21.1	The bidders shall submit the original of the Bid, and the number of copies is: three (3) . In addition to the original of the bid and three (3) hardcopies submission, the Bidders shall submit 1 USB containing electronic copy of the bid submission, including but not limited to the softcopies of duly completed Volume 2 (Price Activity Schedules) , and technical (and supporting evidence) schedules in their native file format as issued.
ITB 21.3	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: Documentary evidence of authority to sign the bid .
D. Submission and Opening of Bids	
ITB 23.1	For Bid submission purposes only, the Employer's address is: ESKOM HOLDINGS SOC LTD Attention: The Tender Issue Office for Hector Mabaso Street Address: 1 Maxwell Drive, Floor: New Main Reception Area, D-Block West, Ground floor, Megawatt Park, City: Sunninghill, Sandton, Johannesburg ZIP/Postal Code: 2191

	<p>Country: Republic of South Africa</p> <p>The deadline for Bid submission is: Date: 01 March 2023 Time: 10:00 (RSA time GMT +2 hours)</p> <p>Bidders shall not have the option of submitting their Bids electronically.</p>
ITB 26.1	<p>The Bid opening shall take place Virtually as follows: Date: 01 March 2023 Time: 10:00 am (RSA Time GMT+2 hours) Online Platform: Microsoft Teams meetings. Responsible: Eskom Tender Office,</p> <p>Bid prices read out at the opening shall be the prices, which are contained in the letter of bid.</p>
ITB 26.6	<p>The Letter of Bid and Price Schedules shall be initialled by two (2) representatives of the Employer conducting Bid opening. The Employer’s representative shall ensure that all documents submitted by the Bidder are appropriately marked in accordance with Employer’s approved protocols and standards.</p>
E. Evaluation, and Comparison of Bids	
ITB 31.3	<p>The adjustment shall be based on the highest price of the item or component as quoted in other substantially responsive Bid. If the price of the item or component cannot be derived from the price of other substantially responsive Bids, the Employer shall use its best estimate.</p>
ITB 32.1(b)	<p>Delete ITB 32.1(b) and replace with the following:</p> <p>Where there are errors between the total of the amounts of Schedules No-1 to 5 plus Schedule No. 9 and the amount given in Schedule No.10 (Grand Summary) for the Lots A and B, the former shall prevail and the later will be corrected accordingly.</p>
ITB 33.1	<p>The currency that shall be used for Bid evaluation and comparison purposes to convert (at the selling exchange rate) all Bid prices expressed in various currencies into a single currency is: RAND (ZAR) The source of exchange rate shall be: South African Reserve Bank (www.resbank.co.za). The date for the exchange rate shall be: the exchange rates ruling on the date shall be 28 days before a deadline for submission of the bid.</p>

ITB 35.4 (f)	<p>The adjustments shall be determined using the following criteria, from amongst those set out in Section III, Evaluation and Qualification Criteria:</p> <ul style="list-style-type: none"> (i) Deviation in Time for Completion: Yes (ii) Life cycle costs: the projected operating and maintenance costs during the life of the goods or equipment: Yes (iii) Functional Guarantees of the Facilities: Yes (iv) Work, services, facilities, etc., to be provided by the Employer. No.
ITB 43.1	<p>Amend ITB 43.1 and add the following:</p> <ul style="list-style-type: none"> (c) after negotiations, the bidder has reached an agreement with the Borrower. If the outcome is unsatisfactory or an agreement is not reached, the Borrower shall negotiate with the next Most Advantageous Bid and so on down the list until a satisfactory outcome is achieved.
ITB 46.1	<p>The successful Bidder shall submit the Beneficial Ownership Disclosure Form.</p>
ITB 47.1	<p>Amend ITB 47.1 by inserting the text below, after a phrase “shall furnish the performance Security”</p> <p>“And, if required in the BDS, the Environmental and Social (ES) and Supplier Development Localization and Industrialisation (SDL&I) Performance Security”</p>
ITB 47.2	<p>Delete ITB 47.2 and replace with the following</p> <p>Failure of the successful Bidder to submit the Performance Security and, if required in the BDS, the Environmental and Social (ES) and Supplier Development Localization and Industrialisation (SDL&I) Performance Security, or sign the Contract shall constitute sufficient grounds for the annulment of the award and execution of the Bid Securing Declaration. In that event the Employer may award the Contract to the Bidder offering the next Most Advantageous Bid</p>
ITB 47.1 and ITB 47.2	<p>The successful Bidder shall be required to submit an Environmental and Social (ES) and Supplier Development Localization and Industrialisation (SDL&I) Performance Security</p>
ITB 48.1	<p>The procedures for making a Procurement-related Complaint are detailed in the “Procurement Regulations for IPF Borrowers (Annex III).” If a Bidder wishes to make a Procurement-related Complaint, the Bidder should submit its complaint following these procedures, in writing (by the quickest means available, that is either by email or fax), to:</p> <p>For the attention: Senior Manager – Assurance and Forensic Employer: Eskom Holdings SOC Limited Email address: investigate@eskom.co.za</p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <ol style="list-style-type: none"> 1. The terms of the Bidding Documents; and 2. The Employer’s decision to award the contract.

Section III - Evaluation and Qualification Criteria

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

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

Table of Criteria

- 1. Evaluation 55**
 - 1.1 Technical Evaluation 55
 - 1.2 Economic Evaluation **Error! Bookmark not defined.**
 - 1.3 Multiple Contracts (ITB 35.6) 69
- 2. Qualification 70**
 - 1 Eligibility 70
 - 2. Historical Contract Non-Performance 71
 - 3 Financial Situation 74
 - 4 Experience 78
 - 2.5 Personnel 81
 - 2.6 Equipment 81
 - 2.7 Subcontractors 81

1. Evaluation

The Employer shall use the criteria and methodologies listed in ITB, BDS, this Section (Section III – Evaluation and Qualification criteria) and Section VII (Employer’s requirements) to evaluate Bids. By applying the criteria and methodologies, the Employer shall determine the Most Advantageous Bid. This is the Bid of the Bidder that meets the qualification criteria and whose Bid has been determined to be:

- (a) Substantially responsive to the bidding document;
- (b) The lowest Evaluated Cost; and
- (c) After negotiations, the bidder has reached an agreement with the Borrower. If the outcome is unsatisfactory or an agreement is not reached, the Borrower shall negotiate with the next Most Advantageous Bid and so on down the list until a satisfactory outcome is achieved

1.1 Technical Evaluation:

The Bidder is expected to examine all the instructions, forms, terms and the specification in the bidding document and furnish with its Bid all information or documentation to demonstrate compliance with the technical aspects of the bidding document as stipulated in Section III (Evaluation and Qualification criteria), Section IV (Bidding Forms) and Section VII (Employer’s requirements).

- (a). Technical detailed/responsive evaluation criteria

The Employer will carry out a detailed technical evaluation of the Bids to determine whether the technical aspects are in compliance with the bidding document. The Bid that does not meet minimum acceptable standards of completeness, consistency and detail, and the specified minimum (or maximum, as the case may be) requirements for specified functional guarantees, will be rejected for non-responsiveness.

- (i). Engineering Evaluation

Evaluation of the Bidder's Technical Proposal will include apart from others (i) an examination of the technical aspects of the Bid in particular to confirm that all requirements of Section VII, Employer’s Requirements have been met without any material deviation, reservation, or omission; (ii) that the bid is technically complete and responsive in terms of ITB 35; and (iii) an assessment of the Bidder's experience and technical capacity in terms of ITB 39 for timely supply of plant and installation services and achievement of specified performance parameters etc.

Engineering Evaluation will assess compliance to the Employer’s requirement as listed in the bid returnables on the following items.

Table -1 – List of Engineering returnables

No.	Description	Reference
1.	BESS Compliance schedules, Operations and Maintenance (O&M) including Protection Telecoms Metering and Control (PTM&C)	Technical schedules A&B for 240-139687256
2.	AC Equipment Declaration of compliance sign off sheet	
3.	Substation layout	Site drawing SLD and GA Volume 03 (Employer's requirement), 3.3-Standard and Policies, 3.3.1-Engineering, 3.3.1.2-Gen Arrangement and 3.3.1.4, - Single Line Diagram
4	Tender Technical Evaluation Strategy for Rietfontein Feeder Solar PV Project	Technical Schedules A&B for 474-12563, Appendix A
5.	Storage and Handling of Dangerous Goods	

(i). Factory evaluation

Factory visits are not mandatory during the bid evaluation process. However, Eskom reserves the right to request the factory visit after the contract is awarded.

This statement supersedes any other references or requirements for factory visit prior to contract award that may appear in other documentation

(ii). Quality Management Evaluation

The Bidder is expected to examine all the instructions, forms, terms and the specification in the bidding document and furnish with its Bid all information in sufficient detail or documentation to demonstrate substantial responsiveness to the Quality requirement of the bidding document as stipulated in the following documents:

- Standard for Welding Requirements on Eskom Plant for Welding (Document No. 240-106628253);
- Quality Requirements for the Contractor Appointed To Design, Supply and Install Distributed Battery Energy Storage System (BESS) (Document No. 240-139266726);
- Standard for Non-Destructive Testing (NDT) on Eskom Plant (Document No. 240-83539994); and
- Supplier Quality Management Specification (Document No. 240-105658000).
- Gx Clean BESS-PV Project Quality Specification (Document No 240-139266726)

The Employer will evaluate and assess compliance to the requirement of the bid on the basis of the information supplied by the Bidders.

(iii). Occupation, Health and Safety Evaluation

The Bidder is expected to examine all the instructions, forms, terms and the specification in the bidding document and furnish with its Bid all information in sufficient detail or documentation to demonstrate substantial responsiveness to the Occupation, Health and Safety requirement of the bidding document as stipulated in the in the Employer’s standard Safety and Health specification for Melkhout reference number **240-156628326**, and for Rietfontein reference number **240-166050797** in Volume 3 (Employer’s requirement), 04 List of Appendices Lots A and B “Appendix I” SHE Specifications.

The Employer will evaluate and assess compliance to the requirement of the bid on the basis of the information supplied by the Bidders.

(iv). Environment Management Evaluation

The Bidder is expected to examine all the instructions, forms, terms and the specification in the bidding document and furnish with its Bid all information in sufficient detail or documentation to demonstrate substantial responsiveness to the Environment management of the bidding document as stipulated in the in the Employer’s Environmental specification for Melkhout (document number **240-156822595**) and for Rietfontein (document number BESS_Dx-SE-C89)) in Volume 3 (Employer’s requirement), 04 List of Appendices Lots A and B “Appendix E” Environmental Management.

(v). Project Controls Evaluation

The Bidder is expected to examine all the instructions, forms, terms and the specification in the bidding document and furnish with its Bid all information in sufficient detail or documentation to demonstrate substantial responsiveness to the Project Controls management of the bidding document as stipulated in the in the Employer’s s Reporting & Data Requirements Specification for Contractors document number **240-146113256**.

In addition to the criteria listed in ITB 35.2 (a) – (b) the following factors shall apply: **None**

1.2 Economic Evaluation/Financial Evaluation:

The following factors and methods will apply:

a) **Time Schedule**

Lot A:

Time for Completion of the Plant and Installation Services from the Effective Date as specified in Article 3 of the Contract Agreement for determining Time for Completion of Pre-commissioning activities shall be between **06 months** minimum and **08 months** maximum.

The adjustment rate in the event of Completion beyond the minimum period shall be **(0.5%)** for each week of delay from that minimum period. No credit will be given for completion earlier than the minimum designated period. Bids offering a completion date beyond the maximum designated period shall be rejected.

Lot B:

Time for Completion the Plant and Installation Services from the Effective Date as specified in Article 3 of the Contract Agreement for determining Time for Completion of Pre-commissioning activities shall be between **06 months** minimum and **08 months** maximum.

The adjustment rate in the event of Completion beyond the minimum period shall be **(0.5%)** for each week of delay from that minimum period. No credit will be given for completion earlier than the minimum designated period. Bids offering a completion date beyond the maximum designated period shall be rejected.

b) Life Cycle Costs

Since the operating and maintenance costs of the facilities being procured form a major part of the **life cycle cost** of the facilities, these costs will be evaluated according to the principles given hereafter, including the cost of spare parts for the initial period of operation stated below and based on prices furnished by each Bidder in Price Schedule Nos. 1, 2, 5, 6, 7, 8 and 9 as well as on past experience of the Employer or other employers similarly placed. Such costs shall be added to the Bid price for evaluation purposes.

Life Cycle Costs for BESS

The life cycle cost will be calculated using the formula and the cost factors as indicated below:

A. Life cycle cost formula

[a] Life cycle cost formula for Battery Energy Storage System

Life cycle costs/MWh= Nominal, present valued [capital costs (incl cost of spare parts) + charging energy costs + operating & maintenance costs + augmentation costs + disposal costs (including decommissioning cost in the 20th year)]/ MWh (Nominal, present valued).

[b] Life cycle cost formula for Solar Photovoltaic System

Life cycle costs/MWh= Nominal, present valued [capital costs (incl cost of spare parts) + operating & maintenance costs + disposal costs (including decommissioning cost in the 20th year)]/ MWh (Nominal, present valued).

B. The costs factors for calculation of the life cycle cost are:

- (i). number of years for life cycle: 20 years for the Battery Energy Storage System.
- (ii). Capital cost, given by the total costs in Schedules 1 - 2, and spare parts given in Schedule 5
- (iii). Charging energy costs (Applicable to Life cycle costs for Battery Energy StorageSystem only)

Operating costs shall be based on the duty cycle provided and determined as follows:

$$\text{Charging Energy Cost} = \sum_{i=1}^{i=20} \left[\frac{\text{Energy_Served}_i * \text{Energy_Rate}_i}{(1+r)^{i-1}} \right] \times \frac{1}{\eta_i}$$

Where:

i = relevant year

η_i = round trip efficiency for year I as declared on coverpage of Schedules

Energy_Served_i = Annual Energy Served in year i, in kWh, based on estimated 255 days of deployment (excludes weekends and holidays)

Energy_Rate_i = 30 per kWh for year i, in Rand cents

r = nominal discount rate

Specified life of the assets shall be 20 years.

- (iv). Operating and Maintenance costs, including the cost of spare parts for the initial period of operation, and

Operating and Maintenance costs shall be determined as follows:

$$\text{Operating and Maintenance Cost} = \sum_{i=1}^{i=20} \frac{\text{Operating \& Maintenance_Cost}_i}{(1+r)^{i-1}}$$

Where:

i = relevant year

Operating & Maintenance_Cost_i = Nominal operating & maintenance cost for year i, in Rands obtained from Section IV, Schedule 9

r = nominal discount rate

Specified life of the assets shall be 20 years.

- (v). Augmentation/ Replacement costs to enable the asset to operate to its design life (Applicable to Life cycle costs for Battery Energy StorageSystem only):

$$\text{Augmentation/Replacement Cost} = \sum_{i=1}^{i=20} \frac{\text{Augmentation_Cost}_i}{(1+r)^{i-1}}$$

Where:

i = relevant year

Augmentation_Cost_i = Nominal augmentation cost for year *i*, in Rands obtained from Section IV, Schedule 6,7,8

r = nominal discount rate

Specified life of the assets shall be 20 years.

(vi). Disposal Costs

Costs of decommissioning and disposal of batteries at the end of life shall be determined as follows:

$$\text{Disposal Cost} = \sum_{i=1}^{i=20} \frac{\text{Disposal_Cost}_i}{(1+r)^{i-1}}$$

Where:

i = relevant year

Disposal_Cost_i = Nominal disposal cost for year *i*, in Rands, obtained from Section IV, Schedule 8

r = nominal discount rate

Specified life of the assets shall be 20 years.

(vii). Discount Rate

Discount rate: 9.08% to be used to discount to present value all annual future costs calculated under (ii) - (v) above for the 20 year period.

(a) Functional Guarantees of the Facilities

The minimum (or maximum) requirements for functional guarantees required as stated in the Specification are indicated in the table below. The functional guarantees and associated penalties for the non-performance are mentioned under section VII Employer's requirements. The values in the table are applicable for the Performance Warranty Period and shall also be met during the Guarantee Tests to attain Operational Acceptance.

Table 2 – Functional Guarantee & minimum requirement

Functional Guarantee	Minimum requirement		
	Lot A	Lot B	
	Melkhout BESS	Rietfontein BESS	Rietfontein PV
Available Energy Capacity Discharged/Charged per cycle	35MW/140MWh	1.54MW/6.16 MWh	N/A
Available Energy Capacity Discharged/Charged – (at operational acceptance) per cycle	140MWh	6.16MWh	N/A
Power Capacity for the life of the installation [MW]	35	1.54	2.04 (170KW per PV Block)
Uptime or Availability	95% of the reporting period.	95% of the reporting period.	PV: ≥ 99.5% for first year operational period and ≥ 98.5% for second year operational period
Efficiency	Declared efficiency by the bidder		

The bidder shall demonstrate compliance to the above-mentioned functional guarantee by proving, with its bid, the performance curve from simulation.

Bids failing to meet the minimum requirements of Functional Guarantees as stated above shall be rejected

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

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

(c) Sustainable procurement

1. Background information

Eskom supports SA Government's Socio-Economic Development initiatives and has as a result adopted the Supplier, Development, Localisation and Industrialisation (SDL&I) strategy to positively impact the initiatives.

To support South Africa's socio-economic transformation objectives, Eskom as a state-owned company serves as a catalyst to advance sustainable local economic development through leveraging Eskom's procurement spend in a flexible manner that positively influences key

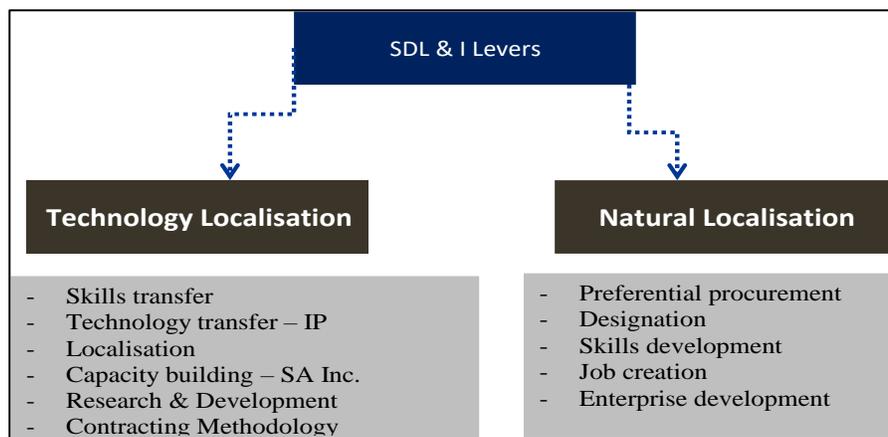
measures such as contracting with previously disadvantaged groups, Skills Development, Enterprise Development, Job Creation and Industrialization.

This procurement transaction will therefore be used as an opportunity to advance governments socio-economic imperatives.

Two scenarios under sustainable procurement as follows:

- Natural Localisation - which refers to localisation of several elements during the construction phase (e.g. site establishment, construction, fencing, site security, etc.) and civil works;
- Technology Localisation – which refers to direct activities which will lead to a substantial role by South African entities in the development of the technology in future, as well as through a supply of critical components and/or systems within the black box for the BESS

The diagram below depicts high-level areas of focus.



2. South Africa’s Socio-Economic transformation objectives

The South Africa’s socio-economic transformation requirement applicable under this project consists of subcontracting a minimum of 20% of the total contract value to RSA Companies, including previously disadvantaged groups and associated skills development initiatives within the vicinity of the Project. **Failure to comply with SDL&I socio-economic transformation will NOT result in disqualification of a bidder, However it is a Condition for Contract Award**

2.1.1. Introduction

Eskom, as a State Owned Entity is a participant in the South African Government’s SDL&I Initiative. The initiative has identified Government spending on infrastructure as a key area for SDL&I intervention. Under this project Eskom is accordingly setting a target of

subcontracting a minimum of 20% of the total contract value to previously disadvantaged groups and associated skills development.

2.1.2. Definitions

- **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- **“Procurement Spend within South Africa means”** subcontracting and or procurement within RSA including subcontracting and or purchase from previously disadvantaged groups and associated skills development”.
- **“Total Project Value”** the capital costs and costs of services procured for the construction of the Facility, for the period commencing on the Effective Date and ending on the date of issuing of the Provisional Acceptance Certificate.
- **“South Africa Products”** means the Total Project Value, excluding:
 - a) the cost of components, parts or materials which have been or are still to be imported (whether by the Employer or the Contractor or any of their contractors) and which costs are inclusive of costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry; and
 - b) the costs of or payments made in respect of services or service providers that are not South African tax paying persons or entities.
Bidders/suppliers must maintain records to certify imported content e.g. bill of materials, expenditure records, income statements, which requirements will be included in the contract.

2.2. Procurement Spend within South Africa

Based on the high-level market sounding exercise Eskom conducted, Eskom has estimated that at least 40% of BESS components are locally manufactured and / or services that can be locally provided in South Africa,

Therefore, Bidders (OEMs/EPC Contractors) are required to provide a written confirmation by completing the SDL&I Matrix Form to indicate that at least a minimum of 20% of the proposed contract value will represent Procurement Spend within South Africa This will consist of subcontracting and/or purchasing from the previously disadvantaged groups and associated skills development. This is far less than the estimated 40% of BESS components that are locally manufactured and / or services that can be locally provided and can therefore be sourced with South Africa.

The Bidders can achieve compliance to this local procurement spend requirements through the SDL&I and BBBEE programs that already exists as means of facilitating Social and Economic sustainability.

Subcontracting and/or purchasing a minimum of 20% of the total contract value within RSA, including previously disadvantaged groups. The aim of subcontracting a minimum of 20% of the total contract value within RSA and from previously disadvantaged groups is to advance the designated groups through sub-contracting of the work to companies owned by previously disadvantaged groups, particularly in the Western Cape Province of South Africa in the following major items of supply or services (specialized sub-contractors).

Table 3: Area of works for possible subcontracting

Item No.	Description of Item
1	Civil , Building and Steel work
2	Survey and Geo-technical studies
3	AC Equipment and installation
4	Shipping / Transportation Services
5	Construction/Project Management Services
6	Security Services
7	O&M Sub-contracting/Joint Venture

The BESS project provides a great opportunity for localisation in the form of sub-contracting opportunities to black owned Emerging Micro-Enterprise (EME)'s and Qualifying Small Enterprise (QSE)'s preferably in the Western Cape region.

The Bidder shall ensure that the targeted sub-contractors for civil building and steel construction works are registered with the Construction Industry Development Board (CIDB) class 6CE for civil works. The list of CIDB register of contractors is available on the link: www.cidb.org.za.

The table below shows the targeted procurement % of spend within South Africa to be met by the Bidder and different categories of the companies to be targeted in order to meet the proposed target of 20% procurement spend within South Africa.

Table 3: Procurement Spend in South Africa Targeted Designated Groups

Criteria	Total Target (%)	Estimated Value	Proposed Target (%) by Bidder
** Plant and Equipment Procured Locally from firms with valid BBBEE certificate	20%		
Total of the proposed contract value	20.00%		

**** Definitions:**

- **Plant Equipment Procured Locally from firms with BBBEE certification means:** Bidders will be expected to procure plant equipment from local RSA firms with valid BBBEE certificate. Such plant and equipment include but is not restricted to Medium and High Voltage transformers, steel products and component, electrical and telecommunication cabling.
- **Skills Development**

Skills development targets will be negotiated in terms of the Standard for Developing Skills through Infrastructure Contracts published by the Construction Industry Development Board (“the CIDB Skills Standard”).

The skills development calculation will be based on the class of construction works for Electrical Engineering works (infrastructure) and Civil Engineering works (CE), which is 0.25% of the contract value.

The skills candidates may be developed directly by the successful bidder (Contractor) or through the bidder’s own supply network, or via SETA accredited training providers.

Skills candidates shall be sourced from unemployed youth, matriculates from local areas, graduates from FET (Further Education and Training) colleges and universities. These candidates shall also be representative of the population demographics of South Africa.

Bidders are required to indicate the proposed number of persons to be trained per skills development requirements on the Skills Development Compliance Matrix table 2 below:

Table 4: Skills Development Compliance matrix

Skill Type (Occupation)	Target Number of Persons to be Trained (Local to South Africa)	Bidder's Proposed Number of Persons to be Trained (Local to South Africa)
1) Bricklayer Grade 1 CIV 5	2	
2) Cable jointer	2	
3) Cable Puller MEC 2	2	
4) Concrete batching plant operators	2	
5) Concrete Hand Grade 2 CIV 3, Grade 1 CIV 4/5	2	
6) Electrician - Semi Skilled (CIV 5 , MEC 3)	2	
7) Operator - Concrete Dumper CIV 4, Concrete Mixer CIV4, Concrete Pump CIV4	2	
8) Operator - Crane (+25Ton) MEC 4	2	

Skill Type (Occupation)	Target Number of Persons to be Trained (Local to South Africa)	Bidder's Proposed Number of Persons to be Trained (Local to South Africa)
9) Operator - Excavator CIV 4, Final Level Grader CIV6, Mobile Crane CIV5	2	
10) Painter - Brushing MEC 2, Semi-Skilled	2	
11) Safety Officer – Jnr CIV 4/5, MEC 3	1	
12) Supervisor Gr I CIV 8,Gr1 MEC 3,Grade 2 CIV7, MEC 3	2	
13) Welder - B Class MEC 3, Flux Cor MEC 3, Semi skilled CIV 5, Structural MEC 3, Tack MEC 2	2	
Total	26	

Bidder are required to fully complete, sign and return with their Bid the SDL&I Matrix form in Section IV – Bidding Forms to demonstrate compliance to the SDL&I requirements.

2.3. Job creation objectives

Job creation proposal by bidders does not form part of the evaluation criterion. It is however, part of Eskom's contribution towards the Government's job-creation initiatives and therefore bidders are required to support the socio-economic imperative that seeks to empower local communities surrounding the areas where construction activities are conducted. These include the utilisation of local labourers from the area within which the project is taking place.

All bidders are therefore required to propose to Eskom a resource plan for the work or number of jobs to be sourced from surrounding local communities.

Table 5: Job Creation

Job Category	No. of jobs proposed by the Bidder
Unskilled workers	
Semi-Skilled	
Skilled	
Staff (supervisory/management)	
Total number of jobs to be created as a result of this contract	

2.3.1. Definitions of skilled, semi-skilled and un-skilled workers

Notwithstanding any definition that may exist for the terms "skilled worker", "semi-skilled worker" and "un-skilled worker", these terms shall have the meanings ascribed to them in the table below. These definitions are generally aligned to the Skills Development Act, the National Qualifications Framework Act, and the

Organising Framework for Occupations (OFO's) and the international Vocational Qualifications Standard.

The intent is to make these definitions as inclusive as possible, not to exclude any potential incumbents, within the ambit of creating a safe, healthy and environmentally stable working environment. All skills areas (even non-technical) can be benchmarked against the nationally and internationally accepted unit standards and qualifications of an Artisan status¹⁵, and the relevant value they offer to organisations and society.

Table 6: Skilled, semi-skilled & unskilled worker definition

Category of Skill	Knowledge	Skills	Behavioural Attributes	Experience
Skilled worker	More than 10 years formal schooling and training	99% benchmarked with an Artisan status NQF Level 4	Declared competent person. Able to Supervise others and direct work teams	More than 7 years relevant experience
Semi skilled worker	Less than 8 years formal schooling and training	66% benchmarked with an Artisan status NQF Level 3	Declared responsible person. Able to Supervise and direct self	Less than 5 years relevant experience
Unskilled worker	Less than 6 years formal schooling and training	33% benchmarked with an Artisan status NQF Level 2	Able to work under Supervision	Less than 3 years relevant experience

3. Development of South African industry through National Industrial Participation Programme

3.1. Introduction

The National Industrial Participation Programme (NIPP) seeks to build the country's industrial capabilities through the leveraging of public procurement. NIPP places an obligation on all suppliers of goods and services to participate in some form of economic activity through any or a combination of the following key objectives: investment to raise production capacity and competitiveness in strategic sectors of the economy; export promotion; R&D collaboration; technology transfer; and acquisition. NIP means that all Government purchases that have an imported content of \$5 million and above are subjected to a NIPP obligation, calculated as an equivalent of 30% of the imported portion

of the purchase contract. This 30% NIPP obligation is fulfilled through local economic activities that have the potential to impact positively on the objectives of NIP.

National Industrial Participation Programme “NIPP” is a programme that seeks to leverage economic benefits and support the development of South African industry by effectively utilizing the instrument of government procurement. The NIPP programme is mandatory on all government and parastatals, such as Eskom Holdings SOC Limited, purchases or lease contracts (goods and services) with an imported content equal to or exceeding US\$5 million.

3.2. Objectives of NIPP

The objectives of the NIPP are to:

- Ensure sustainable economic growth, with particular emphasis on the value-adding, labour-intensive and strategic manufacturing sectors of the economy;
- Facilitate access to new markets and/or establish new trading partners;
- Encourage FDI into South Africa, particularly in strategic productive sectors of the economy;
- Ensure there is technology transfer to South Africa;
- Encourage R&D collaboration and the commercialisation of such new technology in South Africa;
- Enable and support South African manufacturers to enter global supply value chains (GVCs) of major OEMs;
- Contribute to sustainable job creation and/or retention; and
- Support broad-based black economic empowerment and contribute to regional economic decentralisation where possible and appropriate.

3.3. NIPP requirements

The programme is targeted at the South African and foreign industries, enterprises, and suppliers of goods and services to government / parastatals, where the imported content of such goods and services equals to or exceeds US\$5 million. The first customer of NIPP is the South African industry that benefits through the NIPP business plans which, when implemented generate new or additional business activities through one or more of the following: investment, export opportunities, job creation, increased local sales, SMME and BEE promotion, R & D and technology transfer.

Bidders with a NIPP obligation are required to sign this obligation agreement with The Department of Trade, Industry and Competition (the DTIC) before the contract with Eskom Holdings SOC Ltd, as a purchasing entity, is signed. The obligation agreement governs the relationship between the DTIC and the supplier. It defines the NIPP obligation value/s,

requirements to fulfil the NIPP obligation, performance milestones, performance monitoring processes and the NIPP credit allocation criteria

(d) Alternative technical solutions for specified parts

Not applicable

(e) Specific additional criteria

None

1.3 Multiple Contracts (ITB 35.6) -

If in accordance with ITB 1.1, Bids are invited for more than one lot, the contract will be awarded to the Bidder or Bidders offering a substantially responsive Bid(s) and the lowest evaluated cost to the Employer for combined lots, subject to the selected Bidder(s) meeting the required qualification criteria Section III, Evaluation and Qualification Criteria for a lot or combination of lots as the case may be.

In determining Bidder or Bidders that offer the total lowest evaluated cost to the Employer, after considering all possible combination of lots, the Employer shall apply the following steps in sequence:

- (a) evaluate individual lots to determine the substantially responsive Bids and corresponding evaluated costs;
- (b) for each lot, rank the substantially responsive Bids starting from the lowest evaluated cost for the lot;
- (c) apply to the evaluated costs listed in b) above, any applicable discounts/price reductions offered by a Bidder (s) for the award of multiple contracts based on the discounts and the methodology for their application offered by the respective Bidder; and
- (d) determine contract award on the basis of the combination of lots that offer the total lowest evaluated cost to the Employer.

2. Qualification

Factor	1 Eligibility					
Sub-Factor	Requirement	Criteria				Documentation Required
		Single Entity	Bidder			
			Joint Venture (existing or intended)			
			All members combined	Each Partner	At least one Partner	
1.1. Nationality	Nationality in accordance with ITB 4.4.	Must meet requirement	must meet requirement	Must meet requirement	N / A	Form ELI –1.1 and 1.2, with attachments
1.2. Conflict of Interest	No- conflicts of interests as described in ITB 4.2	Must meet requirement	must meet requirement	Must meet requirement	N / A	Letter of Bid
1.3. Bank Ineligibility	Not having been declared ineligible by the Bank as described in 4.5.	Must meet requirement	must meet requirement	Must meet requirement	N / A	Letter of Bid
1.4. State Owned Enterprise or Institution	Compliance with conditions of ITB 4.6	Must meet requirement	Must meet requirement	Must meet requirement	N / A	Form ELI –1.1 and 1.2, with attachments
1.5. Ineligibility based on a United Nations resolution or Borrower's country law	Not having been excluded as a result of the Borrower's country laws or official regulations, or by an act of compliance with UN Security Council resolution, in accordance with ITB 4.8and Section V.	Must meet requirement	must meet requirement	Must meet requirement	N / A	Letter of Bid

Factor	2 Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture (existing or intended)			
All members combined			Each member	At least one member		
2.1. History of non-performing contracts	Non-performance ¹ of a contract did not occur within the last three (3) years prior to the deadline for application submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the Bidder have been exhausted.	Must meet requirement by itself or as member to past or existing JV	N / A	Must meet requirement ²	N / A	Form CON - 2

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

² This requirement also applies to contracts executed by the Bidder as JV member.

Factor	2 Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture (existing or intended)			
All members combined			Each member	At least one member		
2.2. Suspension	Not under suspension based on execution of a Bid Securing Declaration or Proposal Securing Declaration pursuant to ITB 4.7 and ITB 20.9	Must meet requirement	Must meet requirement	Must meet requirement	N / A	Letter of Bid
2.3. Pending Litigation	Bid's financial position and prospective long-term profitability still sound according to criteria established in 3.1 below and assuming that all pending Arbitration and litigation will be resolved against the Bidder	Must meet requirement	Must meet requirement	Must meet requirement	N / A	Form CON – 2
2.4. Litigation History	No consistent history of court/arbitral award decisions against the Bidder ³ since 1 st January 2018	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Form CON – 2

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

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

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

Factor	3 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture (existing or intended)			
			All members combined	Each member	At least one member	
3.1. Financial Capabilities	Submission of audited balance sheets or if not required by the law of the Bidder's Country, other financial statements acceptable to the Employer, for the last five (5) years to demonstrate the current soundness of the Bidders financial position and its prospective long-term profitability.	Must meet requirement	N / A	Must meet requirement	N / A	Form FIN – 3.1 with attachments
3.2. Average Annual Turnover	(1) Lot A (Melkhout) Minimum average annual turnover of ZAR 2.5 Billion (South African Rand Two billion and Five hundred million only) or USD150 M (US Dollars One Hundred and fifty Million only) within the Energy sector, calculated as the yearly average value over	Must meet requirement	Must meet requirement	Must meet 25% (Twenty-five) Percent of the requirement	Must meet 50% (Fifty) Percent (%) of the requirement (Such Member will be called as Lead Member/partner)	Form FIN –3.2

Factor	3 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture (existing or intended)			
All members combined	Each member		At least one member			
	<p>a 5 year period from 1 January 2016 until 31 December 2021</p> <p>(2) Lot B (Rietfontein) Minimum average annual turnover of ZAR 275 Million (South African Rand Two Hundred and seventy-five million only) or USD 14 M (US Dollars Fourteen Million only) within the Energy sector, calculated as the yearly average value over a 5 year period from 1 January 2016 until 31 December 2021</p>					
3.3. Financial Resources	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	Must meet requirement	Must meet requirement	Must meet 25% (Twenty-five) percent of the requirement	Must meet 50% (Fifty) Percent of the requirement (Such Member	Form FIN –3.3

Factor	3 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture (existing or intended)			
All members combined	Each member		At least one member			
	<p>than any contractual advance payments to meet:</p> <p>(i) the following cash-flow requirement:</p> <p>Lot A (Melkhout) ZAR 650 Million (South African Rands Six Hundred and Fifty Million Rands) or USD 38.5 M (US Dollars Thirty Eight Million and five hundred thousand only) and</p> <p>Lot B (Rietfontein) ZAR 71 Million (South African Rands Seventy One Million Rands) or USD 4.2 M (US Dollars Four Million and two hundred thousand only)</p>				<p>will be called as Lead Member/partner)</p>	

Factor	3 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture (existing or intended)			
	(ii) the overall cash flow requirements for this contract and its current commitments			All members combined	Each member	At least one member
	(ii) the overall cash flow requirements for this contract and its current commitments					

Factor	4 Experience					
Sub-Factor	Requirement	Criteria				Documentation Required
		Bidder				
		Single Entity	Joint Venture (existing or intended)			
All members combined	Each member		At least one member			
4.1 General Experience	Experience required in Battery Energy Storage System, Medium Voltage (MV)/High Voltage (HV) substations, and Photovoltaic (PV) Systems under contracts in a role of a main contractor, subcontractor, or management contractor for a minimum of three (3) years .	Must meet requirement	Must meet requirement	N/A	N/A	Form EXP-4.1
4.2 (a) Specific Experience	(a) Lot A (Melkhout) Participation as contractor, joint venture member ¹ , management contractor, or subcontractor, of Grid connected, Front-of-Meter BESS projects on a single responsibility basis inclusive of Design, Engineering, Procurement, Construction, Installation, Testing, Commissioning, Operation and Maintenance of the BESS Plant of cumulative capacity of not less than 25MW and each contract of not less than 10MW substantially completed within the last 7 (seven) years, and that are similar to the proposed Plant and installation services	Must meet requirement	Must meet requirements ²	N/A	Must meet the following requirements for the key activities listed below: (i). Development and completion of Design, Engineering, Procurement, Construction, Installation, Testing, Commissioning, of Grid connected BESS and PV Plants, and / or	Form EXP 4.2(a)

Factor	4 Experience					Documentation Required
Sub-Factor	Requirement	Criteria				
		Single Entity	Bidder			
			Joint Venture (existing or intended)			
			All members combined	Each member	At least one member	
	(b) Lot B (Rietfontein): Participation as contractor, joint venture member ¹ , management contractor, or subcontractor, of Grid connected, PV projects on a single responsibility basis, inclusive of Design, Engineering, Procurement, Construction, Installation, Testing, Commissioning, of minimum one (1) ground mounted PV project with capacity ≥ 1 MWac.				(ii). Development and completion of Design, Engineering, Procurement, Construction, Installation, Testing, Commissioning, of Medium Voltage (MV)/High Voltage (HV) Substations	

Sub-Factor	Requirement	Criteria				Documentation Required
		Single Entity	Bidder			
			Joint Venture (existing or intended)			
			All members combined	Each member	At least one member	
4.2 (a) Specific Experience	(c) BESS The similarity of the contracts shall be based on the following: Specialised Operation and Maintenance of BESS Plants for at least 2 years with cumulated capacity of at least 10MW for Lot A and at least 1MW for Lot B.	Must meet requirement	Must meet requirements ²	N/A	(iii). Operations and maintenance of Grid connected BESS and PV Plants,	Form EXP 4.2(a)

- ¹ For contracts under which the Bidder participated as a joint venture member or sub-contractor, only the Bidder’s share, by value, shall be considered to meet this requirement
- ² In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated.

Factor	4 Experience					Sub-Factor	Criteria	Documentation Required
Requirement	Single Entity	Bidder			Documentation Required			
		All members combined	Each member	At least one member				
4.2 (a) Specific Experience	(d) PV The similarity of the contracts shall be based on the following: The Bidder must have minimum two (2) years of PV plant operation and maintenance experience, for minimum two (2) PV plants, with the capacity of each PV plant ≥ 1 MWac, as the main O&M Contractor or Subcontractor.	Must meet requirement	Must meet requirement ²	N/A		Form EXP 4.2(a)		
4.2 (b)	For the contracts in 4.2 (a) above and/or any other contracts [substantially completed and under implementation] as prime contractor, joint venture member, or Subcontractor between 1 st January 2014 and Bid submission deadline, experience in managing Energy Storage risks and impacts in the following aspects: <ul style="list-style-type: none"> Experience in the handling and/or Transportation of Dangerous goods or hazardous substance 	Must meet requirements	Must meet requirements	N/A	N/A	Form EXP – 4.2 (b)		

2.5. Contractor’s Representative and other Key Personnel

Refer to Section IV – Bidding forms, 5 (Contractor’s representative and other key personnel)

2.6. Equipment

Refer to Section IV – Bidding forms, 4 (Contractor’s Equipment’s)

2.7. Subcontractors

Subcontractors for the following construction related works to be performed by South African companies must meet the following minimum criteria, herein listed for that item:

Item No.	Description of Item	Minimum Criteria to be met
1	Civil Engineering (CE): Construction Works primarily concerned with materials such as steel, concrete, earth & rock & their application in the development, extension, installation, maintenance, removal, renovation, alteration, or dismantling of building and engineering infrastructure	CIDB Level 6CE requirement as indicated in Volume 4, CIDB requirement “Comprehensive Guide to Contractor Registration

Failure to comply with this requirement will result in rejection of the subcontractor and the bidder will be expected to replace the subcontractor with the subcontractor meeting the above-mentioned minimum criteria without changes to the substance of the Bid

In the case of a Bidder who offers to supply and install major items of supply under the contract that the Bidder did not manufacture or otherwise produce, the Bidder shall provide the manufacturer’s authorization, using the form provided in Section IV, showing that the Bidder has been duly authorized by the manufacturer or producer of the related plant and equipment or component to supply and install that item in the Employer’s Country. The Bidder is responsible for ensuring that the manufacturer or producer complies with the requirements of ITB 4 and 5 and meets the minimum criteria listed above for that item.

Section IV - Bidding Forms

Table of Forms

Letter of Bid	84
Schedule of Rates and Prices	87
Price Adjustment	91
Technical Proposal	93
Site Organization	94
Method Statement	100
Mobilization Schedule	102
Construction Schedule	103
Plant	103
Contractor’s Equipment	120
Functional Guarantees	122
Personnel	Error! Bookmark not defined.
Proposed Personnel	Error! Bookmark not defined.
Resume of Proposed Personnel	125
Proposed Subcontractors for Major Items of Plant and Installation Services	126
Others - Time Schedule	127
Bidders Qualification without prequalification	128
Bidder Information Sheet	129
Party to JV Information Sheet	130
Historical Contract Non-Performance	131
Current Contract Commitments / Works in Progress	135
Financial Situation	136
Historical Financial Performance.....	136
Average Annual Turnover.....	138
Financial Resources	139
Experience	140

General Experience 140
Specific Experience 142
Specific Experience in Key Activities..... **Error! Bookmark not defined.**
Form of Bid-Securing Declaration 150
Manufacturer’s Authorization..... 152

Appendix to Financial Proposal

Letter of Bid -

INSTRUCTIONS TO BIDDERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE DOCUMENT
The Bidder must prepare this Letter of Bid on stationery with its letterhead clearly showing the Bidder's complete name and business address.
Note: All italicized text is to help Bidders in preparing this form.

Date of this Bid submission: *[insert date of submission]*

RFB No.: *[insert number of RFB process]*

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

To: *[insert complete name of Employer]*

We, the undersigned, declare that:

- (a) **No reservations:** We have examined and have no reservations to the bidding document, including Addenda issued in accordance with ITB 8;
- (b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITB 4;
- (c) **Bid-Securing Declaration:** We have not been suspended nor declared ineligible by the Employer based on execution of a Bid Securing Declaration or Proposal-Securing Declaration in the Employer's Country in accordance with ITB 4.7;
- (d) **Conformity:** We offer to provide design, supply and installation services in conformity with the bidding document of the following: *[insert a brief description of the Plant, Design, Supply and Installation Services];*
- (e) **Bid Price:** The total price of our Bid – **Lot A (Melkhout)**, excluding any discounts offered in item (f) below is: *[insert the total price of the Bid in words and in figures, indicating the various amounts and the respective currencies]*
- (f) **Discounts: The discounts offered and the methodology for their application are:**
 - (i) The discounts offered are: *[Specify in detail each discount offered.]*
 - (ii) The exact method of calculations to determine the net price after application of discounts is shown below: *[Specify in detail the method that shall be used to apply the discounts];*
- (g) **Bid Price:** The total price of our Bid – **Lot B (Rietfontein)**, excluding any discounts offered in item (h) below is: *[insert the total price of the Bid in words and in figures, indicating the various amounts and the respective currencies]*
- (h) **Discounts: The discounts offered and the methodology for their application are:**
 - (i) The discounts offered are: *[Specify in detail each discount offered.]*

- (ii) The exact method of calculations to determine the net price after application of discounts is shown below: *[Specify in detail the method that shall be used to apply the discounts];*
- (i) **Bid Validity Period:** Our Bid shall be valid until *[insert day, month and year in accordance with ITB 19.1]*, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (j) **Performance Security:** If our Bid is accepted, we commit to obtain a Performance Security in accordance with the bidding document.
- (k) **One Bid Per Bidder:** We are not submitting any other Bid(s) as an individual Bidder, and we are not participating in any other Bid(s) as a Joint Venture member, and meet the requirements of ITB 4.3, other than alternative Bids submitted in accordance with ITB 13;
- (l) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the World Bank Group or a debarment imposed by the World Bank Group in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the World Bank and other development banks. Further, we are not ineligible under the Employer's Country laws or official regulations or pursuant to a decision of the United Nations Security Council.
- (m) **State-owned enterprise or institution:** *[select the appropriate option and delete the other]* *[We are not a state-owned enterprise or institution]* / *[We are a state-owned enterprise or institution but meet the requirements of ITB 4.6];*
- (n) **Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Bidding process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*

Name of Recipient	Address	Reason	Amount

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

- (o) **Binding Contract:** We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (p) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Bid, the Most Advantageous Bid or any other Bid that you may receive; and
- (q) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.

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

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

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

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

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

*: In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder

** : Person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid

Appendix to Financial Proposal Schedule of Rates and Prices

Bidders are required to go through the Price Schedules/SOR 1, 2, 3, 4, 5, 6, 7, 8, 9 & 10 sheets under Section IV for the submission of Price Bids for Battery Energy Storage Systems DS&I & O&M for 5 years.

Price Schedule are attached as a “Volume 2 – Price Schedule” as .xlsx (Excel) Spread Sheets to the bidding document.

Lot A - Melkhout

Schedule No:	Description	Local Currency Portion Price ¹	Foreign Currency Portion Price ² (optional)	Total Price X (2)
1	Plant and Equipment Supplied from Abroad			
2	Plant and Equipment Supplied from Within the Employer’s Country			
3	Design Services			
4	Installation and Other Services			
5	Mandatory Spare Parts			
6	Augmentation Equipment Supplied from Abroad			
7	Augmentation Equipment Supplied from Local			
8	Augmentation Services			
9	Operating & Maintenance Services (5 Years)			
10	Grand Summary (excluding Schedules No. 6 to 8)			
TOTAL (to Letter of Bid)				
		Name of Bidder		
		Signature of Bidder		

Lot B - Rietfontein

Schedule No:	Description	Local Currency Portion Price ¹	Foreign Currency Portion Price ² (optional)	Total Price X (2)
1	Plant and Equipment Supplied from Abroad			
2	Plant and Equipment Supplied from Within the Employer's Country			
3	Design Services			
4	Installation and Other Services			
5	Mandatory Spare Parts			
6	Augmentation Equipment Supplied from Abroad			
7	Augmentation Equipment Supplied from Local			
8	Augmentation Services			
9	Operating & Maintenance Services (5 Years)			
10	Grand Summary (excluding Schedules No. 6 to 8)			
TOTAL (to Letter of Bid)				
		Name of Bidder		
		Signature of Bidder		

Appendix to Financial Proposal

Summary of Payment currencies

Name of payment currency	A Amount of currency	B Rate of exchange (local currency per unit of foreign)	C Local currency equivalent $C = A/B$	D Percentage of Net Bid Price (NBP) $\frac{100 \times A}{NBP}$
ZAR		1.000		0%
Currency 1 (Name)				%
Currency 2 (Name)				%
Currency 3 (Name)				%
Net Bid Price (NBP)				%

Appendix to Financial Proposal

Country of Origin Declaration Form

Item	Description	Code	Country

**The bidders are required to mention country of origin of the supply of items mentioned under SOR -1, wherever applicable.

Price Adjustment

- (a) The prices are to remain firm and fixed for the duration of the portion of Design, Supply and Installation Contract of BESS and PV Systems.
- (b) Price Adjustment only applies to the 5 years Plant Operation and Maintenance Contract and is addressed below:

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

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

in which:

P_1 = adjustment amount payable to the Contractor

P_0 = Contract price (base price)

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

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

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

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

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

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

Conditions Applicable To Price Adjustment

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

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

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

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

The following conditions shall apply:

- (a) No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Employer under the terms of the Contract. No price increase will be allowed for periods of delay for which the Contractor is responsible. The Employer will, however, be entitled to any price decrease occurring during such periods of delay.
- (b) If the currency in which the Contract price, P_0 , is expressed is different from the currency of the country of origin of the labor and/or materials indices, a correction factor will be applied to avoid incorrect adjustments of the Contract price. The correction factor shall be: Z_0 / Z_1 , where,
- Z_0 = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price P_0 on the Base date, and
- Z_1 = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price P_0 on the Date of Adjustment.
- (c) No price adjustment shall be payable on the portion of the Contract price paid to the Contractor as an advance payment.

Technical Proposal

The Bidder shall furnish the information stipulated in this section i.e. Section IV (Bidding Forms) and Section VII (Employer's requirements) in sufficient detail to demonstrate substantial responsiveness of the Bidder's proposal to the technical aspects of the bid requirement, work requirements and the completion time.

1. Technical Returnables (BESS & Control Plant and Solar Photovoltaic)
2. Technical Bid Returnables (AC Equipment compliance schedule)
3. Technical Schedules (Electronic submission)
4. Contractor's Equipment
5. Contractor's Representative and other Key Personnel
6. Site Organization
7. Method Statement
8. Pre-Mobilization and Pre-operational activity Schedule
9. Time and Construction Schedule
10. Plant Equipment
11. Staffing Plan and Organisational chart
12. Training and Development Plan
13. Safety and Health management
14. Quality Management
15. Project Controls
16. Industrial Relation and Stability
17. ES Management Strategies and Implementation Plans (ES-MSIP)
18. Proposed Subcontractors for Major Items of Plant and Installation Services
19. Others

Appendix to Technical Proposal

1. Technical Returnables (BESS and Control & Solar Photovoltaic Plants)

- 1.1. The Bidder shall submit with its bid the technical bid returnable as stipulated on Section VII Employer's requirement, Scope of work, paragraph 3.9 – List of Tender returnable, 240-139687256_1_EC, BESS Technical Schedules A&B
- 1.2. The Bidder shall provide a BESS and Control & PV Plants technical proposal that details the offered solution. It is imperative that ALL details (applicable technical drawings, block diagrams, general arrangements, calculation sheets, etc.) of the BESS and Control & PV Plants, Control Plant Equipment shall be included in the proposal or supplied as separate files.
- 1.3. The Control Plant section shall contain all Protection & Interconnection, Measurements, Metering, SCADA, Remote Engineering access, Standby Power Systems, AC/DC Distribution, Telecommunications, Phasor Measurement Units (where applicable) and Physical Security proposals.
- 1.4. Where specific brands and models of equipment (especially for Control Plant) are required, this shall be clearly stated in the Technical Proposal.
- 1.5. A complete telecom (LAN), BESS SCADA Gateway, HMI, and interconnections to all applicable BESS systems must be included. This is to confirm philosophy, links 100Base Fx requirements etc. Needs to highlight all applicable locations (e.g., BESS and Control & PV Plants containers, SS control room, etc.)
- 1.6. Technical Bid Returnables (Solar Photovoltaic Technical Schedule A & B) - Only applicable to Rietfontein (Lot B)
 - 1.6.1. The Bidder shall submit with its bid the technical bid returnable as stipulated on Section VII Employer's requirement, Scope of work, paragraph 3.1– List of Tender returnable; Appendix A of 474-12563, Tender Technical Evaluation Strategy for Rietfontein Feeder Solar PV Project

Appendix to Technical Proposal

2. Technical Bid Returnables (AC Equipment)

The Bidder shall submit with its bid the technical bid returnable as stipulated on Section VII Employer's requirement, Scope of work, paragraph 3.1– List of Tender returnable.

- (a) AC Equipment Declaration of Compliance sign off sheet
- (b) Station Electric Diagram (SED) or Single Line Diagram (SLD) and General Arrangement (GA) or Site Plan

Appendix to Technical Proposal

3. Technical schedules (Electronic submission)

Lot A - Melkhout.

Refer to Volume 3 Employers Requirements\03 Standards and Policies\Lot A\Eng\AC Equipment\AC Equip Compliance Dec Form.

Lot B - Rietfontein

Refer to Volume 03 Employers Requirements\3.3 - Standard and Policies\3.3.1_Engineering\3.3.1.6_AC Equipment\AC Equipment Compliance Declaration Form

Electronic submission of Technical Schedules:

In addition to the hard copy submission of the technical schedules, the bidder shall submit an electronic copy of the duly completed technical schedules (and supporting evidence) in its native file format, as issued. The requirements of the electronic submission for BESS & Control Plant are detailed in 240-143716052, Technical Evaluation Criteria for Battery Energy Storage Systems for Grid-Scale Applications.

- The list of Engineering tender returnables for **Lot A - Melkhout:**

Note: The referenced documents may contain further instructions regarding supporting evidence that must be provided as part of the tender submission.

Table 7: List of engineering tender returnables

#	All tender returnables as per the following
1	240-139687256_1_EC, BESS Technical Schedules A&B
2	AC Equipment Declaration of Compliance sign off sheet
3	Station Electric Diagram (SED) or Single Line Diagram (SLD) and General Arrangement (GA) or Site Plan

- The list of Engineering tender returnables for **Lot B - Rietfontein:**

Note: The referenced documents may contain further instructions regarding supporting evidence that must be provided as part of the tender submission.

Table 8: List of engineering tender returnables

#	All tender returnables as per the following
1	240-139687256_1_EC, BESS Technical Schedules A&B

#	All tender returnables as per the following
2	AC Equipment Declaration of Compliance sign off sheet
3	Station Electric Diagram (SED) or Single Line Diagram (SLD) and General Arrangement (GA) or Site Plan
4	Appendix A of 474-12563, Rietfontein Feeder Solar PV Technical Evaluation Strategy

Appendix to Technical Proposal

4. Contractor's key equipment's

The Bidder must demonstrate that they will have the ability to mobilise key equipment and comply with legal and statutory requirements of such.

The Bidder shall provide details of the proposed list of equipment's using the relevant Form in this section (Section IV – Bidding Form).

Appendix to Technical Proposal

5. Contractor’s Representative and other Key Personnel

- 5.1. The Bidder must submit a list of key personnel to demonstrate that it will have a suitably qualified Contractor’s Representative, construction manager with specific capabilities in BESS installation and other suitably qualified (and in adequate numbers) key personnel, as described in the Specification.
- 5.2. The Bidder shall provide details of the Contractor’s Representative and other key personnel and such other key personnel that the Bidder considers appropriate to perform the Contract, together with their academic qualifications and work experience. The Bidder shall complete the relevant Forms in Section IV, Bidding Forms.

Table -9 – Contractor’s key personnel – Lot A (Melkhout)

No.	Position	Total Work Similar Experience (years)	In Similar Works Experience (years)
1	Project Director	8	4
2	Construction Manager	5	4

Table -10 – Contractor’s key personnel – Lot B (Rietfontein)

No.	Position	Total Work Similar Experience (years)	In Similar Works Experience (years)
1	Project Director	8	4
2	Construction Manager	5	4

The Bidder shall complete the relevant Forms in Section IV, Bidding Forms.

Appendix to Technical Proposal

6. Site Organization

The Bidder shall submit with its bid the Site Organization information containing the following minimum information:

- 6.1. Site organogram showing the key personnel.
- 6.2. Location of site camps and their organizational structure should be presented as well including assigned equipment, facilities, and communication channels; and
- 6.3. Narrative description of the Organization Structure is required.

Appendix to Technical Proposal

7. Method Statement

The Bidder shall submit with its bid a method Statement containing the following minimum information:

Method of executing the activities, including but not limited to the following:

- Demonstrate a good understanding of the activities associated with the various sections of the scope
- Design and development processes
- Interface and Integration during design, construction, and commissioning
- Construction methodology
- Construction Equipment and Resources
- Management Responsibilities
- Control of Documents and Records
- Materials Management (e.g., on and off site, long lead items, acceptance procedures etc.)
- Work Programmes
- Division of Works; and
- Innovative processes and procedures to be used.

Appendix to Technical Proposal

8. Pre-Mobilization and Pre-operational activity Schedule

Appendix to Technical Proposal

9. Time and Construction Schedule

Appendix to Technical Proposal

10. Plant equipment

Appendix to Technical Part

11. Staffing Plan and Organisational chart

Appendix to Technical Proposal

12. Training and Development Plan

Appendix to Technical Proposal

13. Safety and Health management

- 13.1. The Contractor and all Subcontractors shall comply with the requirements listed in the Employer's standard document, 'Occupational Health and Safety (OHS) requirements for the Contractor appointed to design, supply and install (DS&I) for distributed battery energy storage systems projects', document identifier – for Melkhout reference number 240-156628326, and for Rietfontein reference number 240-166050797.
- 13.2. The Bidder shall submit with its bid the following minimum information related to SHEQ:
- 13.2.1. Provide an OHS resource plan for the proposed scope of work. For each position, stipulate the position titles; roles; responsibilities, accountability, qualifications and competencies that will be required for each position.
- 13.2.2. Provide CV's of individuals that will fulfil the following roles, plus proof of registration with relevant approved professional body where applicable:
- Construction Health and Safety Agent in terms of Construction Regulations 2014, CR 5 (5) (6) and (7) and as per the SACPCMP requirements.
 - Registered Designer(s).
 - Construction Health and Safety Manager and/or Officers in terms of Construction Regulations 2014, CR 8 (5) and (6) and as per the SACPCMP requirements.
 - Construction Manager in terms of Construction Regulations 2014, CR 8 (1) and as per the SACPCMP requirements.
 - Construction Supervisor & Assistant Construction Supervisor in terms of Construction Regulations 2014, CR 8 (7) and (8).
- Note: Service Level Contract or letter of intent will be accepted with a key personnel competent service provider as stated in 13.2.2, only for the purpose of evaluation and prior to contract award the bidder needs to confirm resources for the proposed project.
- 13.2.3. Occupational Health & Safety Plan
- Provide in terms of CR 7 (1) (a) Construction Regulations 2014, an OHS plan for the proposed scope of work in response to this OHS Specification/Requirements.
 - Provide a process/ procedure on how you would deal with companies/individuals that have transgressed OHS requirements.
- 13.2.4. OHS Management System's requirement
- Provide a copy of a recognised OHS Management System certification (if available)
 - Provide a copy of a typical Health and Safety risk profile for a project of this nature as well as high level interventions that will be implemented to mitigate the risk.

- Provide in terms of CR 5 (b) Construction Regulations 2014, an OHS specification for the proposed scope of work that will be issued to the Contractor's.
 - Provide a detailed plan as to how you will ensure provision of medical facilities, services and assistance at all times on the project. How will you address medical emergencies?
 - Provide a copy of a current valid certificate of Compensation for Occupational Injuries and Diseases issued by the Compensation Commissioner. Or a licensed compensation insurer.
- 13.2.5. Fire Safety and emergency requirement
- Provide baseline fire risk assessment and fire safety Plan.
 - Provide Emergency Preparedness response Plan.
 - Provide a detailed plan as to how to access the local authority fire and emergency services or indicate what provision will be made for fire and emergency response services and assistance on the project.
- 13.2.6. Legal requirements
- Explain how you would manage the evaluation and selection process of joint venture or sub-contractors to ensure that they have the necessary competencies and resources to perform the work safely.
 - Provide a detailed plan how you would fulfil the role of a Client in terms of the Construction Regulations 2014, and of the OHS Act 85 of 1993
 - Explain how you would manage and monitor contractor companies in terms of Health and Safety compliance.
 - Explain how you would manage multiple contractor company interfaces on the project.
 - Provide detailed costing for OHS on the overall scope of works/services to be performed in the Costing Schedules.
- 13.2.7. OHS Operational Controls
- Provide your company's safe work plans in managing high risk activities that will be applicable to the scope of work on this project.
 - Provide documents of any known or anticipated dangers and hazards relating to the Distributed Battery Energy Storage Systems during construction, maintenance and operating, and safe operating procedures to be followed
- 13.2.8. Provide references of the least two (2) clients
- Provide details of client's references
 - OHS safety performance on the work that your company performed and
 - OHS on a project/similar to this scope of work
- 13.2.9. Provide a COVID-19 management plan to ensure that measures required by COVID-19 directives and guidelines are strictly complied with.

Appendix to Technical Proposal

14. Quality Management

The Bidder shall submit with its bid and demonstrate compliance to the following minimum information relating to quality management requirement:

The *Contractor* and all *sub-contractors* shall comply with the *Employer's* quality requirements including those listed in the *Employers* specification document, 240-105658000 and the latest ISO 9001 standard. Category 1 as per the employer specification will be applied on this project.

Table 11: Quality requirements

Document No.		Description	Application and Responsibility
1	240-105658000 (QM 58)	Supplier Quality Management: Specification	Specifying Eskom supplier quality requirements. Tenderer to comply with the selected requirements as per Category 1 .
2	240-68099512	FORM A: Tender & Contract Quality Requirements For QM 58 and Quality Requirements For ISO 9001 Standard	Tenderer to complete (section A and E) and sign it.
3	240-12248652	List of Tender Returnables Document	Tenderer to submit all tender returnable for section A, B, C, D and E, as per list (Category 1)
4	240-109253698	Contract Quality Plan (CQP)	Tenderer to compile and submit a draft document/ plan based on the scope of work/ technical specification.
5	240-109253302	Quality Control Plan (QCP)/ Inspection and Test Plan (ITP)	Tenderer to compile and submit a draft plan or an example based on the scope of work/ technical specification.

Appendix to Technical Proposal

15. Project Controls

The Bidder's submissions must contain the following minimum information:

15.1. Cost Management and Schedule Compliance

- Submission of a Primavera P6 file (.XER format) for the project schedule. All Primavera P6 .XER files to be accompanied with an equivalent pdf file
- Logic is complete and practicable & conforms to key delivery dates as prescribed by Eskom
- Critical path is clearly shown within reports
- Interdependencies are clearly shown
- The Cost Pricing Schedule is reflected in the Schedule submission.
- Schedule Resource loading at activity level.
- Calendar conforms to Section VII Employers requirements Calendars are to be clearly identified showing all planned workdays, non-workdays, pay weekends, productivity norms, allowed weather days and holidays. Planning units will be in days.

15.2. System Compliance

Methodology of how all areas of Project Controls (Cost Management, Planning & Scheduling, Contract Administration, Document & Records Management, Risk Management, Project Management Reporting, and Configuration Management & Knowledge Management) will be systemised in a toolset, for data processing and reporting.

15.3. Reporting

- Planned S-Curves, manpower histogram based on Earned Schedule samples
- Commodity loaded schedule report sample
- Earned value Management Information report sample
- Detailed Cost Reporting sample
- Risk report as per specification with Risk Register sample

Appendix to Technical Proposal

16. Industrial Relation and Stability

The Bidder shall submit with its bid the following minimum information relating to Industrial Relation and Stability

16.1. Resource Plan

16.1.1. Project Resource Histogram, containing the following:

- The various stages in which the projects work will be executed.
- The skills type and the associated job categories and job titles that will be required during each stage of the project works;
- The job titles must be aligned with those that are appearing in the wage schedules of the relevant Bargaining Council. The job titles further has to be classified as either: Management / Supervisory / administrative staff; or Skilled Employees (Artisans); or Semi-skilled Employees or Unskilled Workers;
- The plan must clearly state per job title: the numbers required; the resourcing strategy / recruitment strategy that will be used i.e. core employees; local employees; general recruitment etc.

16.1.2. The stage of the project when the number of employees will be reduced and the stage when a specific job title will no longer be required at the project works;

16.1.3. The ratio of local employees versus core employees. Based on the skills that are available in the geographic area that the projects will be operated in.

16.1.4. The Principal Contractor resource plan must include all Sub-contractors, and the Principal Contractor must require all Sub-contractors to also submit a similar resource plan.

16.2. Industrial Action Management Procedure

The Bidder shall in his bid include a comprehensive Industrial Action Management Procedure the People and Industrial Relations Procedures should at least address the following aspects:

- Recruitment and selection procedure
- Induction programmes
- Daily labour returns procedure
- Payroll and payment of wages procedure
- Working time and shift rosters
- Incident reporting
- Disciplinary handling including violence and intimidation
- Absenteeism procedure
- Grievance handling procedure
- Dispute resolution Procedure,

- Mobilisation Procedure, and
- Termination Procedure
- Industrial Action management Procedure

Appendix to Technical Proposal

17. ES Management Strategies and Implementation Plans (ES-MSIP)

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

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

Additional ES requirements

The Bidder shall submit the following additional comprehensive and concise Environmental and Social documentation as part of the bid as fully described in the Employer's Requirements in Section VII found in the Environmental Specifications for Melkhout (document number 240-156822595), for Rietfontein (document number : BESS_Dx-SE-C89):

- A copy of your Company Environmental Policy statement (refer to section 6.3 of the Environmental Specifications for Melkhout (document number 240-156822595), for Rietfontein (document number: BESS_Dx-SE-C89):
- Proof of Environmental Authorisation (EA) and Environmental Management Programme (EMPr) execution and implementation on at least three current or previous completed projects completed in the past ten (10) years. Examples include independent project audit reports and closure certificates. Provide at least four (4) contactable references per project.
- Declare history of environmental fines, compliance notices and legal contraventions issued to the Contractor or Client over the past 10 years, especially where performance guarantees have been withheld on account of any environmental reason.
- Provide a price list for all Scheduled Items as per section 6.41.3 of the Environmental Specifications for Melkhout (document number 240-156822595), for Rietfontein (document number: BESS_Dx-SE-C89):

Note to the Bidder:

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

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

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

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

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

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

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

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

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

REQUIRED CONDUCT

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

1. carry out his/her duties competently and diligently;
2. comply with this Code of Conduct and all applicable laws, regulations and other requirements, including requirements to protect the health, safety and well-being of other Contractor's and Subcontractor's personnel and any other person;
3. maintain a safe working environment including by:

- a. ensuring that workplaces, machinery, equipment and processes under each person's control are safe and without risk to health;
 - b. wearing required personal protective equipment;
 - c. using appropriate measures relating to chemical, physical and biological substances and agents; and
 - d. following applicable emergency operating procedures.
4. report work situations that he/she believes are not safe or healthy and remove himself/herself from a work situation which he/she reasonably believes presents an imminent and serious danger to his/her life or health;
 5. treat other people with respect, and not discriminate against specific groups such as women, people with disabilities, migrant workers or children;
 6. not engage in any form of sexual harassment including unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature with other Contractor's or Employer's Personnel;
 7. not engage in Sexual Exploitation, which means any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another;
 8. not engage in Sexual Abuse, which means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions;
 9. not engage in any form of sexual activity with individuals under the age of 18, except in case of pre-existing marriage;
 10. complete relevant training courses that will be provided related to the environmental and social aspects of the Contract, including on health and safety matters, and Sexual Exploitation and Abuse, and Sexual Harassment (SH);
 11. report violations of this Code of Conduct; and
 12. not retaliate against any person who reports violations of this Code of Conduct, whether to us or the Employer, or who makes use of the grievance mechanism for Contractor's Personnel or the project's Grievance Redress Mechanism.

RAISING CONCERNS

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

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

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

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

CONSEQUENCES OF VIOLATING THE CODE OF CONDUCT

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

FOR CONTRACTOR’S PERSONNEL:

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

Name of Contractor’s Personnel: [insert name] Signature:

Date: (day month year): _____

Countersignature of authorized representative of the Contractor:

Signature: _____

Date: (day month year): _____

ATTACHMENT 1: Behaviors constituting SEA and behaviors constituting SH

ATTACHMENT 1 TO THE CODE OF CONDUCT FORM**BEHAVIORS CONSTITUTING SEXUAL EXPLOITATION AND ABUSE (SEA) AND BEHAVIORS CONSTITUTING SEXUAL HARASSMENT (SH)**

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

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

- A Contractor's Personnel tells a member of the community that he/she can get them jobs related to the work site (e.g. cooking and cleaning) in exchange for sex.
- A Contractor's Personnel that is connecting electricity input to households says that he can connect women headed households to the grid in exchange for sex.
- A Contractor's Personnel rapes, or otherwise sexually assaults a member of the community.
- A Contractor's Personnel denies a person access to the Site unless he/she performs a sexual favor.
- A Contractor's Personnel tells a person applying for employment under the Contract that he/she will only hire him/her if he/she has sex with him/her.

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

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

Appendix to Financial Proposal

SDL&I MATRIX FORM

NOTE TO BIDDERS:

1. As part of Socio Economic Imperative, a bidder is required to subcontract a minimum of 20% of the total contract value to previously disadvantaged groups and associated skills development”.
2. Bidders are therefore required to complete this SDL&I matrix form confirming that at least 20% of the proposed contract value will represent procurement spend within South Africa. (See **Table -12** below) Subcontracting agreements and skills development plans for evaluation purposes
3. Bidders who fail to meet the minimum of 20% Procurement Spend within South Africa defined as “subcontracting a minimum of 20% of the total contract value to previously disadvantaged groups and associated skills development” will not be rejected, but will be expected to meet the requirement prior to contract award.
4. However, Eskom reserves the right to negotiate the breakdown of this 20% of the total contract value for sub-contracting in respect of designated groups and skills development at award stage
5. All civil and construction work subcontracted to local Companies, should meet the CIDB regulation 2004, standard for uniformity.
6. Note: **0.25%** of the 20% local spend must be allocated to skills development for any of the skills listed in (**Table -13**) below
7. Bidders are also required to indicate the number of jobs created and/or retained from this contract in (**Table-14**) below.

Table -12: Procurement Spend in South Africa

Criteria	Total Target (%)	Estimated Value	Proposed Target (%) by Bidder
*Procurement / Subcontracting from BPwD (% of the total contract value)			
*Procurement/ Subcontracting from BWO (% of the total contract value)			
*Procurement / Subcontracting from BYO (%of the total contract value))			
*Procurement/Subcontracting from BO (% of the total contract value)			
*EME/ QSE level 1 or level 2			
** Plant and Equipment Procured Locally from firms with valid BBBEE certificate			
**Skills Development			
Total of the proposed contract value	20.00%		

Table -13: Skills Development Compliance Matrix

Skill Type (Occupation)	Target Number of Persons to be Trained (Local to South Africa)	Bidder's Proposed Number of Persons to be Trained (Local to South Africa)
1. Bricklayer Grade 1 CIV 5	2	
2. Cable jointer	2	
3. Cable Puller MEC 2	2	
4. Concrete batching plant operators	2	
5. Concrete Hand Grade 2 CIV 3, Grade 1 CIV 4/5	2	
6. Electrical Assistant MEC 2	1	
7. Electrician - Semi Skilled (CIV 5 , MEC 3)	2	
8. Operator - Concrete Dumper CIV 4, Concrete Mixer CIV 4,Concrete Pump CIV 4	2	
9. Operator - Crane (+25Ton) MEC 4	2	
10. Operator - Excavator CIV 4, Final Level Grader CIV 6, Mobile Crane CIV 5	2	
11. Painter - Brushing MEC 2,Semi-Skilled	2	
12. Safety Officer - Jnr CIV 4/5, MEC 3	1	
13. Supervisor Gr I CIV 8,Gr1 MEC 3,Grade 2 CIV 7,MEC 3	2	
14. Welder - B Class MEC 3, Flux Cor MEC 3, Semi-skilled CIV 5, Structural MEC 3, Tack MEC 2	2	
Total	26	

Table-14 - Job Creation

Number of jobs to be created as a result of this contract	
Number of jobs to be retained as a result of this contract	

To be completed by bidder

Company: _____ Designation: _____ Signature _____ Date: _____
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Appendix to Technical Proposal

18. Proposed Subcontractors for Major Items of Plant and Installation Services

Form EQU

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

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

Omit the following information for equipment owned by the Bidder.

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

Appendix to Technical Proposal

19. Others

Appendix to Technical Proposal

Functional Guarantees

Form FUNC

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

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

Appendix to Technical Proposal

Personnel

Form PER -1

Contractor's Representative and other Key Personnel Schedule

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

Contractor' Representative and Key Personnel

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

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

Appendix to Technical Proposal

Form PER-2

Resume of Proposed Personnel

Name of Bidder

Position							
Personnel information	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Name</td> <td style="width: 50%; padding: 5px;">Date of birth</td> </tr> <tr> <td colspan="2" style="padding: 5px;">Professional qualifications</td> </tr> </table>	Name	Date of birth	Professional qualifications			
	Name	Date of birth					
Professional qualifications							
Present employment	Name of employer						
	Address of employer						
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Telephone</td> <td style="width: 50%; padding: 5px;">Contact (manager / personnel officer)</td> </tr> <tr> <td style="padding: 5px;">Fax</td> <td style="padding: 5px;">E-mail</td> </tr> <tr> <td style="padding: 5px;">Job title</td> <td style="padding: 5px;">Years with present employer</td> </tr> </table>	Telephone	Contact (manager / personnel officer)	Fax	E-mail	Job title	Years with present employer
	Telephone	Contact (manager / personnel officer)					
	Fax	E-mail					
Job title	Years with present employer						
Job title							
Years with present employer							

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

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

Appendix to Technical Proposal

Proposed Subcontractors for Major Items of Plant and Installation Services

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

The following Subcontractors and/or manufacturers are proposed for carrying out the item of the facilities indicated. Bidders are free to propose more than one for each item. Bidders to list major components below but not limited to the following.

Major Items of Plant and Installation Services	Proposed Subcontractors/Manufacturers	Nationality
BESS		
Transformers		
Switchgears		
Invertors		
Protection and Control		
Civil Works		
PV		

Appendix to Technical Proposal

Others - Time Schedule

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

Appendix to Technical Proposal

Bidders Qualification without prequalification

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

Appendix to Financial Proposal

Form ELI 1.1

Bidder Information Sheet

Date: _____

RFB No.: _____

Page _____ of _____ pages

1. Bidder's Legal Name
2. In case of JV, legal name of each party:
3. Bidder's actual or intended Country of Registration:
4. Bidder's Year of Registration:
5. Bidder's Legal Address in Country of Registration:
6. Bidder's Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB 4.4 <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1 <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITB 4.6, documents establishing: <ul style="list-style-type: none"> • Legal and financial autonomy • Operation under commercial law • Establishing that the Bidder is not under the supervision of the Employer
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. <i>[If required under BDS ITB 46.1, the successful Bidder shall provide additional information on beneficial ownership, using the Beneficial Ownership Disclosure Form.]</i>

Appendix to Financial Proposal

Form ELI 1.2

Party to JV Information Sheet

Date: _____

RFB No.: _____

Page _____ of _____ pages

1. Bidder's Legal Name:
2. JV's Party legal name:
3. JV's Party Country of Registration:
4. JV's Party Year of Registration:
5. JV's Party Legal Address in Country of Registration:
6. VAT number (Only for bidders of Employer's Country)
7. JV's Party Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
8. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITB 4.4. <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Employer, in accordance with ITB 4.6. 9. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. <i>[If required under BDS ITB 46.1, the successful Bidder shall provide additional information on beneficial ownership for each JV member using the Beneficial Ownership Disclosure Form.]</i>

Appendix to Financial Proposal

Form CON – 2

Historical Contract Non-Performance

Bidder’s Legal Name: _____

Date: _____

JV Member Legal Name: _____

RFB No.: _____

Page _____ of _____ pages

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> Contract non-performance did not occur since 1 st January <i>[insert year]</i> specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.			
<input type="checkbox"/> Contract(s) not performed since 1 st January <i>[insert year]</i> specified in Section III, Evaluation and Qualification Criteria, requirement 2.1			
Year	Non-performed portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and US\$ equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for non-performance: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>
Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.			
<input type="checkbox"/> Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.			

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), USD Equivalent (exchange rate)
		Contract Identification: _____ Name of Employer: _____ Address of Employer: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	
		Contract Identification: Name of Employer: Address of Employer: Matter in dispute: Party who initiated the dispute: Status of dispute:	
Litigation History in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4. <input type="checkbox"/> Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.			
Year of award	Outcome as percentage of Net Worth	Contract Identification	Total Contract Amount (currency), USD Equivalent (exchange rate)
<i>[insert year]</i>	<i>[insert percentage]</i>	Contract Identification: <i>[indicate complete contract name, number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Employer" or "Contractor"]</i> Reason(s) for Litigation and award decision <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>

Appendix to Technical Proposal

Form CON – 3

Environmental and Social Performance Declaration

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

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

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

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

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

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

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

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

Appendix to Financial Proposal

Form CCC

Current Contract Commitments / Works in Progress

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

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

Appendix to Financial Proposal

Form FIN – 3.1

Financial Situation

Historical Financial Performance

Bidder's Legal Name: _____

Date: _____

JV Member Legal Name: _____

RFB No.: _____

Page _____ of _____ pages

To be completed by the Bidder and, if JV, by each member

Financial information in ZAR equivalent	Historic information for previous three (3) years (ZAR equivalent)						
	Year 1	Year 2	Year 3	Year ...	Year n	Avg.	Avg. Ratio
Information from Balance Sheet							
Total Assets (TA)							
Total Liabilities (TL)							
Net Worth (NW)							
Current Assets (CA)							
Current Liabilities (CL)							
Information from Income Statement							
Total Revenue (TR)							
Profits Before Taxes (PBT)							

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

-
- (a) Must reflect the financial situation of the Bidder or member to a JV, and not sister or parent companies
- (b) Historic financial statements must be audited by a certified accountant
- (c) Historic financial statements must be complete, including all notes to the financial statements
- (d) Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted)
- (e) The audited financial statement must reflect the following:
- Background to the company
 - A signed director's report
 - A signed auditor's report
 - Statement of financial position
 - Statement of comprehensive income
 - Statement of changes in equity
 - Statement of cash flows
 - Notes to the financial statements
 - Notarised signature and seal by a Public Notary of the country where the company is based to confirm the veracity of the financial statements.

Appendix to Financial Proposal

Form FIN – 3.2

Average Annual Turnover

Bidder's Legal Name: _____

Date: _____

JV Member Legal Name: _____

RFB No.: _____

Page _____ of _____ pages

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

*Average annual turnover calculated as total certified payments received for work in progress or completed, divided by the number of years specified in Section III, Evaluation Criteria, Sub-Factor 3.2.

Appendix to Financial Proposal

Form FIN3.3

Financial Resources

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

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

Appendix to Technical Proposal

Form EXP 4.1

Experience

General Experience

Bidder's Legal Name: _____

Date: _____

JV Member Legal Name: _____

RFB No.: _____

Page _____ of _____ pages

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

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

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

Appendix to Technical Proposal

Form EXP –4.2(a)

Specific Experience

Bidder's Legal Name: _____

Date: _____

JV Member Legal Name: _____

RFB No.: _____

Page _____ of _____ pages

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

Appendix to Technical Proposal

Form EXP –4.2(a) (cont.)

Specific Experience (cont.)

Bidder’s Legal Name: _____

Page _____ of _____ pages

JV Member Legal Name: _____

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

Appendix to Technical Proposal

Form EXP –4.2(b)

Specific Experience in Managing ES aspects

Bidder’s Legal Name: _____

Date: _____

JV Member Legal Name: _____

RFB No.: _____

Subcontractor’s Legal Name: _____

Page _____ of _____ pages

1. Key Requirement no 1 in accordance with 4.2 (b): __

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

2. Key Requirement no 2 in accordance with 4.2 (b): _____

3. Key Requirement no 3 in accordance with 4.2 (b): _____

Appendix to Financial Proposal

SBD 1 Form

Tax Questionnaire

Supplier Information				
Name of Bidder				
Postal Address				
Street Address				
Telephone Number	Code		Number	
Cell phone Number				
Facsimile Number	Code		Number	
E-mail Address				
VAT Registration Number				
	TCS pin:		or	CSD No:
B-BBEE status level verification certificate [Tick applicable box]	<input type="checkbox"/> Yes	B-BBEE status level sworn affidavit		<input type="checkbox"/> Yes
	<input type="checkbox"/> No			<input type="checkbox"/> No
If yes, who was the certificate issued by?				
An Accounting Officer as contemplated in the Close Corporation Act (CCA) and name the applicable in the Tick box	<input type="checkbox"/>	An Accounting Officer as contemplated in the Close Corporation Act (CCA)		
	<input type="checkbox"/>	A verification agency accredited by the South African Accreditation System (SANAS)		
	<input type="checkbox"/>	A registered auditor		
		Name:		
[A B-BBEE status level verification certificate/sworn affidavit(for EMES& QSES) must be submitted in order to qualify for preference points for B-BBEE]				

Are You The Accredited Representative In South Africa For The Goods /Services /Works Offered?	<input type="checkbox"/> Yes <input type="checkbox"/> No [If Yes Enclose Proof]	Are you a Foreign based Supplier for the goods /services /works offered?	<input type="checkbox"/> Yes <input type="checkbox"/> No [If Yes Answer Part B:3 Below]
Signature of Bidder	Date	
Capacity under which this bid is signed (attach proof of authority to sign this bid; e.g. Resolution of directors, etc.)			
Total number of items offered		Total bid price (all inclusive)	

Bidding procedure enquiries may be directed to:		Technical information may be directed to:	
Department/ Public entity		Contact person	
Contact Person		Telephone number	
Telephone Number		Facsimile number	
Facsimile Number		E-mail address	
E-mail address			

PART B

TERMS AND CONDITIONS FOR BIDDING

1. Tax compliance requirements
1.1. Bidders must ensure compliance with their tax obligations. 1.2. Bidders are required to submit their unique personal identification number (pin) issued by SARS to enable the organ of state to view the taxpayer’s profile and tax status. 1.3. Application for Tax Compliance Status (TCS) or pin may also be made via e-filing. In order to use this provision, taxpayers will need to register with SARS as e-filers through the website www.sars.gov.za . 1.4. Bidders may also submit a printed TCS together with the bid. 1.5. In bids where consortia / joint ventures / sub-contractors are involved, each party must submit a

separate proof of TCS / pin / CSD number.

- 1.6. Where no TCS is available but the bidder is registered on the Central Supplier Database (CSD), a CSD number must be provided.

2. Questionnaire to Bidding foreign suppliers

- 2.1. Is the bidder a resident of the Republic of South Africa (RSA)? yes no
- 2.2. Does the bidder have a branch in the RSA? yes no
- 2.3. Does the bidder have a permanent establishment in the RSA? yes no
- 2.4. Does the bidder have any source of income in the RSA? yes no

If the answer is “no” to all of the above, then, it is not a requirement to obtain a tax compliance status / tax compliance system pin code from the South African revenue service (SARS) and if not register as per 2.3 above.

Form of Bid Security

Form of Bid Security – Bank Guarantee

Not applicable.

Form of Bid Security-

Bid Bond

Not applicable

.

Appendix to Financial Proposal

Form of Bid-Securing Declaration

Date: _____

RFB No.: _____

Alternative No.: _____

To: _____

We, the undersigned, declare that:

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

We accept that we will automatically be suspended from being eligible for Bidding or submitting proposals in any contract with the Employer for the period of time of 5 years _____, starting on the first date we perform any of the actions mentioned in paragraphs (a) or (b) below as determined by the Employer _____, if we are in breach of our obligation(s) under the Bid conditions, because we:

- (a) have withdrawn our Bid during the period of Bid validity specified in the Letter of Bid or any extension thereto provided by us; or
- (b) having been notified of the acceptance of our Bid by the Employer during the period of Bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB20.

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Signed: _____

In the capacity of _____

Name: _____

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

Dated on _____ day of _____, _____

Corporate Seal (where appropriate)

Appendix to Technical Proposal

Manufacturer's Authorization

Date: _____

RFB No.: _____

To: _____

WHEREAS

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

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

Signed: _____

Name: _____

Title: _____

Duly authorized to sign this Authorization on behalf of:

Dated on _____ day of _____, _____

Appendix to Financial Proposal

	Foreign Procurement: Shipping Information Requirements	Template Identifier	240-43921804	Rev	6
		Document Identifier	240-55409456	Rev	2
		Effective Date	01 November 2012		
		Review Date	June 2021		

PROJECT / RFB NAME :

SUPPLIER/BIDDER :

CONTRACT PERIOD :

COMMODITY DETAILS

Description of items	
Type of Cargo (general or hazardous)	
Tariff Code	
Value of Goods	

COLLECTION and DELIVERY DETAILS

Collection address and country	
Airport / port of loading	
Delivery Site Address	
Airport/port of discharge	
Required Transport Mode	
INCOTERM (Terms of Delivery)	

SHIPPING COSTS

BIDDER TO COMPLETE THE FOLLOWING:

Currency used	
Exchange Rate Used	

PLEASE SELECT THE APPLICABLE PACKAGING METHOD:

TABLE 1: CONTAINERISED

NO of containers	Container Type	Container Size	Price per container	Total Price (all containers)

TABLE 2: NON-CONTAINERISED / BREAKBULK

Length (cm)	Width (cm)	Height (cm)	NO of packages	Total Gross Weight	Total Price (all packages)

INDICATE ANY SPECIAL HANDLING INSTRUCTIONS REQUIRED:

--

	Foreign Procurement: Importation Information/ Requirements	Document Identifier 240-55409456
		Revision: V1
		Revision Date: June 2023
		Group Tax

PROJECT / RFB NAME :

SUPPLIER/BIDDER :

CONTRACT PERIOD :

REQUIRED INFORMATION

Country of Origin	
If country of origin is EU, is the supplier an approved exporter in or order to claim a preferential import rate of duty	
If country of origin is EU, are EUR1 certificate issued in order to claim a preferential rate of duty	
List of overseas Suppliers where goods will be sourced / manufactured	
Relationship with overseas supplier (i.e. any shareholdings; sister company; agent, etc)	
Country of Export of final product/ goods	
Mode of transport	
Description of products to be imported	
Harmonised Customs Tariff	
Rate of Duty as per above	
Finished or Semi – Finished Products	

Ex Works Price Overseas (Value of Goods) in foreign currency (USD; GBP; EURO's ECT)	
Any discounts? If yes, indicate type of discounts	
Were any Value Determinations issued by SARS	
If yes, please elaborate	
Type of cargo (Containerised, break bulk)	
Provide catalogue / brochure of the final product	

Questionnaire completed byCapacity.....

Date.....

Company Stamp

Section V - Eligible Countries

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

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

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

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

Section VI - Fraud and Corruption

1. Purpose

1.1 The Bank's Anti-Corruption Guidelines and this annex apply with respect to procurement under Bank Investment Project Financing operations.

2. Requirements

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

2.2 To this end, the Bank:

- a. Defines, for the purposes of this provision, the terms set forth below as follows:
 - i. "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - ii. "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
 - iii. "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - iv. "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - v. "obstructive practice" is:
 - (a) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - (b) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under paragraph 2.2 e. below.
- b. Rejects a proposal for award if the Bank determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or

- indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- c. In addition to the legal remedies set out in the relevant Legal Agreement, may take other appropriate actions, including declaring misprocurement, if the Bank determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement process, selection and/or execution of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
 - d. Pursuant to the Bank's Anti-Corruption Guidelines and in accordance with the Bank's prevailing sanctions policies and procedures, may sanction a firm or individual, either indefinitely or for a stated period of time, including by publicly declaring such firm or individual ineligible (i) to be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;¹ (ii) to be a nominated² sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-financed project;
 - e. Requires that a clause be included in bidding/request for proposals documents and in contracts financed by a Bank loan, requiring (i) bidders (applicants/proposers), consultants, contractors, and suppliers, and their sub-contractors, sub-consultants, service providers, suppliers, agents personnel, permit the Bank to inspect³ all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the Bank.

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

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

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

PART 2 - Employer’s Requirements

Section VII - Employer’s Requirements

Contents

Scope of Supply of Plant and Installation Services by the Contractor	163
Specification	163
Forms and Procedures	164
Form of Completion Certificate.....	164
Form of Operational Acceptance Certificate.....	165
Change Order Procedure and Forms	166
Change Order Procedure.....	167
Annex 1. Request for Change Proposal	168
Annex 2. Estimate for Change Proposal	170
Annex 3. Acceptance of Estimate	172
Annex 4. Change Proposal	174
Annex 5. Change Order	177
Annex 7. Application for Change Proposal	180
Drawings.....	181
Supplementary Information.....	182

Scope of Supply of Plant and Installation Services by the Contractor

**Refer to the Employer’s Requirements or Technical Specifications is attached as
“Volume 3” to the Bidding Documents.**

Forms and Procedures

Form of Completion Certificate

Date: _____

Loan/Credit N°: IBRD 7820 and CTF TF010690 RFB

N°: _____

To: _____

Dear Ladies and/or Gentlemen,

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

1. Description of the Facilities or part thereof: _____

2. Date of Completion: _____

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

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

Very truly yours,

Title

(Project Manager)

Form of Operational Acceptance Certificate

Date: XXX

Loan/Credit

Nº: IBRD 7820 and CTF

TF010690

RFB Nº: XXX

To: _____

Dear Ladies and/or Gentlemen,

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

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

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

Very truly yours,

Title

(Project Manager)

Change Order Procedure and Forms

Date: XXX

Loan/Credit N°: IBRD 7820 and CTF

TF010690

RFB N°: XXX

CONTENTS

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

ANNEXES

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

Change Order Procedure

1. General

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

2. Change Order Log

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

3. References for Changes

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

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

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

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

Annex 1. Request for Change Proposal

(Employer’s Letterhead)

To: _____

Date: _____

Attention: _____

Contract Name: _____

Contract Number: _____

Dear Ladies and/or Gentlemen:

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

1. Title of Change: _____

2. Change Request No. _____

3. Originator of Change: Employer: _____

Contractor (by Application for Change Proposal No. _____⁸:

4. Brief Description of Change: _____

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

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

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

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

8. General Terms and Conditions:

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

(Employer’s Name)

(Signature)

(Name of signatory)

(Title of signatory)

Annex 2. Estimate for Change Proposal

(Contractor’s Letterhead)

To: _____

Date: _____

Attention: _____

Contract Name: _____

Contract Number: _____

Dear Ladies and/or Gentlemen:

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

1. Title of Change: _____
2. Change Request No./Rev.: _____
3. Brief Description of Change: _____
4. Scheduled Impact of Change: _____
5. Cost for Preparation of Change Proposal: _____⁹

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

⁹ Costs shall be in the currencies of the Contract.

Total Cost (a) + (b)

(Contractor’s Name)

(Signature)

(Name of signatory)

(Title of signatory)

Annex 3. Acceptance of Estimate

(Employer’s Letterhead)

To: _____

Date: _____

Attention: _____

Contract Name: _____

Contract Number: _____

Dear Ladies and/or Gentlemen:

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

1. Title of Change: _____

2. Change Request No./Rev.: _____

3. Estimate for Change Proposal No./Rev.: _____

4. Acceptance of Estimate No./Rev.: _____

5. Brief Description of Change: _____

6. Other Terms and Conditions: In the event that we decide not to order the Change accepted, you shall be entitled to compensation for the cost of preparation of Change Proposal

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

(Employer’s Name)

(Signature)

(Name and Title of signatory)

(Amount)

- (a) Direct material _____
- (b) Major construction equipment _____
- (c) Direct field labor (Total _____ hrs) _____
- (d) Subcontracts _____
- (e) Indirect material and labor _____
- (f) Site supervision _____

- (g) Head office technical staff salaries
 - Process engineer _____ hrs @ _____ rate/hr _____
 - Project engineer _____ hrs @ _____ rate/hr _____
 - Equipment engineer _____ hrs @ _____ rate/hr _____
 - Procurement _____ hrs @ _____ rate/hr _____
 - Draftsperson _____ hrs @ _____ rate/hr _____
 - Total _____ hrs _____

- (h) Extraordinary costs (computer, travel, etc.) _____
- (i) Fee for general administration, _____ % of Items _____
- (j) Taxes and customs duties _____

Total lump sum cost of Change Proposal _____

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

Cost to prepare Estimate for Change Proposal _____

(Amount payable if Change is not accepted)

- 9. Additional time for Completion required due to Change Proposal
- 10. Effect on the Functional Guarantees
- 11. Effect on the other terms and conditions of the Contract
- 12. Validity of this Proposal: within [Number] days after receipt of this Proposal by the Employer
- 13. Other terms and conditions of this Change Proposal:

- (a) You are requested to notify us of your acceptance, comments or rejection of this detailed Change Proposal within _____ days from your receipt of this Proposal.
- (b) The amount of any increase and/or decrease shall be taken into account in the adjustment of the Contract Price.
- (c) Contractor’s cost for preparation of this Change Proposal:²

(Contractor’s Name)

(Signature)

(Name of signatory)

(Title of signatory)

² Specify where necessary.

Annex 5. Change Order

(Employer’s Letterhead)

To: _____

Date: _____

Attention: _____

Contract Name: _____

Contract Number: _____

Dear Ladies and/or Gentlemen:

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

1. Title of Change: _____

2. Change Request No./Rev.: _____

3. Change Order No./Rev.: _____

4. Originator of Change: Employer: _____

Contractor: _____

5. Authorized Price:

Ref. No.: _____

Date: _____

Foreign currency portion _____ plus Local currency portion _____

6. Adjustment of Time for Completion

None Increase _____ days

Decrease _____ days

7. Other effects, if any

Authorized by: _____

(Employer)

Date: _____

Accepted by: _____

(Contractor)

Date: _____

Annex 6. Pending Agreement Change Order

(Employer’s Letterhead)

To: _____

Date: _____

Attention: _____

Contract Name: _____

Contract Number: [_____

Dear Ladies and/or Gentlemen:

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

1. Title of Change: _____
2. Employer’s Request for Change Proposal No./Rev.:
_____ dated: _____
3. Contractor’s Change Proposal No./Rev.: _____ dated:

4. Brief Description of Change: _____
5. Facilities and/or Item No. of equipment related to the requested Change:

6. Reference Drawings and/or technical documents for the requested Change:
Drawing/Document No. Description
7. Adjustment of Time for Completion:
8. Other change in the Contract terms:
9. Other terms and conditions:

(Employer’s Name)

(Signature)

(Name of signatory)

(Title of signatory)

Annex 7. Application for Change Proposal

(Contractor’s Letterhead)

To: _____

Date: _____

Attention: _____

Contract Name: _____

Contract Number: _____

Dear Ladies and/or Gentlemen:

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

1. Title of Change: _____
2. Application for Change Proposal No./Rev.: _____ dated:

3. Brief Description of Change: _____
4. Reasons for Change:
5. Order of Magnitude Estimation (in the currencies of the Contract):
6. Scheduled Impact of Change:
7. Effect on Functional Guarantees, if any:
8. Appendix:

(Contractor’s Name)

(Signature)

(Name of signatory)

(Title of signatory)

Drawings

Appendix A

Below listed Artefacts (**Refer to Volume 3, Appendix A**)

- 1.1 Geographical Location
- 1.2 Station General Arrangement
- 1.3 Single Line Diagram –Proposed

Annexure B

- 1.1 Typical PTM&C drawings (**Refer to Volume 3, Annexure B**)

Annexure C

- 1.1 Typical network integration drawings (**Refer to Volume 3, Annexure C**)

Supplementary Information (Volume 4)

Item	Description
1.	SDL&I, BBBEE and Job creation
2.	NIPP
3.	Insurance
4.	CIDB
5.	Importation Information
6.	SARS Tax Clearance
7.	Industrial Relation and Stability
8.	Forex
9.	Registration on Eskom’s Database

1. SDL&I INCLUDING BBBEE, JOB CREATION AND LOCALISATION (PROCUREMENT SPEND WITHIN SOUTH AFRICA)

Refer to Volume 4, Supplementary Information, SDL&I, BBBEE and Job creation

1.1. Skills Development

Refer to Volume 4, Supplementary Information, SDL&I, BBBEE and job creation

Bidders are required to complete and submit a fully signed **Table -13: Skills Development Compliance Matrix** to indicate the proposed number of persons to be trained per skills type on the skills development matrix.

1.2. Localisation: Procurement Spend within South Africa defined as “subcontracting a minimum of 20% of the total contract value to previously disadvantaged groups and associated skills development”

In order to promote localization preferably in the Western Cape Province the bidders are requested to submit, with its bid, the following:

- A comprehensive plan on Knowledge transfer in terms of Operations and Maintenance capabilities to Eskom employees which includes battery maintenance to ensure systematic and upkeep of battery power output
- Completed and signed **Table -13**

1.3. Broad Based Black Economic Empowerment (B-BBEE):

In respect of the Contractor being an international company they will be exempted from submitting a BBBEE certificate, however in respect of the main contractor being a local bidder, the Broad-Based Black Economic Empowerment certificates will not form part of the bid evaluation but must be provided for record keeping purposes and reporting to government. Therefore either a SANAS Accredited BBBEE certificates for transactions more than R50 million or valid sworn affidavit (DTI Template) will be required for transactions below R50 million.

1.4. Summary of SDL&I returnables

1.4.1. Bidding stage

A bidder is required to submit, with its bid, this as a returnable document:

A signed Supplier Development, Localisation and Industrialisation document – (non-disqualification nor evaluation requirement. It will be convenient for Contract Award.

1.4.2. Contract award stage

- National Industrialisation Participation Programme (NIPP) Obligor Agreement or Letter of Exemption from NIPP entered with the Department of Trade, Industry and Competition of South African Government,
- Commitment to Skills Development as agreed upon and influenced by the Construction Industry Development Board of South Africa CIDB (www.cidb.co.za),
- Commitment to 20% Local Procurement and/or Subcontracting to agreed-upon, and
- Commitment to job creation for communities within the vicinity of the project as part of ESG requirements.

2. INSURANCE

Refer to Clause 34 (Insurance) of the General Contract conditions, Appendix 3 (Insurance Requirements from the Contract and Insurance Requirements by the Employer) and the Contract Forms where insurance details may be required.

The bidder is requested to submit a list of all the Insurances that will be required for the entire project. The list is to be submitted with the bid documents.

3. CONSTRUCTION INDUSTRY DEVELOPMENT BOARD (CIDB)

Construction Industry Development Board (CIDB) was established under the Construction Industry Development Board Act (Act 520) in South Africa and among their functions are to promote and stimulate the development, improvement and expansion of the construction industry.

CIDB is a national body established by an Act of Parliament (Act 38 of 2000) to oversee the sustainability and growth of construction enterprises across the country

If the Bidder elect to subcontract to a local South African contractor for construction works, the subcontractors is expected be registered with CIDB with a grading level of minimum **6CE**. The CIDB certificate or proof of registrations to be submitted with the bid

Only those sub-contractors who are registered with the Construction Industry Development Board of South Africa (CIDB), in a contractor grading designation of minimum stated above or higher, are eligible to be evaluated as subcontractors.

Find below the comprehensive guideline link for the Contractor registration. This will explain what CIDB is, how the grading is decided and also the process of registration. For more information refer to Construction Industry Development Board internet web page, www.cidb.org.za.

Refer to Volume 4 – CIDB for information relating to CIDB regulation, and Guide for contractor’s registration

4. SHIPPING AND INMPORTATION INFORMATION

4.1. Importation Information

Bidders to fill in a form named “Foreign Procurement: Importation Information/Requirements,” found in the Volume 4, Supplementary Information, Importation information folder. Bidders are to ensure that the form is submitted with the **bid**. The questionnaire will assist the Employer to complete the tax memo i.r.o Customs implications.

4.2. Shipping Information

Shipping or Importation form to be found in “Volume 4, Supplementary Information, Shipping Information folder” to be completed and submitted with the **bid**. All the necessary details pertaining to the transportation of the consignment should be included. The same information will be used to solicit estimates from Eskom’s approved Clearing and Forwarding Agents to determine whether the transport estimated costs provided by the supplier are competitive. Based on the comparison a report will be prepared with recommendations and advice will be provided on other benefits that may exist when Eskom Clearing and Forwarding Agents are utilized versus the suppliers handling transportation.

The Shipping Requirements for this Contract are based on the use of INCOTERMS 2020®:

The Contractor delivers the *goods* in accordance with the Incoterm indicated in the table below.

Group	Category	Term	Delivery Place
C	Arrival	CIP (Carriage and Insurance Paid) (Delivered at Place)	As per Employer’s named Place

The Parties obligations described in the above Incoterms are now incorporated into this contract as part of the Supply Requirements.

The obligations of the Contractor and the Employer for the selected Incoterm determine each Party’s costs, risks and insurance requirements incidental to the supply and transport of the *goods* from *Contractor* to *Employer*. Each Party’s obligations cover the following subjects:

A	The <i>Contractor’s</i> obligations:	B	The <i>Employer’s</i> obligations:
A1	Provision of goods in conformity with contract	B1	Payment of the price as per the contract terms

A	The Contractor’s obligations:	B	The Employer’s obligations:
A2	Checking - packing - marking	B2	Employers Marine Insurance to do quality check and material survey (where applicable) at every handling point
A3	Licences, authorisations and formalities (in country of export). This includes obtaining EUR1 Certificate where goods are of EU origin	B3	Contracts of marine insurance on an ex-works basis (as per clause 84.1 on Contract Data)
A4	Bookings of main carriage and inland transport at country of export	B4	No action required
A5	Contract of main carriage	B5	No action required
A6	Acceptance of risks associated with main carriage	B6	Transfer of risks associated with main carriage to supplier
A7	<p>Notice to the Employer Seafreight : 1(one) week after vessel departure at country of export . Airfreight :upon confirmation of bookings details with airline</p> <p>Provide/handover original Shipping Document (inline with utilized transport mode mentioned timelines as shown above) to enable South African Customs Clearances</p>	B7	<p>Nominate Clearing and Forwarding Agent and Inform Contractor</p> <p>Taking delivery of Shipping Documents</p>
A8	Contractor’s Forwarding Agent informs Employer’s nominated Clearing and Forwarding Agent on vessel arrival dates and handover	B8	Responsible for handover charges payable to Employer’s nominated Clearing and Forwarding Agent
A9	No action required	B9	Perform Import Customs Formalities (Payment of Customs VAT, Duties and any applicable levies)
A10	Accept Proof of Customs Clearance Documents	B10	Provide Proof of Customs Clearance Documents

A	The Contractor’s obligations:	B	The Employer’s obligations:
A11	Arrange transport delivery, including all necessary road permits, to Employer’s named place	B11	Arrange transport delivery, including all necessary road permits, to Employer’s named place
A12	Notice to the delivery site on estimated delivery times	B12	Notice to the delivery site on estimated delivery times
A13	Deliver and offload at Employer’s named place	B13	Deliver and offload at Employer’s named place
A14	Provide proof of delivery, transport document or equivalent electronic message	B14	Provide proof of delivery, transport document or equivalent electronic message
A15	Responsible for transport costs to all stakeholders involved until named place	B15	Payment of the price to Contractor as per the contract terms

A11 –A14 will apply to the Contractor, where given responsibility to delivery from port to site, no action required from Employer

B11 –B14 will apply to the Employer, where given responsibility to deliver from port to site, no action required from Contractor

5. SARS TAX CLEARANCE CERTIFICATE

It is essential that all suppliers conducting business with the Employer are tax compliant at the awarding of a competitive bid. No Bids will be awarded to suppliers who are not tax compliant.

However, it must be noted that SARS no longer issues tax clearance certificates (TCCs). It is therefore important for bidders to fill in the Standard Bidding Document 1 (SBD1) found in “Volume 4, Supplementary information, SARS Tax Clearance Information” folder, issued as part of the bid document. SBD1 requires bidders to provide either their Tax Compliance Status (TCS) e-filing PIN from SARS or their Master Registration Number on CSD (the CSD number). The e-filing Pin will be utilized to verify the tax compliance status of bidders either by using the bidder’s TCS PIN or CSD number. Bidders are also permitted to print their own TCCs from e-filing which they can submit with their bids.

Foreign suppliers with existing tax obligations in South Africa must provide proof of tax compliance status in the manner described above. Foreign suppliers (who have answered yes to any of the questions in the relevant section of SBD 1 and who have not provided a CSD or SARS

e-filing pin number as per Annexure A, will need to provide a copy of a current valid tax compliance certificate

Foreign suppliers with no existing tax obligations in South Africa or history of doing business in South Africa must complete a pre-award questionnaire on SBD1 (Find attached)

If such foreign bidder is selected for award, the Employer will request the bidder to send the following information to SARS at the email address: **GovernmentInstitute@sars.gov.za**

- Details of foreign company;
- Description of goods and services being supplied by foreign company;
- Name of the South African Government institution the bidder will be providing the goods and/or services to.

The South African Revenue Services will issue out a confirmation of Tax obligation letter confirming whether or not the foreign supplier has tax obligation in South Africa.

If the recommended bidder is not tax compliant, the bidder will be notified of their non-compliance and be granted a reasonable opportunity to rectify their tax compliance status with SARS. The bidder must then provide proof of its tax compliance which must be verified by the Employer via CSD or e-filing. If the bidder fails to submit proof of tax compliance status despite having been afforded a reasonable opportunity to do so, such bidder’s bid shall be rejected.

6. STAKEHOLDER MANAGEMENT

Refer to Volume 4 – Stakeholder Management for specification for external stakeholder relation (Document no. 240-131867835) and specification for Labour and industrial relation (Document no. 240-131867835)

7. FOREIGN CURRENCY PAYMENT METHODS

Eskom Holdings currently has a policy of being fully hedged against any foreign currency and exchange rate risk. Where agreements are concluded or where Eskom has to pay foreign currency for the imported components/services, or the payment is linked to an exchange rate movement, Eskom has developed the following options relating to payments for those particular agreements, Kindly note that for all foreign currency payments, Eskom requires proof of the foreign commitment.

7.1. Payment Methods for Imports

Where foreign exchange is involved, and Eskom will cover the risk forward, the methods of payment listed in Part 1 are the only acceptable methods. It must be noted that Eskom considers Payment **Method 1** to be the default payment method.

7.1.1. Payment Method 1: Payment of Foreign commitments

Payment of Eskom’s foreign commitment in foreign currency will be made either:

7.1.1.1. Payment Method 1A - Payment is made directly overseas

Payment will be effected to a nominated bank account in a foreign country in a foreign currency (payment will be made to the party and account nominated by the supplier in the contract, and not to any other party);

The contracting party must be the direct importer of the goods

7.1.1.1.1. Documents required to be submitted for payment of imports

- Commercial invoice (from the foreign supplier)
- SAD 500
- Bill of Entry as evidence that goods have been cleared by the Department of Customs and Excise
- Customs release notification
- Transport documents from the freight company
- Marine/ ocean bill of lading
- Any one of the following documents as per the mode of transportation
 - Airway bill / air transport document
 - Road or rail consignment note
 - Postal receipt “ good despatched
 - Certificate of posting
 - Courier dispatch note or air waybill

7.1.1.1.2. Documents required to be submitted for payment of services

Services related payments to be effected to a nominated bank account in a foreign country in a foreign currency (payment will be made to the party and account nominated by the supplier in the contract, and not to any other party);

- Commercial invoice (invoice from the overseas supplier)
- Assessment certificate stating where the service was rendered e.g. Germany or JHB, signed by the project manager.

7.1.1.2. Payment Method 1B; Payment to an SARB approved CFC account

To a valid SARB approved CFC account in South Africa, in a foreign currency (payment will be made to the party and account nominated by the bidder in the contract, and not to any other party).

Should the bidder select this option, the following should be provided:

- The contracting party must be the direct importer
- Proof that the South African Reserve Bank has given bidder approval to invoice Eskom in foreign currency and to receive foreign currency proceeds into that CFC account.
- For payment purposes, Eskom will require both the foreign (commercial) invoice and the local tax invoice
- The foreign currency values on both the commercial and local invoice must be the same. Eskom will not pay any profit in foreign currency.
- Service related payments are excluded from this option;
- Copy of the application made by the bidder’s bank to the South African Reserve Bank (SARB) requesting approval to invoice Eskom and receive foreign currency proceeds from Eskom into the bidders CFC account for the imports/services provided in the proposed contract. Please note that the application to SARB must make specific reference to Eskom.
- Copy of the official response from the South African Reserve Bank authorising payments to be made into the Bidders CFC account.
- Proof of importation by the contracting party will be required.

Approvals granted by SARB, are only valid for a period of 1 year or as per the period approved by SARB. It is the supplier’s responsibility to ensure that this facility remains valid for the duration of the contract.

7.1.1.2.1. Documents required to be submitted for payment of imports

- Commercial Invoice (from the foreign supplier)
- Local Tax Invoice
The foreign currency values on both the commercial and local invoice must match. Eskom will NOT pay profit to a supplier in foreign currency and profits cannot be linked to exchange rate.
- SAD 500
- Bill of Entry as evidence that goods have been cleared by the Department of Customs and Excise
- Customs release notification
- Transport documents from the freight company
- Any of the following documents as per the mode of transportation
 - Marine/ ocean bill of lading

- Airway bill / air transport document
- Road or rail consignment note
- Postal receipt
- Certificate of posting
- Courier dispatch note or air waybill

7.1.1.2.2. Documents required to be submitted for payment of services

Service related payments to a valid SARB approved CFC account in South Africa; in a foreign currency (payment will be made to the party and account nominated by the supplier in the contract, and not to any other party).

Should a bidder select this option, they are required to provide proof that the South African Reserve Bank has given them approval to invoice Eskom in foreign currency for services and to receive the foreign currency proceeds for services into that CFC account. The proof would consist of:

- Copy of the application made by the bidders bankers to the South African Reserve Bank (SARB) requesting approval to invoice Eskom and receive foreign currency proceeds from Eskom into the bidders CFC account for the imports/services provided in the proposed contract. Please note that the application to SARB must make specific reference to Eskom.
- Copy of the official response from the South African Reserve Bank authorising payments to be made into the bidders CFC account.
- • Commercial invoice (invoice from the overseas supplier to proof that we have foreign currency exposure)
- Local Tax invoice (from the local supplier)
- Copy of the passport/s and work permit/s of the individual/s for which payment is being requested.
- Assessment certificate stating where the service was rendered e.g. Germany or JHB, signed by the project manager.

Please note that the foreign currency values on both the commercial and local invoice must match. Eskom will NOT pay profit to a supplier in foreign currency and the profits cannot be linked to exchange rate.

NB: If a supplier is unable to produce or provide us with a commercial invoice, the contract will be concluded in ZAR and Not in currency and the bidder will be required to reimburse Eskom for any costs incurred in the purchase and subsequent selling of any forward cover acquired.

7.1.2. Payment Method 2: Payment in Rand at the selling spot rate of exchange

In South African Rand at the selling spot rate of exchange obtained Eskom’s Treasury on the date that the forward cover is cancelled. Eskom will notify the bidder of the date that the forward cover is cancelled as well as the intended payment date, which will be as per the agreed payment terms. Any exchange rate adjustment after Eskom has notified the bidder of the date and the rate which the forward cover is cancelled will be for the account of the bidder.

Requirements applicable to this payment method:

- The Bidder needs to apply for and receive approval from Eskom **prior** to the Bid Closing date, for approval to use this Payment Method.
- The contracting party has to be the direct importer of the goods.
- Proof of importation is required for this option
- This payment option is not applicable for the payment of services
- The bidder must provide a letter of undertaking that neither they nor any of their subsidiaries will acquire forward cover for this exposure.

An indemnity in writing confirming that the bidder will not buy forward cover is required where Payment Method 1 or 2 is contracted.

7.1.3. Contract in ZAR with no exchange rate variation for Eskom’s account.

The Employer will permit the bidder to hedge the exposure themselves and quote the Employer as a fixed ZAR price where the Employer will have no exposure to any exchange rate movement. The Employer however, reserves the right to require that both the Employer and the bidder simultaneously, on the same date and at the same time, obtain pricing from their respective bankers to ensure that any exchange rate passed on to the Employer is a market related rate. The Bidder will be required to either match or better the exchange rate that the Employer would obtain in the market. If not, the Bidder will be required to select any one of the other payment methods indicated above which would be applicable to them. If an exchange rate has been agreed by both parties, the Employer will not be liable for any exchange rate adjustment thereafter. Although the contract will be a ZAR based contract, Eskom reserves the right to, on an ad-hoc basis, request proof of importation and commercial invoices.

Eskom will require substantiating proof of importation at the time of invoicing, regardless of which Payment Method is used.

Where goods were previously imported into stock by the Bidder, for delivery to various customers, including the Employer, the price quoted must be in South African Rand. In such cases the Employer will not undertake any foreign exchange commitment or arrange forward cover.

Provided that the Bidder nominates either Payment Method 1 or 2 as the main bid offer, an alternative payment method offering a fixed price not subject to exchange variation may be offered for the Employer’s consideration.

8. REQUIREMENTS FOR REGISTRATION ON ESKOM’S DATABASE

8.1. The successful Contractor will be requested to submit, within ten (10) days after the receipt of Letter of Acceptance, the necessary documentations required for the registration and creation of a contractor number into the Employer’s database for the purpose of payment.

8.2. The successful supplier (s) will be required to complete the online registration form and complete the OHS, Quality and Declaration of Interest

8.3. The required documents for the registration of suppliers are:

8.3.1. CSD report/number (Applicable for South African registered bidders)

Bidders shall ensure that the correct email addresses to be use for communication purpose is reflected on CSD report)

8.3.2. Bidder’s letter of good standing /Accidental and disability cover

8.3.3. OHS report

8.3.4. Quality report

8.3.5. Declaration of Interest report

8.3.6. Valid BBBEE certificate/ Sworn affidavit (For South African registered bidders)

8.3.6.1. Valid sworn affidavit guidelines:

- a. The company name and registration must be reflected on the sworn affidavit;
- b. The deponent must indicate their capacity in the business;
- c. Bidders to indicate whether they used financial statements/management accounts;
- d. The deponent must sign the affidavit;
- e. The date of signature of the deponent must be the same date as the commissioner’s stamp date;

PART 3 – Conditions of Contract and Contract Forms

Section VIII - General Conditions of Contract

Table of Clauses

A.	Contract and Interpretation	198
1.	Definitions	198
2.	Contract Documents.....	201
3.	Interpretation	201
4.	Communications.....	203
5.	Law and Language	204
6.	Fraud and Corruption	204
B.	Subject Matter of Contract.....	205
7.	Scope of Facilities	205
8.	Time for Commencement and Completion	206
9.	Contractor’s Responsibilities	206
10.	Employer’s Responsibilities	211
C.	Payment.....	212
11.	Contract Price	212
12.	Terms of Payment.....	212
13.	Securities	213
14.	Taxes and Duties.....	214
D.	Intellectual Property	215
15.	License/Use of Technical Information	215
16.	Confidential Information	215
E.	Execution of the Facilities.....	216
17.	Representatives	216
18.	Work Program	219
19.	Subcontracting.....	221
20.	Design and Engineering	222
21.	Procurement.....	225
22.	Installation	227
23.	Test and Inspection.....	241
24.	Completion of the Facilities	243
25.	Commissioning and Operational Acceptance	245
F.	Guarantees and Liabilities	248
26.	Completion Time Guarantee	248

27.	Defect Liability	249
28.	Functional Guarantees	252
29.	Patent Indemnity	253
30.	Limitation of Liability	254
G.	Risk Distribution	254
31.	Transfer of Ownership	254
32.	Care of Facilities.....	255
33.	Loss of or Damage to Property; Accident or Injury to Workers; Indemnification	256
34.	Insurance	257
35.	Unforeseen Conditions	260
36.	Change in Laws and Regulations	261
37.	Force Majeure	261
38.	War Risks	263
H.	Change in Contract Elements.....	265
39.	Change in the Facilities	265
40.	Extension of Time for Completion	269
41.	Suspension	270
42.	Termination	272
43.	Assignment	279
44.	Export Restrictions.....	279
I.	Claims, Disputes and Arbitration	279
45.	Contractor’s Claims.....	279
46.	Disputes and Arbitration	281

General Conditions of Contract

A. Contract and Interpretation

1. Definitions

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

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

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

“GCC” means the General Conditions of Contract hereof.

“PCC” means the Particular Conditions of Contract.

“day” means calendar day.

“year” means 365 days.

“month” means calendar month.

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

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

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

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

“Contractor’s Representative” means any person nominated by the Contractor and approved by the Employer in the manner provided in GCC Sub-Clause 17.2 (Contractor’s Representative and Construction Manager) hereof to perform the duties delegated by the Contractor.

“Construction Manager” means the person appointed by the Contractor’s Representative in the manner provided in GCC Sub-Clause 17.2.4.

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

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

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

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

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

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

“Installation Services” means all those services ancillary to the supply of the Plant for the Facilities, to be provided by the Contractor under the Contract, such as transportation and provision of marine or other similar insurance, inspection, expediting, site preparation works (including the provision and use of Contractor’s Equipment and the supply of all construction materials required), installation, testing, Pre-commissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc... as the case may require.

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

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

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

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

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

“Completion” means that the Facilities (or a specific part thereof where specific parts are specified in the Contract) have been completed operationally and structurally and put in a tight and clean condition, that all work in respect of 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.

“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.

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

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

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

acceptance in accordance with GCC Clause 25 (Commissioning and Operational Acceptance) hereof.

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

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

“Sexual Exploitation and Abuse” “(SEA)” means the following:

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

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

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

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

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

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|------------------------------|-----|---|
| 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: <ul style="list-style-type: none"> (a) words indicating one gender include all genders; |

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

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

3.2 Incoterms

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

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

3.3 Entire Agreement

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

3.4 Amendment

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

3.5 Independent Contractor

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

to create any contractual relationship between any such employees, representatives or Subcontractors and the Employer.

3.6 Non-Waiver

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

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

3.7 Severability

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

3.8 Country of Origin

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

4. **Communica- tions**

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

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

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

-
- 5. Law and Language**
- 5.1 The Contract shall be governed by and interpreted in accordance with laws of the country **specified in the PCC.**
- 5.2 The ruling language of the Contract shall be that **stated in the PCC.**
- 5.3 The language for communications shall be the ruling language unless otherwise **stated in the PCC.**
- 6. Fraud and Corruption**
- 6.1 The Bank requires compliance with the Bank’s Anti-Corruption Guidelines and its prevailing sanctions policies and procedures as set forth in the WBG’s Sanctions Framework, as set forth in Appendix B to the GCC.
- 6.2 The Employer requires the Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the Bidding process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

B. Subject Matter of Contract

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

- 8. Time for Commencement and Completion**
- 8.1 The Contractor shall commence work on the Facilities within the period **specified in the PCC** and without prejudice to GCC Sub-Clause 9.9 and 26.2 hereof, the Contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in the Appendix to the Contract Agreement titled Time Schedule.
- 8.2 The Contractor shall attain Completion of the Facilities or of a part where a separate time for Completion of such part is specified in the Contract, within the time **stated in the PCC** or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.
- 9. Contractor's Responsibilities**
- 9.1 The Contractor shall design, manufacture including associated purchases and/or subcontracting, install and complete the Facilities in accordance with the Contract. When completed, the Facilities should be fit for the purposes for which they are intended as defined in the Contract.
- 9.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities including any data as to boring tests provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site if access thereto was available and of other data readily available to it relating to the Facilities as of the date twenty-eight (28) days prior to Bid submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.
- 9.3 The Contractor shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under GCC Sub-Clause 10.3 hereof and that are necessary for the performance of the Contract.
- 9.4 The Contractor shall comply with all laws in force in the country where the Facilities are to be implemented. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or

resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Sub-Clause 10.1 hereof.

- 9.5 Any Plant and Installation Services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under GCC Clause 1 (Country of Origin). Any subcontractors retained by the Contractor shall be from a country as specified in GCC Clause 1 (Country of Origin).
- 9.6 If the Contractor is a joint venture, or association (JV) of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfillment of the provisions of the Contract, and shall designate one of such persons to act as a leader with authority to bind the JV. The composition or the constitution of the JV shall not be altered without the prior consent of the Employer.
- 9.7 Pursuant to paragraph 2.2 e. of Appendix B to the General Conditions the Contractor shall permit and shall cause its agents (where declared or not), subcontractors, subconsultants, service providers, suppliers, and personnel, to permit, the Bank and/or persons appointed by the Bank to inspect the site and/or the accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have such accounts, records and other documents audited by auditors appointed by the Bank. The Contractor's and its Subcontractors' and subconsultants' attention is drawn to Sub-Clause 6.1 (Fraud and Corruption) which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Bank's prevailing sanctions procedures).
- 9.8 The Contractor shall conform to the sustainable procurement contractual provisions, if and as specified in the PCC.
- 9.9 Contractor's Environmental and Social Management Plan (C-ESMP)

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

The Contractor shall submit, to the Project Manager for Review, any additional Management Strategies and Implementation Plans as are necessary to manage the ES risks and impacts of the Facilities. These

Management Strategies and Implementation Plans collectively comprise the Contractor's Environmental and Social Management Plan (C-ESMP).

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

9.10 Training of Contractor's Personnel

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

As stated in the Employer's Requirements or as instructed by the Project Manager, the Contractor shall also allow appropriate opportunities for the relevant Contractor's Personnel to be trained on ES aspects of the Contract by the Employer's personnel and/or other personnel assigned by the Employer.

9.11 Stakeholder engagements

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

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

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

9.12 Forced Labor

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

No persons shall be employed or engaged who have been subject to trafficking. Trafficking in persons is defined as the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud,

deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.

The Contractor shall also take measures to require its suppliers (other than Subcontractors) not to employ or engage forced labour including trafficked persons. If forced labour/trafficking cases are identified, the Contractor shall take measures to require the suppliers to take appropriate steps to remedy them. Where the supplier does not remedy the situation, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to manage such risks.

9.13 Child Labor

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

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

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

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

- (a) with exposure to physical, psychological or sexual abuse;
- (b) underground, underwater, working at heights or in confined spaces;
- (c) with dangerous machinery, equipment or tools, or involving handling or transport of heavy loads;
- (d) in unhealthy environments exposing children to hazardous substances, agents, or processes, or to temperatures, noise or vibration damaging to health; or

- (e) under difficult conditions such as work for long hours, during the night or in confinement on the premises of the employer.

The Contractor shall also take measures to require its suppliers (other than Subcontractors) not to employ or engage child labor. If child labor cases are identified, the Contractor shall take measures to require the suppliers to take appropriate steps to remedy them. Where the supplier does not remedy the situation, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to manage such risks.

9.14 Serious Safety Issues

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

9.15 Obtaining natural resource materials

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

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

10. Employer's Responsibilities

- 10.1 All information and/or data to be supplied by the Employer as described in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, shall be deemed to be accurate, except when the Employer expressly states otherwise.
- 10.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in that Appendix.
- 10.3 The Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which (a) such authorities or undertakings require the Employer to obtain in the Employer's name, (b) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract, and (c) are specified in the Appendix (Scope of Works and Supply by the Employer).
- 10.4 If requested by the Contractor, the Employer shall use its best endeavors to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.
- 10.5 Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature, including those required by the Contractor to properly carry out Pre-commissioning, Commissioning and Guarantee Tests, all in accordance with the provisions of the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, at or before the time specified in the program furnished by the Contractor under GCC Sub-Clause 18.2 hereof and in the manner thereupon specified or as otherwise agreed upon by the Employer and the Contractor.

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

C. Payment

11. Contract Price

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

12. Terms of Payment

- 12.1 The Contract Price shall be paid as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement and in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, which also outlines the procedures to be followed in making application for and processing payments.
- 12.2 No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Facilities or any part(s) thereof.
- 12.3 In the event that the Employer fails to make any payment by its respective due date or within the period set forth in the Contract, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate(s) shown in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.

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

13. Securities

13.1 Issuance of Securities

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

13.2 Advance Payment Security

13.2.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with the Appendix to the Contract Agreement titled Terms and Procedures of Payment, and in the same currency or currencies.

13.2.2 The security shall be in the form provided in the Bidding documents or in another form acceptable to the Employer. The amount of the security shall be reduced in proportion to the value of the Facilities executed by and paid to the Contractor from time to time, and shall automatically become null and void when the full amount of the advance payment has been recovered by the Employer. The security shall be returned to the Contractor immediately after its expiration.

13.3 Performance Security

13.3.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security for the due performance of the Contract in the amount **specified in the PCC**.

13.3.2 The Performance Security shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Employer, and shall be in the form provided in Section X, Contract Forms, corresponding to the type of bank guarantee stipulated by the Employer in the PCC, or in another form acceptable to the Employer.

13.3.3 Unless otherwise specified in the PCC, the security shall be reduced by half on the date of the Operational Acceptance. The Security shall become null and void, or shall be reduced pro rata to the Contract Price of a part of the Facilities for which a separate Time for Completion is provided, five hundred and forty (540) days after

Completion of the Facilities or three hundred and sixty five (365) days after Operational Acceptance of the Facilities, whichever occurs first; provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC Sub-Clause 27.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the Contractor immediately after its expiration, provided, however, that if the Contractor, pursuant to GCC Sub-Clause 27.10, is liable for an extended defect liability obligation, the Performance Security shall be extended for the period specified in the PCC pursuant to GCC Sub-Clause 27.10 and up to the amount specified in the PCC.

13.3.4 The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract. The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Employer was not entitled to make the claim.

14. Taxes and Duties

- 14.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the country where the Site is located.
- 14.2 Notwithstanding GCC Sub-Clause 14.1 above, the Employer shall bear and promptly pay
- (a) all customs and import duties for the Plant specified in Price Schedule No. 1; and
 - (b) other domestic taxes such as, sales tax and value added tax (VAT) on the Plant specified in Price Schedules No. 1 and No. 2 and that is to be incorporated into the Facilities, and on the finished goods, imposed by the law of the country where the Site is located.
- 14.3 If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the country where the Site is located, the Employer shall use its best endeavors to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.
- 14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies and charges

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

D. Intellectual Property

15. License/Use of Technical Information

- 15.1 For the operation and maintenance of the Plant, the Contractor hereby grants a non-exclusive and non-transferable license (without the right to sub-license) to the Employer under the patents, utility models or other industrial property rights owned by the Contractor or by a third Party from whom the Contractor has received the right to grant licenses thereunder, and shall also grant to the Employer a non-exclusive and non-transferable right (without the right to sub-license) to use the know-how and other technical information disclosed to the Employer under the Contract. Nothing contained herein shall be construed as transferring ownership of any patent, utility model, trademark, design, copyright, know-how or other intellectual property right from the Contractor or any third Party to the Employer.
- 15.2 The copyright in all drawings, documents and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third Party, including suppliers of materials, the copyright in such materials shall remain vested in such third Party.

16. Confidential Information

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

the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GCC Clause 16.

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

E. Execution of the Facilities

17. Representatives

17.1 Project Manager

If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Employer shall appoint and notify the Contractor in writing of the name of the Project Manager. The Employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect

upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Employer at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.

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

17.2 Contractor's Representative & Construction Manager

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

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

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

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

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

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

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

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

17.2.5 The Project Manager may require the Contractor to remove (or cause to be removed) the Contractor's Representative or any other person employed by the Contractor in the execution of the Contract, who:

- (a) persists in any misconduct or lack of care;
- (b) carries out duties incompetently or negligently;
- (c) fails to comply with any provision of the Contract;
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment;

- (e) based on reasonable evidence, is determined to have engaged in Fraud and Corruption during the execution of the Contract;
- (f) has been recruited from the Employer's Personnel in breach of GCC Sub-Clause 22.2.2;
- (g) undertakes behaviour which breaches the Code of Conduct (ES), as applicable;

If appropriate, the Contractor shall then promptly appoint (or cause to be appointed) a suitable replacement with equivalent skills and experience.

Notwithstanding any requirement from the Project Manager to remove or cause to remove any person, the Contractor shall take immediate action as appropriate in response to any violation of (a) through (g) above. Such immediate action shall include removing (or causing to be removed) from the Site or other places where the Contract is being executed, any Contractor's Personnel who engages in (a), (b), (c), (d), (e) or (g) above or has been recruited as stated in (f) above..

- 17.2.6 If any representative or person employed by the Contractor is removed in accordance with GCC Sub-Clause 17.2.5, the Contractor shall, where required, promptly appoint a suitable replacement with equivalent skills and experience.

18. Work Program

18.1 Contractor's Organization

The Contractor shall supply to the Employer and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out work on the Facilities within twenty-one (21) days of the Effective Date. The chart shall include the identities of the key personnel and the curricula vitae of such key personnel to be employed shall be supplied together with the chart. The Contractor shall promptly inform the Employer and the Project Manager in writing of any revision or alteration of such an organization chart.

18.2 Program of Performance

Within twenty-eight (28) days after the Effective Date, the Contractor shall submit to the Project Manager a detailed program of performance of the Contract, made in a form acceptable to the

Project Manager and showing the sequence in which it proposes to design, manufacture, transport, assemble, install and precommission the Facilities, as well as the date by which the Contractor reasonably requires that the Employer shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve Completion, Commissioning and Acceptance of the Facilities in accordance with the Contract. The program so submitted by the Contractor shall accord with the Time Schedule included in the Appendix to the Contract Agreement titled Time Schedule, and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion specified in the PCC pursuant to Sub-Clause 8.2 and any extension granted in accordance with GCC Clause 40, and shall submit all such revisions to the Project Manager.

18.3 Progress Report

The Contractor shall monitor progress of all the activities specified in the program referred to in GCC Sub-Clause 18.2 above, and supply a progress report to the Project Manager every month.

The progress report shall be in a form acceptable to the Project Manager and shall indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken.

Unless otherwise stated in the Specifications, each progress report shall include the Environmental and Social (ES) metrics set out in Appendix C.

In addition to the progress reports, the Contractor shall inform the Project Manager immediately of any allegation, incident or accident in the Site, which has or is likely to have a significant adverse effect on the environment, the affected communities, the public, Employer's Personnel or Contractor's Personnel. This includes, but is not limited to, any incident or accident causing fatality or serious injury; significant adverse effects or damage to private property; or any allegation of SEA and/or SH. In case of SEA and/or SH, while maintaining confidentiality as appropriate, the type of allegation (sexual exploitation, sexual abuse or sexual harassment), gender and

age of the person who experienced the alleged incident should be included in the information.

The Contractor, upon becoming aware of the allegation, incident or accident, shall also immediately inform the Project Manager of any such incident or accident on the Subcontractors' or suppliers' premises relating to the Facilities which has or is likely to have a significant adverse effect on the environment, the affected communities, the public, Employer's Personnel, or Contractor's, its Subcontractors' and suppliers' personnel. The notification shall provide sufficient detail regarding such incidents or accidents. The Contractor shall provide full details of such incidents or accidents to the Project Manager within the timeframe agreed with the Project Manager.

The Contractor shall require its Subcontractors and suppliers to immediately notify the Contractor of any incidents or accidents referred to in this Subclause

18.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the program referred to in GCC Sub-Clause 18.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Employer or the Project Manager, prepare and submit to the Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under GCC Sub-Clause 8.2, any extension thereof entitled under GCC Sub-Clause 40.1, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.

18.5 Procedures

The Contract shall be executed in accordance with the Contract Documents including the procedures given in the Forms and Procedures of the Employer's Requirements.

The Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract.

19. Subcontracting

19.1 The Appendix to the Contract Agreement titled List of Major Items of Plant and Installation Services and List of Approved

Subcontractors, specifies major items of supply or services and a list of approved Subcontractors against each item, including manufacturers. Insofar as no Subcontractors are listed against any such item, the Contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The Contractor may from time to time propose any addition to or deletion from any such list. The Contractor shall submit any such list or any modification thereto to the Employer for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the Employer for any of the Subcontractors shall not relieve the Contractor from any of its obligations, duties or responsibilities under the Contract.

- 19.2 The Contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GCC Sub-Clause 19.1.
- 19.3 For items or parts of the Facilities not specified in the Appendix to the Contract Agreement titled List of Major Items of Plant and Installation Services and List of Approved Subcontractors, the Contractor may employ such Subcontractors as it may select, at its discretion.
- 19.4 Each sub-contract shall include provisions which would entitle the Employer to require the sub-contract to be assigned to the Employer under GCC 19.5 (if and when applicable), or in event of termination by the Employer under GCC 42.2.
- 19.5 If a subcontractor's obligations extend beyond the expiry date of the relevant Defects Liability Period and the Project Manager, prior to that date, instructs the Contractor to assign the benefits of such obligations to the Employer, then the Contractor shall do so.
- 19.6 The Contractor shall ensure that its Subcontractors execute the Facilities in accordance with the Contract, including complying with the relevant ES requirements and the obligations set out in GCC Sub-Clause 22.4.

20. Design and Engineering

20.1 Specifications and Drawings

- 20.1.1 The Contractor shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.

The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer.

20.1.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the Employer, by giving a notice of such disclaimer to the Project Manager.

20.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of Bid submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied subject to approval by the Employer and shall be treated in accordance with GCC Clause 39.

20.3 Approval/Review of Technical Documents by Project Manager

20.3.1 The Contractor shall prepare or cause its Subcontractors to prepare, and furnish to the Project Manager the documents listed in the Appendix to the Contract Agreement titled List of Documents for Approval or Review, for its approval or review as specified and in accordance with the requirements of GCC Sub-Clause 18.2 (Program of Performance).

Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof.

GCC Sub-Clauses 20.3.2 through 20.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

20.3.2 Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Sub-Clause 20.3.1, the

Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefor and the modifications that the Project Manager proposes.

If the Project Manager fails to take such action within the said fourteen (14) days, then the said document shall be deemed to have been approved by the Project Manager.

- 20.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with the Contract or that it is contrary to good engineering practice.
- 20.3.4 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Sub-Clause 20.3.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.
- 20.3.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the Parties within a reasonable period, then such dispute or difference may be referred to a Dispute Board for determination in accordance with GCC Sub-Clause 46.1 hereof. If such dispute or difference is referred to a Dispute Board, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Dispute Board upholds the Contractor's view on the dispute and if the Employer has not given notice under GCC Sub-Clause 46.3 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Dispute Board shall decide, and the Time for Completion shall be extended accordingly.

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

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

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

21. Procurement

21.1 Plant

Subject to GCC Sub-Clause 14.2, the Contractor shall procure and transport all Plant in an expeditious and orderly manner to the Site.

21.2 Employer-Supplied Plant

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

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

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

or to substitute for any defective item, or shall apply to defective items that have been repaired.

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

21.3 Transportation

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

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

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

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

21.4 Customs Clearance

The Contractor shall, at its own expense, handle all imported materials and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Employer's obligations under GCC Sub-Clause 14.2, provided that if applicable laws or regulations require any application or act to be made by or in the name of the Employer, the Employer shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance that are not the fault of the Contractor, the Contractor shall be entitled to an extension in the Time for Completion, pursuant to GCC Clause 40.

22. Installation

22.1 Setting Out/Supervision

22.1.1 Bench Mark: The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Employer.

If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Employer, the expense of rectifying the same shall be borne by the Employer.

22.1.2 Contractor's Supervision: The Contractor shall give or provide all necessary superintendence during the installation of the Facilities, and the Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

22.2 Labor:

22.2.1 Engagement of Staff and Labor

Except as otherwise stated in the Employer's Requirements , the Contractor shall make arrangements for the

engagement of all staff and labor, local or otherwise, and for their payment, housing, feeding and transport.

The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labor that has the necessary skills.

The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labor and personnel to be employed on the Site into the country where the Site is located. The Employer will, if requested by the Contractor, use his best endeavors in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national or government permission required for bringing in the Contractor's personnel.

The Contractor shall at its own expense provide the means of repatriation to all of its and its Contractor's Personnel employed on the Contract at the Site or other places where the Installation Services are carried out to the place where they were recruited or to their domicile. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Employer may provide the same to such personnel and recover the cost of doing so from the Contractor.

The Contractor shall provide Contractor's Personnel employed for the execution of the Contract at the Site or other places where the Installation Services are carried out, relevant information and documentation that are clear and understandable regarding their terms and conditions of employment. The information and documentation shall set out their rights under relevant labor laws applicable to the Contractor's Personnel (which will include any applicable collective agreements), including their rights related to hours of work, wages, overtime, compensation and benefits, as well as those arising from any requirements in the Employer's Requirements. The Contractor's Personnel shall

be informed when any material changes to their terms or conditions of employment occur.

22.2.2 Persons in the Service of Employer

The Contractor shall not recruit, or attempt to recruit, staff and labor from amongst the Employer's Personnel.

22.2.3 Labor Laws

The Contractor shall comply with all the relevant labor Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labor of its Subcontractors.

The Contractor shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labor.

22.2.4 Rates of Wages and Conditions of Labor

The Contractor shall pay rates of wages, and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

The Contractor shall inform the Contractor's Personnel about:

- (a) any deduction to their payment and the conditions of such deductions in accordance with the applicable laws or as stated in the Employer's Requirements; and
- (b) their liability to pay personal income taxes in the Country in respect of such of their salaries, wages,

allowances and any benefits as are subject to tax under the laws of the Country for the time being in force.

The Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws.

Where required by applicable Laws or as stated in the Employer's Requirements, the Contractor and its Subcontractors shall provide their personnel written notice of termination of employment and details of severance payments in a timely manner. The Contractor and its Subcontractors shall have paid their personnel (either directly or where appropriate for their benefit) all due wages and entitlements including, as applicable, social security benefits and pension contributions, on or before the end of their engagement/ employment.

22.2.5 Working Hours

No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours **stated in the PCC**, unless:

- (a) otherwise stated in the Contract,
- (b) the Project Manager gives consent, or
- (c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Facilities, in which case the Contractor shall immediately advise the Project Manager.

If and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Project Manager's consent thereto, the Project Manager shall not unreasonably withhold such consent.

This Sub-Clause shall not apply to any work which is customarily carried out by rotary or double-shifts.

22.2.6 Facilities for Staff and Labor

Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel employed for the execution of the Contract at the Site or other places where the Installation Services are

carried out. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Employer's Requirements.

If stated in the Employer's Requirements, the Contractor shall give access to or provide services that accommodate the physical, social and cultural needs of the Contractor's Personnel. The Contractor shall also provide similar facilities for the Employer's Personnel as stated in the Employer's Requirements.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Facilities.

22.2.7 Health and Safety

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel employed for the execution of Installation Services at the Site (or other places in the country where the Site is located).

The Contractor shall:

- (a) comply with all applicable health and safety regulations and laws;
- (b) comply with all applicable health and safety obligations specified in the Contract;
- (c) develop and implement procedures to establish and maintain a safe working environment without risk to health at all workplaces, machinery, equipment and processes under the control of the Contractor, including control measures for chemical, physical and biological substances and agents;
- (d) provide health and safety training of the Contractor's Personnel as appropriate and maintain training records;
- (e) actively engage the Contractor's Personnel in promoting understanding, and methods for, implementation of health and safety requirements, as well as in providing information to such personnel,

and provision of personal protective equipment without expense to the personnel;

- (f) put in place workplace processes for the Contractor's Personnel to report work situations that they believe are not safe or healthy, and to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health; Contractor's Personnel who remove themselves from such work situations shall not be required to return to work until necessary remedial action to correct the situation has been taken. Such personnel shall not be retaliated against or otherwise subject to reprisal or negative action for such reporting or removal;
- (g) in collaboration with local health authorities, ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel;
- (h) appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the performance of the Contract, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority;
- (i) put in place measures to avoid or minimize the potential for community exposure to water-borne, water-based, water-related, and vector-borne diseases;
- (j) put in place measures to be implemented to avoid or minimize the spread of communicable diseases (including transfer of Sexually Transmitted Diseases or Infections (STDs), such as HIV virus) and non-communicable diseases associated with the Installation Services, taking into consideration differentiated exposure to and higher sensitivity of vulnerable groups. This includes taking measures to

avoid or minimize the transmission of communicable diseases that may be associated with the influx of temporary or permanent Contract-related labor;

- (k) have in place procedures for prevention, preparedness and response activities to be implemented in the case of an emergency event (i.e. an unanticipated incident, arising from both natural and man-made hazards, typically in the form of fire, explosions, leaks or spills, which may occur for a variety of different reasons including failure to implement operating procedures that are designed to prevent their occurrence, extreme weather or lack of early warning);
- (l) (l)collaborate, as applicable, with the Employer's personnel, any other contractors employed by the Employer, and/or personnel of any legally constituted public authorities and private utility companies that are employed in carrying out, on or near the site, of any work not included in the Contract, in applying the health and safety requirements. This is without prejudice to the responsibility of the relevant entities for the health and safety of their own personnel; and
- (m) put in place a system for regular review of health and safety performance and the working environment.

22.2.8 Funeral Arrangements

In the event of the death of any of the Contractor's personnel or accompanying members of their families, the Contractor shall be responsible for making the appropriate arrangements for their return or burial, unless otherwise **specified in the PCC.**

22.2.9 Records of Contractor's Personnel

The Contractor shall keep accurate records of the Contractor's personnel, including the number of each class of Contractor's Personnel on the Site and the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis in a form approved by the Project Manager and shall be available for inspection by the Project Manager until the Contractor has completed all work.

22.2.10 Supply of Foodstuffs

The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Employer's Requirements at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.

22.2.11 Supply of Water

The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.

22.2.12 Measures against Insect and Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce their danger to health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

22.2.13 Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift barter or disposal by Contractor's Personnel.

22.2.14 Arms and Ammunition

The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.

22.2.15 Workers' Organizations

In countries where the relevant labor laws recognize workers' rights to form and to join workers' organizations of their choosing and to bargain collectively without interference, the Contractor shall comply with such laws. In such circumstances, the role of legally established workers' organizations and legitimate workers' representatives will be respected, and they will be provided with information needed for meaningful negotiation in a timely manner. Where the relevant labor laws substantially restrict workers' organizations, the Contractor shall enable

alternative means for the Contractor's and its Subcontractors' personnel to express their grievances and protect their rights regarding working conditions and terms of employment. The Contractor shall not seek to influence or control these alternative means. The Contractor shall not discriminate or retaliate against the Contractor's and its Subcontractors' personnel who participate, or seek to participate, in such organizations and collective bargaining or alternative mechanisms. Workers' organizations are expected to fairly represent the workers in the workforce.

22.2.16 Non-Discrimination and Equal Opportunity

The Contractor shall not make decisions relating to the employment or treatment of Contractor's Personnel on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment of Contractor's Personnel on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to any aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, job assignment, promotion, termination of employment or retirement, and disciplinary practices.

Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination. The Contractor shall provide protection and assistance as necessary to ensure non-discrimination and equal opportunity, including for specific groups such as women, people with disabilities, migrant workers and children (of working age in accordance with GCC Sub-Clause 9.13).

22.2.17 Contractor's Personnel Grievance Mechanism

The Contractor shall have a grievance mechanism for the Contractor's Personnel, and where relevant the workers' organizations stated in subclause 22.2.15, to raise workplace concerns. The grievance mechanism shall be proportionate to the nature, scale, risks and impacts of the Contract. The mechanism shall address concerns promptly, using an understandable and transparent process that

provides timely feedback to those concerned in a language they understand, without any retribution, and shall operate in an independent and objective manner.

The Contractor's Personnel shall be informed of the grievance mechanism at the time of engagement for the Contract, and the measures put in place to protect them against any reprisal for its use. Measures will be put in place to make the grievance mechanism easily accessible to all Contractor's and its Subcontractors' personnel.

The grievance mechanism shall not impede access to other judicial or administrative remedies that might be available, or substitute for grievance mechanisms provided through collective agreements.

The grievance mechanism may utilize existing grievance mechanisms, providing that they are properly designed and implemented, address concerns promptly, and are readily accessible to such project workers. Existing grievance mechanisms may be supplemented as needed with Contract-specific arrangements.

22.3 Contractor's Equipment

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

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

22.3.3 The Employer will, if requested, use its best endeavors to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.

22.4 Site Regulations

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 Project Manager , with a copy to the Employer , proposed Site regulations for the Project Managers approval, which approval shall not be unreasonably withheld.

Such Site regulations shall include, but shall not be limited to, Codes of Conduct for environmental and social aspects submitted as part of the Bid and agreed to by the Employer, security arrangements in accordance with GCC Sub-Clause 22.8,, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.

The Contractor shall take all necessary measures to ensure that each Contractor's Personnel, employed for the execution of the Contract at the Site or other places where the Installation Services are carried out, is made aware of the Code of Conduct including specific behaviors that are prohibited, and understands the consequences of engaging in such prohibited behaviors.

These measures include providing instructions and documentation that can be understood by the Contractor's Personnel and seeking to obtain that person's signature acknowledging receipt of such instructions and/or documentation, as appropriate.

The Contractor shall also ensure that the Code of Conduct is visibly displayed in multiple locations on the Site and any other place where the Installation Services will be carried out, as well as in areas outside the Site accessible to the local community and project affected people. The posted Code of Conduct shall be provided in languages comprehensible to Contractor's Personnel, Employer's Personnel and the local community.

The Contractor's Management Strategy and Implementation Plans shall include appropriate processes for the Contractor to verify compliance with these obligations.

22.5 Opportunities for Other Contractors

22.5.1 The Contractor shall, upon written request from the Employer or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors employed by the Employer on or near the Site.

22.5.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways the maintenance for which

the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services.

22.5.3 The Contractor shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of the Employer in regard to their work.

22.5.4 The Contractor shall notify the Project Manager promptly of any defects in the other contractors' work that come to its notice, and that could affect the Contractor's work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the Facilities. Decisions made by the Project Manager shall be binding on the Contractor.

22.6 Emergency Work

If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Facilities, the Contractor shall immediately carry out such work.

If the Contractor is unable or unwilling to do such work immediately, the Employer may do or cause such work to be done as the Employer may determine is necessary in order to prevent damage to the Facilities. In such event the Employer shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefor. If the work done or caused to be done by the Employer is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Employer in connection therewith shall be paid by the Contractor to the Employer. Otherwise, the cost of such remedial work shall be borne by the Employer.

22.7 Site Clearance

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

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

22.8 Security of the Site

The Contractor shall be responsible for the security of the Site including providing and maintaining at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Facilities, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.

If required in the Employer's Requirements, the Contractor shall submit for the Project Manager's No-objection a security management plan that sets the security arrangements for the Site.

In making security arrangements, the Contractor shall be guided by applicable laws and any other requirements stated in the Employer's Requirements.

The Contractor shall (i) conduct appropriate background checks on any personnel retained to provide security; (ii) train the security personnel adequately (or determine that they are properly trained) in the use of force (and where applicable, firearms), and appropriate conduct towards Contractor's and Sub-contractor's personnel, Employer's personnel and affected communities; and (iii) require the security personnel to act within the applicable laws and any requirements set out in the Employer's Requirements.

The Contractor shall not permit any use of force by security personnel in providing security except when used for preventive and defensive purposes in proportion to the nature and extent of the threat.

22.9 Protection of the Environment

The Contractor shall take all necessary measures to:

- i. protect the environment (both on and off the Site); and
- ii. limit damage and nuisance to people and property resulting from pollution, noise and other results of the Contractor's operations and/or activities.

The Contractor shall ensure that emissions, surface discharges, effluent and any other pollutants from the Contractor's activities shall exceed neither the values indicated in the Employer's Requirements, nor those prescribed by applicable laws.

In the event of damage to the environment, property and/or nuisance to people, on or off Site as a result of the Contractor's operations, the Contractor shall agree with the Project Manager the appropriate actions and time scale to remedy, as practicable, the damaged environment to its former condition. The Contractor shall implement such remedies at its cost to the satisfaction of the Project Manager.

22.10 Traffic and Road Safety

The Contractor shall take all necessary safety measures to avoid the occurrence of incidents and injuries to any third party associated with the use of Contractor's Equipment on public roads or other public infrastructure.

The Contractor shall monitor and use road safety incidents and accidents reports to identify negative safety issues, and establish and implement necessary measures to resolve them.

22.11 Cultural Heritage Findings

All fossils, coins, articles of value or antiquity, structures, groups of structures, and other remains or items of geological, archaeological, paleontological, historical, architectural, religious interest found on the Site shall be placed under the care and custody of the Employer.

The Contractor shall:

- (a) take all reasonable precautions, including fencing-off the area or site of the finding, to avoid further disturbance and prevent Contractor's and Subcontractors' personnel or other persons from removing or damaging any of these findings;
- (b) as soon as practicable after discovery of any such finding, give a notice to the Project Manager, to give the Project Manager the opportunity to promptly inspect and/or investigate the

finding before it is disturbed and to issue instructions for dealing with it;

- (c) train relevant Contractor's and its Subcontractors' personnel on the procedures for handling such findings; and
- (d) implement any other action consistent with the requirements of the Employer's Requirements and relevant laws.

If the Contractor suffers delay and/or incurs extra costs from complying with the Project Manager instructions, the Contractor shall be entitled to an extension of time under GCC Sub-Clause 40.1, and the amount of such extra costs shall be added to the Contract Price.

23. Test and Inspection

23.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and any part of the Facilities as are specified in the Contract.

23.2 The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

23.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third Party or manufacturer any necessary permission or consent to enable the Employer and the Project Manager or their designated representatives to attend the test and/or inspection.

23.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.

If the Employer or Project Manager or their designated representatives fails to attend the test and/or inspection, or if it is agreed between the Parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.

23.5 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the

carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.

- 23.6 If any Plant or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 23.3.
- 23.7 If any dispute or difference of opinion shall arise between the Parties in connection with or arising out of the test and/or inspection of the Plant or part of the Facilities that cannot be settled between the Parties within a reasonable period of time, it may be referred to an Dispute Board for determination in accordance with GCC Sub-Clause 46.3.
- 23.8 The Contractor shall afford the Employer and the Project Manager, at the Employer's expense, access at any reasonable time to any place where the Plant are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice. Without prejudice to GCC Sub-Clause 9.7, as instructed by the Project Manager, the Contractor shall also afford other relevant entities (at the Employer's or their respective entities' expense, as appropriate) access to the Facilities, to inspect progress and the manner of the execution of the Facilities, carry out environmental and social audit, as appropriate, or carry out any other duty as stated in the Employer's Requirements or as instructed by the Project Manager
- 23.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant or any part of the Facilities, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GCC Sub-Clause 23.4, shall release the Contractor from any other responsibilities under the Contract.
- 23.10 No part of the Facilities or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Project Manager whenever any such parts of the Facilities or foundations are ready or about to be ready for test

and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.

- 23.11 The Contractor shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.

If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GCC Sub-Clause 23.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

24. Completion of the Facilities

- 24.1 As soon as the Facilities or any part thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Employer's Requirements, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Employer in writing.

- 24.2 Within seven (7) days after receipt of the notice from the Contractor under GCC Sub-Clause 24.1, the Employer shall supply the operating and maintenance personnel specified in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer for Pre-commissioning of the Facilities or any part thereof.

Pursuant to the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, the Employer shall also provide, within the said seven (7) day period, the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for 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 Sub-Clause 24.2, the Contractor shall commence Pre-commissioning of the Facilities or the relevant

part thereof in preparation for Commissioning, subject to GCC Sub-Clause 25.5.

24.4 As soon as all works in respect of 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 fourteen (14) days after receipt of the Contractor's notice under GCC Sub-Clause 24.4, either issue a Completion Certificate in the form specified in the Employer's Requirements (Forms and Procedures), stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's notice under GCC Sub-Clause 24.4, or notify the Contractor in writing of any defects and/or deficiencies.

If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure described in GCC Sub-Clause 24.4.

If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within seven (7) days after receipt of the Contractor's repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's repeated notice.

If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within seven (7) days after receipt of the Contractor's repeated notice, and the above procedure shall be repeated.

24.6 If the Project Manager fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies within fourteen (14) days after receipt of the Contractor's notice under GCC Sub-Clause 24.4 or within seven (7) days after receipt of the Contractor's repeated notice under GCC Sub-Clause 24.5, or if the Employer makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the Contractor's notice or repeated notice, or as of the Employer's use of the Facilities, as the case may be.

24.7 As soon as possible after Completion, the Contractor shall complete all outstanding minor items so that the Facilities are fully in

accordance with the requirements of the Contract, failing which the Employer will undertake such completion and deduct the costs thereof from any monies owing to the Contractor.

24.8 Upon Completion, the Employer shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.

25. Commissioning and Operational Acceptance

25.1 Commissioning

25.1.1 Commissioning of the Facilities or any part thereof shall be commenced by the Contractor immediately after issue of the Completion Certificate by the Project Manager, pursuant to GCC Sub-Clause 24.5, or immediately after the date of the deemed Completion, under GCC Sub-Clause 24.6.

25.1.2 The Employer shall supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Commissioning.

25.1.3 In accordance with the requirements of the Contract, the Contractor's and Project Manager's advisory personnel shall attend the Commissioning, including the Guarantee Test, and shall advise and assist the Employer.

25.2 Guarantee Test

25.2.1 Subject to GCC Sub-Clause 25.5, the Guarantee Test and repeats thereof shall be conducted by the Contractor during Commissioning of the Facilities or the relevant part thereof to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees. The Employer shall promptly provide the Contractor with such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test and any repeats thereof.

25.2.2 If for reasons not attributable to the Contractor, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period from the date of Completion **specified in the PCC** or any other period agreed upon by the Employer and the Contractor,

the Contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and GCC Sub-Clauses 28.2 and 28.3 shall not apply.

25.3 Operational Acceptance

25.3.1 Subject to GCC Sub-Clause 25.4 below, Operational Acceptance shall occur in respect of the Facilities or any part thereof when

- (a) the Guarantee Test has been successfully completed and the Functional Guarantees are met; or
- (b) the Guarantee Test has not been successfully completed or has not been carried out for reasons not attributable to the Contractor within the period from the date of Completion specified in the PCC pursuant to GCC Sub-Clause 25.2.2 above or any other period agreed upon by the Employer and the Contractor; or
- (c) the Contractor has paid the liquidated damages specified in GCC Sub-Clause 28.3 hereof; and
- (d) any minor items mentioned in GCC Sub-Clause 24.7 hereof relevant to the Facilities or that part thereof have been completed.

25.3.2 At any time after any of the events set out in GCC Sub-Clause 25.3.1 have occurred, the Contractor may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in the form provided in the Employer's Requirements (Forms and Procedures) in respect of the Facilities or the part thereof specified in such notice as of the date of such notice.

25.3.3 The Project Manager shall, after consultation with the Employer, and within seven (7) days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.

25.3.4 If within seven (7) days after receipt of the Contractor's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as of the date of the Contractor's said notice.

25.4 Partial Acceptance

25.4.1 If the Contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.

25.4.2 If a part of the Facilities comprises facilities such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the Contractor shall thereafter complete any outstanding minor items that are listed in the Operational Acceptance Certificate.

25.5 Delayed 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 Sub-Clause 24.3, or with the Guarantee Test pursuant to Sub-Clause 25.2, for reasons attributable to the Employer either on account of non availability of other facilities under the responsibilities of other contractor(s), or for reasons beyond the Contractor's control, the provisions leading to "deemed" completion of activities such as Completion, pursuant to GCC Sub-Clause 24.6, and Operational Acceptance, pursuant to GCC Sub-Clause 25.3.4, and Contractor's obligations regarding Defect Liability Period, pursuant to GCC Sub-Clause 27.2, Functional Guarantee, pursuant to GCC Clause 28, and Care of Facilities, pursuant to GCC Clause 32, and GCC Clause 41.1, Suspension, shall not apply. In this case, the following provisions shall apply.

25.5.2 When the Contractor is notified by the Project Manager that he will be unable to proceed with the activities and obligations pursuant to above Sub-Clause 25.5.1, the Contractor shall be entitled to the following:

- (a) the Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GCC Sub-Clause 26.2;

- (b) payments due to the Contractor in accordance with the provision specified in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, which would not have been payable in normal circumstances due to non-completion of the subject activities, shall be released to the Contractor against submission of a security in the form of a bank guarantee of equivalent amount acceptable to the Employer, and which shall become null and void when the Contractor will have complied with its obligations regarding those payments, subject to the provision of Sub-Clause 25.5.3 below;
- (c) the expenses towards the above security and extension of other securities under the contract, of which validity needs to be extended, shall be reimbursed to the Contractor by the Employer;
- (d) the additional charges towards the care of the Facilities pursuant to GCC Sub-Clause 32.1 shall be reimbursed to the Contractor by the Employer for the period between the notification mentioned above and the notification mentioned in Sub-Clause 25.5.4 below. The provision of GCC Sub-Clause 33.2 shall apply to the Facilities during the same period.

25.5.3 In the event that the period of suspension under above Sub-Clause 25.5.1 actually exceeds one hundred eighty (180) days, the Employer and Contractor shall mutually agree to any additional compensation payable to the Contractor.

25.5.4 When the Contractor is notified by the Project Manager that the plant is ready for Pre-commissioning, the Contractor shall proceed without delay in performing Pre-commissioning in accordance with Clause 24.

F. Guarantees and Liabilities

26. Completion Time Guarantee

26.1 The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified) within the Time for Completion specified in the PCC pursuant to GCC Sub-Clause 8.2, or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.

26.2 If the Contractor fails to attain Completion of the Facilities or any part thereof within the Time for Completion or any extension thereof under GCC Clause 40, the Contractor shall pay to the Employer liquidated damages in the amount **specified in the PCC** as a percentage rate of the Contract Price or the relevant part thereof. The aggregate amount of such liquidated damages shall in no event exceed the amount **specified as “Maximum” in the PCC** as a percentage rate of the Contract Price. Once the “Maximum” is reached, the Employer may consider termination of the Contract, pursuant to GCC Sub-Clause 42.2.2.

Such payment shall completely satisfy the Contractor’s obligation to attain Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension thereof under GCC Clause 40. The Contractor shall have no further liability whatsoever to the Employer in respect thereof.

However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Contractor under the Contract.

Save for liquidated damages payable under this GCC Sub-Clause 26.2, the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in the Appendix to the Contract Agreement titled Time Schedule, and/or other program of work prepared pursuant to GCC Sub-Clause 18.2 shall not render the Contractor liable for any loss or damage thereby suffered by the Employer.

26.3 If the Contractor attains Completion of the Facilities or any part thereof before the Time for Completion or any extension thereof under GCC Clause 40, the Employer shall pay to the Contractor a bonus in the amount **specified in the PCC**. The aggregate amount of such bonus shall in no event exceed the amount **specified as “Maximum” in the PCC**.

27. Defect Liability

27.1 The Contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant supplied and of the work executed.

27.2 The Defect Liability Period shall be five hundred and forty (540) days from the date of Completion of the Facilities (or any part thereof) or one year from the date of Operational Acceptance of the Facilities (or

any part thereof), whichever first occurs, unless specified otherwise in the PCC pursuant to GCC Sub-Clause 27.10.

If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Plant supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good as the Contractor shall determine at its discretion, such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:

- (a) improper operation or maintenance of the Facilities by the Employer;
- (b) operation of the Facilities outside specifications provided in the Contract; or
- (c) normal wear and tear.

27.3 The Contractor's obligations under this GCC Clause 27 shall not apply to:

- (a) any materials that are supplied by the Employer under GCC Sub-Clause 21.2, are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein;
- (b) any designs, specifications or other data designed, supplied or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility herein; or
- (c) any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GCC Sub-Clause 27.7.

27.4 The Employer shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect any such defect.

27.5 The Employer shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GCC Clause 27.

The Contractor may, with the consent of the Employer, remove from the Site any Plant or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the

defect, is such that repairs cannot be expeditiously carried out at the Site.

- 27.6 If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Employer may give to the Contractor a notice requiring that tests of the defective part of the Facilities shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.

If such part fails the tests, the Contractor shall carry out further repair, replacement or making good, as the case may be, until that part of the Facilities passes such tests. The tests shall be agreed upon by the Employer and the Contractor.

- 27.7 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the Employer may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Employer in connection therewith shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due the Contractor or claimed under the Performance Security.
- 27.8 If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Employer because of any of the aforesaid reasons.
- 27.9 Except as provided in GCC Clauses 27 and 33, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Plant, design or engineering or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, or criminal or willful action of the Contractor.
- 27.10 In addition, any such component of the Facilities, and during the period of time as may be **specified in the PCC**, shall be subject to an extended defect liability period. Such obligation of the Contractor shall be in addition to the defect liability period specified under GCC Sub-Clause 27.2.

28. Functional Guarantees

- 28.1 The Contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, subject to and upon the conditions therein specified.
- 28.2 If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, modifications and/or additions, and shall request the Employer to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Employer may consider termination of the Contract, pursuant to GCC Sub-Clause 42.2.2.
- 28.3 If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the said Appendix to the Contract Agreement is met, the Contractor shall, at the Contractor's option, either
- (a) make such changes, modifications and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Employer to repeat the Guarantee Test or
 - (b) pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the Appendix to the Contract Agreement titled Functional Guarantees.
- 28.4 The payment of liquidated damages under GCC Sub-Clause 28.3, up to the limitation of liability specified in the Appendix to the Contract Agreement titled Functional Guarantees, shall completely satisfy the Contractor's guarantees under GCC Sub-Clause 28.3, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Operational

Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.

**29. Patent
Indemnity**

29.1 The Contractor shall, subject to the Employer's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Employer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the Facilities by the Contractor or the use of the Facilities in the country where the Site is located; and (b) the sale of the products produced by the Facilities in any country.

Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Contractor, pursuant to the Contract Agreement.

29.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GCC Sub-Clause 29.1, the Employer shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

29.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Employer.

30. Limitation of Liability

- 30.1 Except in cases of criminal negligence or willful misconduct,
- (a) neither Party shall be liable to the other Party, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, which may be suffered by the other Party in connection with the Contract, other than specifically provided as any obligation of the Party in the Contract, and
 - (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the amount resulting from the application of the multiplier specified in the PCC, to the Contract Price or, if a multiplier is not so specified, the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

G. Risk Distribution

31. Transfer of Ownership

- 31.1 Ownership of the Plant (including spare parts) to be imported into the country where the Site is located shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Plant from the country of origin to that country.
- 31.2 Ownership of the Plant (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Plant are brought on to the Site.

- 31.3 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.
- 31.4 Ownership of any Plant in excess of the requirements for the Facilities shall revert to the Contractor upon Completion of the Facilities or at such earlier time when the Employer and the Contractor agree that the Plant in question are no longer required for the Facilities.
- 31.5 Notwithstanding the transfer of ownership of the Plant, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GCC Clause 32 (Care of Facilities) hereof until Completion of the Facilities or the part thereof in which such Plant are incorporated.
- 32. Care of Facilities**
- 32.1 The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Completion of the Facilities pursuant to GCC Clause 24 or, where the Contract provides for Completion of the Facilities in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GCC Clause 27. Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clauses 32.2 and 38.1.
- 32.2 If any loss or damage occurs to the Facilities or any part thereof or to the Contractor's temporary facilities by reason of
- (a) insofar as they relate to the country where the Site is located, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GCC Clause 34 hereof; or

- (b) any use or occupation by the Employer or any third Party other than a Subcontractor, authorized by the Employer of any part of the Facilities; or
- (c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the Employer, or any such matter for which the Contractor has disclaimed responsibility herein,

the Employer shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed or damaged. If the Employer requests the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with GCC Clause 39. If the Employer does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Employer shall terminate the Contract pursuant to GCC Sub-Clause 42.1 hereof.

32.3 The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the Facilities, except (i) as mentioned in GCC Sub-Clause 32.2 with respect to the Contractor's temporary facilities, and (ii) where such loss or damage arises by reason of any of the matters specified in GCC Sub-Clauses 32.2 (b) and (c) and 38.1.

32.4 With respect to any loss or damage caused to the Facilities or any part thereof or to the Contractor's Equipment by reason of any of the matters specified in GCC Sub-Clause 38.1, the provisions of GCC Sub-Clause 38.3 shall apply.

**33. Loss of or
Damage to
Property;
Accident or
Injury to
Workers;
Indemnification**

33.1 Subject to GCC Sub-Clause 33.3, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property other than the Facilities whether accepted or not, arising in connection with the supply and installation of the Facilities and by reason of the negligence

of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Employer, its contractors, employees, officers or agents.

- 33.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GCC Sub-Clause 33.1, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

- 33.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Facilities not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 34, provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.
- 33.4 The Party entitled to the benefit of an indemnity under this GCC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the Party fails to take such measures, the other Party's liabilities shall be correspondingly reduced.

34. Insurance

- 34.1 To the extent specified in the Appendix to the Contract Agreement titled Insurance Requirements, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the

form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.

(a) Cargo Insurance During Transport

Covering loss or damage occurring while in transit from the Contractor's or Subcontractor's works or stores until arrival at the Site, to the Plant (including spare parts therefor) and to the Contractor's Equipment.

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third Parties including the Employer's personnel, and loss of or damage to property occurring in connection with the supply and installation of the Facilities.

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors, whether or not owned by them, in connection with the execution of the Contract.

(e) Workers' Compensation

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

(f) Employer's Liability

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

(g) Other Insurances

Such other insurances as may be specifically agreed upon by the Parties hereto as listed in the Appendix to the Contract Agreement titled Insurance Requirements.

34.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1, except for the Third Party Liability, Workers' Compensation and Employer's

Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1 except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

- 34.3 The Contractor shall, in accordance with the provisions of the Appendix to the Contract Agreement titled Insurance Requirements, deliver to the Employer certificates of insurance or copies of the insurance policies as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.
- 34.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.
- 34.5 The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the Appendix to the Contract Agreement titled Insurance Requirements, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor's Subcontractors shall be named as co-insureds under all such policies. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Employer shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than twenty-one (21) days' notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Employer shall provide copies of the policies taken out by the Employer under this GCC Sub-Clause 34.5.
- 34.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC Sub-Clause 34.1, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If

the Employer fails to take out and/or maintain in effect the insurances referred to in GCC 34.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Employer under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Employer. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards the Employer, and the Contractor shall have full recourse against the Employer for any and all liabilities of the Employer herein.

34.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 34, and all monies payable by any insurers shall be paid to the Contractor. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.

**35. Unforeseen
Conditions**

35.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions other than climatic conditions, or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Facilities including any data as to boring tests, provided by the Employer, and on the basis of information that it could have obtained from a visual inspection of the Site if access thereto was available, or other data readily available to it relating to the Facilities, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Plant or Contractor's Equipment, notify the Project Manager in writing of

(a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;

- (b) the additional work and/or Plant and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;
- (c) the extent of the anticipated delay; and
- (d) the additional cost and expense that the Contractor is likely to incur.

On receiving any notice from the Contractor under this GCC Sub-Clause 35.1, the Project Manager shall promptly consult with the Employer and Contractor and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.

- 35.2 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GCC Sub-Clause 35.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.

If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC Sub-Clause 35.1, the Time for Completion shall be extended in accordance with GCC Clause 40.

36. Change in Laws and Regulations

- 36.1 If, after the date twenty-eight (28) days prior to the date of Bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed which shall be deemed to include any change in interpretation or application by the competent authorities, that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the PCC pursuant to GCC Sub-Clause 11.2.

37. Force Majeure

- 37.1 "Force Majeure" shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, and which is

unavoidable notwithstanding the reasonable care of the Party affected, and shall include, without limitation, the following:

- (a) war, hostilities or warlike operations whether a state of war be declared or not, invasion, act of foreign enemy and civil war
- (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts
- (c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority
- (d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague
- (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster
- (f) shortage of labor, materials or utilities where caused by circumstances that are themselves Force Majeure.

37.2 If either Party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.

37.3 The Party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such Party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GCC Clause 40.

37.4 The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either Party's right to terminate the Contract under GCC Sub-Clauses 37.6 and 38.5.

- 37.5 No delay or nonperformance by either Party hereto caused by the occurrence of any event of Force Majeure shall
- (a) constitute a default or breach of the Contract, or
 - (b) give rise to any claim for damages or additional cost or expense occasioned thereby, subject to GCC Sub-Clauses 32.2, 38.3 and 38.4

if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.

- 37.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other, but without prejudice to either Party's right to terminate the Contract under GCC Sub-Clause 38.5.

- 37.7 In the event of termination pursuant to GCC Sub-Clause 37.6, the rights and obligations of the Employer and the Contractor shall be as specified in GCC Sub-Clauses 42.1.2 and 42.1.3.

- 37.8 Notwithstanding GCC Sub-Clause 37.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.

38. War Risks

- 38.1 "War Risks" shall mean any event specified in paragraphs (a) and (b) of GCC Sub-Clause 37.1 and any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war, occurring or existing in or near the country (or countries) where the Site is located.

- 38.2 Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to

- (a) destruction of or damage to Facilities, Plant, or any part thereof;
- (b) destruction of or damage to property of the Employer or any third Party; or
- (c) injury or loss of life

if such destruction, damage, injury or loss of life is caused by any War Risks, and the Employer shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions,

lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.

- 38.3 If the Facilities or any Plant or Contractor's Equipment or any other property of the Contractor used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any War Risks, the Employer shall pay the Contractor for
- (a) any part of the Facilities or the Plant so destroyed or damaged to the extent not already paid for by the Employer
and so far as may be required by the Employer, and as may be necessary for completion of the Facilities
 - (b) replacing or making good any Contractor's Equipment or other property of the Contractor so destroyed or damaged
 - (c) replacing or making good any such destruction or damage to the Facilities or the Plant or any part thereof .

If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to GCC Sub-Clause 42.1.

If the Employer requires the Contractor to replace or make good on any such destruction or damage to the Facilities, the Time for Completion shall be extended in accordance with GCC 40.

- 38.4 Notwithstanding anything contained in the Contract, the Employer shall pay the Contractor for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any War Risks, provided that the Contractor shall as soon as practicable notify the Employer in writing of any such increased cost.
- 38.5 If during the performance of the Contract any War Risks shall occur that financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an

aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other.

- 38.6 In the event of termination pursuant to GCC Sub-Clauses 38.3 or 38.5, the rights and obligations of the Employer and the Contractor shall be specified in GCC Sub-Clauses 42.1.2 and 42.1.3.

H. Change in Contract Elements

39. Change in the Facilities

39.1 Introducing a Change

39.1.1 Subject to GCC Sub-Clauses 39.2.5 and 39.2.7, the Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Facilities hereinafter called "Change", provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract.

39.1.2 Value Engineering: The Contractor may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;

(a) the proposed change(s), and a description of the difference to the existing contract requirements;

(b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the Employer may incur in implementing the value engineering proposal; and

(c) a description of any effect(s) of the change on performance/functionality.

The Employer may accept the value engineering proposal if the proposal demonstrates benefits that:

(a) accelerates the delivery period; or

(b) reduces the Contract Price or the life cycle costs to the Employer; or

(c) improves the quality, efficiency, safety or sustainability of the Facilities; or

(d) yields any other benefits to the Employer,

without compromising the necessary functions of the Facilities.

If the value engineering proposal is approved by the Employer and results in:

(a) a reduction of the Contract Price; the amount to be paid to the Contractor shall be the percentage specified in the PCC of the reduction in the Contract Price; or

(b) an increase in the Contract Price; but results in a reduction in life cycle costs due to any benefit described in (a) to (d) above, the amount to be paid to the Contractor shall be the full increase in the Contract Price.

39.1.3 Notwithstanding GCC Sub-Clauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.

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

39.2 Changes Originating from Employer

39.2.1 If the Employer proposes a Change pursuant to GCC Sub-Clause 39.1.1, it shall send to the Contractor a "Request for Change Proposal," requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:

- (a) brief description of the Change
- (b) effect on the Time for Completion
- (c) estimated cost of the Change
- (d) effect on Functional Guarantees (if any)
- (e) effect on the Facilities

(f) effect on any other provisions of the Contract.

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

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

(a) accept the Contractor’s estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal

(b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate

(c) advise the Contractor that the Employer does not intend to proceed with the Change.

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

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

39.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this GCC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than fifteen percent (15%), the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor’s objection, the Employer shall withdraw the proposed Change and shall notify the Contractor in writing thereof.

The Contractor’s failure to so object shall neither affect its right to object to any subsequent requested Changes or Change

Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.

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

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

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

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

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

If the Parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Dispute Board in accordance with the provisions of GCC Sub-Clause 46.1.

39.3 Changes Originating from Contractor

- 39.3.1 If the Contractor proposes a Change pursuant to GCC Sub-Clause 39.1.2, the Contractor shall submit to the Project

Manager a written “Application for Change Proposal,” giving reasons for the proposed Change and including the information specified in GCC Sub-Clause 39.1.2.

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

40. Extension of Time for Completion

40.1 The Time(s) for Completion specified in the PCC pursuant to GCC Sub-Clause 8.2 shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- (a) any Change in the Facilities as provided in GCC Clause 39
- (b) any occurrence of Force Majeure as provided in GCC Clause 37, unforeseen conditions as provided in GCC Clause 35, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clause 32.2
- (c) any suspension order given by the Employer under GCC Clause 41 hereof or reduction in the rate of progress pursuant to GCC Sub-Clause 41.2 or
- (d) any changes in laws and regulations as provided in GCC Clause 36 or
- (e) any default or breach of the Contract by the Employer, Appendix to the Contract Agreement titled ,or any activity, act or omission of the Employer, or the Project Manager, or any other contractors employed by the Employer, or
- (f) any delay on the part of a Subcontractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this sub-clause, or
- (g) delays attributable to the Employer or caused by customs, or
- (h) any other matter specifically mentioned in the Contract

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

40.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of

the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to a Dispute Board, pursuant to GCC Sub-Clause 46.1.

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

40.4 In all cases where the Contractor has given a notice of a claim for an extension of time under GCC 40.2, the Contractor shall consult with the Project Manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall there after comply with all reasonable instructions which the Project Manager shall give in order to minimize such delay. If compliance with such instructions shall cause the Contractor to incur extra costs and the Contractor is entitled to an extension of time under GCC 40.1, the amount of such extra costs shall be added to the Contract Price.

41. Suspension

41.1 The Employer may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The Contractor shall thereupon suspend performance of such obligation, except those obligations necessary for the care or preservation of the Facilities, until ordered in writing to resume such performance by the Project Manager.

If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Clause 39, excluding the performance of the suspended obligations from the Contract.

If the Employer fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GCC Clause 39 or, where it affects the whole of the Facilities, as termination of the Contract under GCC Sub-Clause 42.1.

41.2 If

(a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice or

(b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas in accordance with GCC Sub-Clause 10.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,

then the Contractor may by fourteen (14) days' notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

41.3 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GCC Clause 41, then the Time for Completion shall be extended in accordance with GCC Sub-Clause 40.1, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of

progress by reason of the Contractor's default or breach of the Contract.

- 41.4 During the period of suspension, the Contractor shall not remove from the Site any Plant, any part of the Facilities or any Contractor's Equipment, without the prior written consent of the Employer.

42. Termination

42.1 Termination for Employer's Convenience

42.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GCC Sub-Clause 42.1.

42.1.2 Upon receipt of the notice of termination under GCC Sub-Clause 42.1.1, the Contractor shall either immediately or upon the date specified in the notice of termination

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii) below
- (c) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition, and
- (d) subject to the payment specified in GCC Sub-Clause 42.1.3,
 - (i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination
 - (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and

- (iii) deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities.

42.1.3 In the event of termination of the Contract under GCC Sub-Clause 42.1.1, the Employer shall pay to the Contractor the following amounts:

- (a) the Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination
- (b) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel
- (c) any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges
- (d) costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 42.1.2
- (e) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third Parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.

42.2 Termination for Contractor's Default

42.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the Contractor, referring to this GCC Sub-Clause 42.2:

- (a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up, other than a voluntary liquidation for the purposes of amalgamation or reconstruction, a receiver is appointed

over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt

- (b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 43.
- (c) if the Contractor, in the judgment of the Employer has engaged in Fraud and Corruption, as defined in paragraph 2.2 a. of Appendix B to the GCC, in competing for or in executing the Contract.

42.2.2 If the Contractor

- (a) has abandoned or repudiated the Contract
- (b) has without valid reason failed to commence work on the Facilities promptly or has suspended, other than pursuant to GCC Sub-Clause 41.2, the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Employer to proceed
- (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause
- (d) refuses or is unable to provide sufficient materials, services or labor to execute and complete the Facilities in the manner specified in the program furnished under GCC Sub-Clause 18.2 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Facilities by the Time for Completion as extended,

then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GCC Sub-Clause 42.2.

42.2.3 Upon receipt of the notice of termination under GCC Sub-Clauses 42.2.1 or 42.2.2, the Contractor shall, either

immediately or upon such date as is specified in the notice of termination,

- (a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition
- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) below
- (c) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination
- (d) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors
- (e) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

42.2.4 The Employer may enter upon the Site, expel the Contractor, and complete the Facilities itself or by employing any third Party. The Employer may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of the Employer and with an indemnification by the Employer for all liability including damage or injury to persons arising out of the Employer's use of such equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Facilities for such reasonable period as the Employer considers expedient for the supply and installation of the Facilities.

Upon completion of the Facilities or at such earlier date as the Employer thinks appropriate, the Employer shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay

and at its cost remove or arrange removal of the same from the Site.

42.2.5 Subject to GCC Sub-Clause 42.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Facilities executed as of the date of termination, the value of any unused or partially used Plant on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 42.2.3. Any sums due the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.

42.2.6 If the Employer completes the Facilities, the cost of completing the Facilities by the Employer shall be determined.

If the sum that the Contractor is entitled to be paid, pursuant to GCC Sub-Clause 42.2.5, plus the reasonable costs incurred by the Employer in completing the Facilities, exceeds the Contract Price, the Contractor shall be liable for such excess.

If such excess is greater than the sums due the Contractor under GCC Sub-Clause 42.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under GCC Sub-Clause 42.2.5, the Employer shall pay the balance to the Contractor.

The Employer and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

42.3 Termination by the Contractor

42.3.1 If

- (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the

Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice, or

- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,

then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Employer referring to this GCC Sub-Clause 42.3.1, forthwith terminate the Contract.

42.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GCC Sub-Clause 42.3.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.

42.3.3 If the Contract is terminated under GCC Sub-Clauses 42.3.1 or 42.3.2, then the Contractor shall immediately

- (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition

- (b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii)
- (c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractors' personnel from the Site, and
- (d) subject to the payment specified in GCC Sub-Clause 42.3.4,
 - (i) deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination
 - (ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Plant as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors, and
 - (iii) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

42.3.4 If the Contract is terminated under GCC Sub-Clauses 42.3.1 or 42.3.2, the Employer shall pay to the Contractor all payments specified in GCC Sub-Clause 42.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.

42.3.5 Termination by the Contractor pursuant to this GCC Sub-Clause 42.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GCC Sub-Clause 42.3.

42.4 In this GCC Clause 42, the expression "Facilities executed" shall include all work executed, Installation Services provided, and all Plant acquired, or subject to a legally binding obligation to purchase, by the Contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.

42.5 In this GCC Clause 42, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the

Employer to the Contractor under the Contract, including any advance payment paid pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment.

43. Assignment 43.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other Party, which consent shall not be unreasonably withheld, assign to any third Party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

44. Export Restrictions 44.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Employer, to the country of the Employer or to the use of the Plant and Installation Services to be supplied which arise from trade regulations from a country supplying those Plant and Installation Services, and which substantially impede the Contractor from meeting its obligations under the Contract, shall release the Contractor from the obligation to provide deliveries or services, always provided, however, that the Contractor can demonstrate to the satisfaction of the Employer and of the Bank that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the Plant and Installation Services under the terms of the Contract. Termination of the Contract on this basis shall be for the Employer's convenience pursuant to Sub-Clause 42.1.

I. Claims, Disputes and Arbitration

45. Contractor's Claims 45.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall submit a notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be

discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

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

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

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

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

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

Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant

provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

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

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

In the event that the Contractor and the Employer cannot agree on any matter relating to a claim, either Party may refer the matter to the Dispute Board pursuant to GCC 46 hereof.

46. Disputes and Arbitration

46.1 Appointment of the Dispute Board

Disputes shall be referred to a DB for decision in accordance with GCC Sub-Clause 46.3. The Parties shall appoint a DB by the date stated in the PCC.

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

If the Contract is with a foreign Contractor, the DB members shall not have the same nationality as the Employer or the Contractor.

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

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

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

The DB shall be deemed to be constituted on the date the Parties and the sole member or the three members (as the case may be) of the DB have all signed a DB agreement.

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

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

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

46.2 Failure to Agree on the Composition of the Dispute Board

If any of the following conditions apply, namely:

- (a) the Parties fail to agree upon the appointment of the sole member of the DB by the date stated in the first paragraph of GCC Sub-Clause 46.1,
- (b) either Party fails to nominate a member (for approval by the other Party) of a DB of three persons by such date,
- (c) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DB by such date, or

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

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

46.3 Obtaining Dispute Board's Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with the performance of the Contract, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Project Manager, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Project Manager. Such reference shall state that it is given under this Sub-Clause.

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

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

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

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

28 days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.

In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in GCC Sub-Clauses 46.6 and 46.7, neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

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

46.4 Amicable Settlement

Where notice of dissatisfaction has been given under GCC Sub-Clause 46.3 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction and intention to commence arbitration was given, even if no attempt at amicable settlement has been made.

46.5 Arbitration

Unless **indicated otherwise in the PCC**, any dispute not settled amicably and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Unless otherwise agreed by both Parties, arbitration shall be conducted as follows:

(a) For contracts with foreign contractors:

unless otherwise specified in the PCC; the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce; by one or three arbitrators appointed in accordance with these Rules. The place of arbitration shall be the neutral location **stated in the PCC**; and the arbitration shall be conducted in the ruling language **stated in the PCC**; and

(b) For contracts with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's Country.

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

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

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

46.6 Failure to Comply with Dispute Board's Decision

In the event that a Party fails to comply with a DB decision which has become final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under GCC Sub-Clause 46.5. GCC Sub-Clauses 46.3 and 46.4 shall not apply to this reference.

46.7 Expiry of Dispute Board's Appointment

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

- (a) GCC Sub-Clauses 46.3 and 46.4 shall not apply, and
- (b) the dispute may be referred directly to arbitration under GCC Sub-Clause 46.5

APPENDIX A.

General Conditions of Dispute Board Agreement

1. Definitions

Each “Dispute Board Agreement” is a tripartite agreement by and between:

the “Employer”;

the “Contractor”; and

the “Member” who is defined in the Dispute Board Agreement as being:

- (i) the sole member of the “DB” and, where this is the case, all references to the “Other Members” do not apply, or
- (ii) one of the three persons who are jointly called the “DB” (or “dispute board”) and, where this is the case, the other two persons are called the “Other Members”.

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

2. General Provisions

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

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

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

3. Warranties

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

- a) When appointing the Member, the Employer and the Contractor relied upon the Member's representations that he/she is:has at least a bachelor's degree in relevant disciplines such as law, engineering, construction management or contract management;
- b) has at least ten years of experience in contract administration/management and dispute resolution, out of which at least five years of experience as an arbitrator or adjudicator in construction-related disputes;
- c) has received formal training as an adjudicator from an internationally recognized organization;
- d) has experience and/or is knowledgeable in the type of work which the Contractor is to carry out under the Contract;
- e) has experience in the interpretation of construction and/or engineering contract documents; and
- f) is fluent in the language for communications defined in GCC Sub-Clause 5.3 (or the language as agreed between the Parties and the DB).

4. General Obligations of the Member

The Member shall:

- (a) have no interest financial or otherwise in the Employer, the Contractor or the Project Manager, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;
- (b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;
- (c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Project Manager, and any previous involvement in the overall project of which the Contract forms part;
- (d) not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);
- (e) comply with the annexed procedural rules and with GCC Sub-Clause 46.3;
- (f) not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
- (g) not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Project Manager regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;

- (h) ensure his/her availability for all site visits and hearings as are necessary;
- (i) become conversant with the Contract and with the progress of the Facilities (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
- (j) treat the details of the Contract and all the DB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and
- (k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

5. General Obligations of the Employer and the Contractor

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

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

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

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

Whenever the Employer or the Contractor refers a dispute to the DB under GCC Sub-Clause 46.3, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

6. Payment

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

- (a) a retainer fee per calendar month, which shall be considered as payment in full for:
 - (i) being available on 28 days' notice for all site visits and hearings;

- (ii) becoming and remaining conversant with all project developments and maintaining relevant files;
- (iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and
- (iv) all services performed hereunder except those referred to in 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 Facilities.

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

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

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

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

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

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

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in accordance with GCC Sub-Clause 12.3.

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

7. Termination

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

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

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

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

8. Default of the Member

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

9. Disputes

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

APPENDIX B.

DISPUTE BOARD GUIDELINES

1. Unless otherwise agreed by the Employer and the Contractor, the DB shall visit the site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.
2. The timing of and agenda for each site visit shall be as agreed jointly by the DB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DB. The purpose of site visits is to enable the DB to become and remain acquainted with the progress of the execution of the Contract and of any actual or potential problems or claims, and, as far as reasonable, to prevent potential problems or claims from becoming disputes.
3. Site visits shall be attended by the Employer, the Contractor and the Project Manager and shall be coordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the DB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.
4. The Employer and the Contractor shall furnish to the DB one copy of all documents which the DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.
5. If any dispute is referred to the DB in accordance with GCC Sub-Clause 46.3, the DB shall proceed in accordance with GCC Sub-Clause 46.3 and these Guidelines. Subject to the time allowed to give notice of a decision and other relevant factors, the DB shall:
 - (a) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case, and
 - (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.
6. The DB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.
7. Except as otherwise agreed in writing by the Employer and the Contractor, the DB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Project Manager, and

to proceed in the absence of any Party who the DB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.

8. The Employer and the Contractor empower the DB, among other things, to:
 - (a) establish the procedure to be applied in deciding a dispute,
 - (b) decide upon the DB's own jurisdiction, and as to the scope of any dispute referred to it,
 - (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Guidelines,
 - (d) take the initiative in ascertaining the facts and matters required for a decision,
 - (e) make use of its own specialist knowledge, if any,
 - (f) decide upon the payment of financing charges in accordance with the Contract,
 - (g) decide upon any provisional relief such as interim or conservatory measures,
 - (h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute, and
 - (i) appoint, should the DB so consider necessary and the Parties agree, a suitable expert/s (including legal and technical expert(s)) at the cost of the Parties to give advice on a specific matter/{s relevant to the dispute.

9. The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with GCC Sub-Clause 46.3, or as otherwise agreed by the Employer and the Contractor in writing. If the DB comprises three persons:
 - (a) it shall convene in private after a hearing, in order to have discussions and prepare its decision;
 - (b) it shall endeavor to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
 - (c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:
 - (i) either the Employer or the Contractor does not agree that they do so, or
 - (ii) the absent Member is the chairman and he/she instructs the other Members to not make a decision.

APPENDIX C.

Fraud and Corruption

1. Purpose

- 1.1. The Bank’s Anti-Corruption Guidelines and this annex apply with respect to procurement under Bank Investment Project Financing operations.

2. Requirements

- 2.1. The Bank requires that Borrowers (including beneficiaries of Bank financing); bidders (applicants/proposers), consultants, contractors and suppliers; any sub-contractors, sub-consultants, service providers or suppliers; any agents (whether declared or not); and any of their personnel, observe the highest standard of ethics during the procurement process, selection and contract execution of Bank-financed contracts, and refrain from Fraud and Corruption.
- 2.2. To this end, the Bank:
 - a. Defines, for the purposes of this provision, the terms set forth below as follows:
 - i. “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - ii. “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
 - iii. “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - iv. “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - v. “obstructive practice” is:
 - (a) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - (b) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under paragraph 2.2 e. below.

- b. Rejects a proposal for award if the Bank determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- c. In addition to the legal remedies set out in the relevant Legal Agreement, may take other appropriate actions, including declaring misprocurement, if the Bank determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement process, selection and/or execution of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
- d. Pursuant to the Bank's Anti- Corruption Guidelines and in accordance with the Bank's prevailing sanctions policies and procedures, may sanction a firm or individual, either indefinitely or for a stated period of time, including by publicly declaring such firm or individual ineligible (i) to be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;¹ (ii) to be a nominated² sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-financed project;
- e. Requires that a clause be included in bidding/request for proposals documents and in contracts financed by a Bank loan, requiring (i) bidders (applicants/proposers), consultants, contractors, and suppliers, and their sub-contractors, sub-consultants, service providers, suppliers, agents personnel, permit the Bank to inspect³ all accounts, records and other

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

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

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

documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the Bank.

APPENDIX D.

Metrics for Progress Reports- Environmental and Social (ES)

Metrics for regular reporting:

- a. environmental incidents or non-compliances with contract requirements, including contamination, pollution or damage to ground or water supplies;
- b. health and safety incidents, accidents, injuries that require treatment and all fatalities;
- c. interactions with regulators: identify agency, dates, subjects, outcomes (report the negative if none);
- d. status of all permits and agreements:
 - (i) work permits: number required, number received, actions taken for those not received;
 - (ii) status of permits and consents:
 - list areas/facilities with permits required (quarries, asphalt & batch plants), dates of application, dates issued (actions to follow up if not issued), dates submitted to resident engineer (or equivalent), status of area (waiting for permits, working, abandoned without reclamation, decommissioning plan being implemented, etc.);
 - list areas with landowner agreements required (borrow and spoil areas, camp sites), dates of agreements, dates submitted to resident engineer (or equivalent);
 - identify major activities undertaken in each area in the reporting period and highlights of environmental and social protection (land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation);
 - for quarries: status of relocation and compensation (completed, or details of activities and current status in the reporting period).
- e. health and safety supervision:
 - (i) safety officer: number days worked, number of full inspections & partial inspections, reports to construction/project management;
 - (ii) number of workers, work hours, metric of PPE use (percentage of workers with full personal protection equipment (PPE), partial, etc.), worker violations observed (by type of violation, PPE or otherwise), warnings given, repeat warnings given, follow-up actions taken (if any);
- f. worker accommodations:
 - (i) number of expats housed in accommodations, number of locals;
 - (ii) date of last inspection, and highlights of inspection including status of accommodations' compliance with national and local law and good practice, including sanitation, space, etc.;
 - (iii) actions taken to recommend/require improved conditions, or to improve conditions.

- g. Health services: provider of health services, information and/or training, location of clinic, number of non-safety disease or illness treatments and diagnoses (no names to be provided);
- h. gender (for expats and locals separately): number of female workers, percentage of workforce, gender issues raised and dealt with (cross-reference grievances or other sections as needed);
- i. training:
 - (i) number of new workers, number receiving induction training, dates of induction training;
 - (ii) number and dates of toolbox talks, number of workers receiving Occupational Health and Safety (OHS), environmental and social training;
 - (iii) number and dates of communicable diseases (including STDs) sensitization and/or training, no. workers receiving training (in the reporting period and in the past); same questions for gender sensitization, flag person training.
 - (iv) number and date of SEA prevention and SH sensitization and/or training events, including number of workers receiving training on Code of Conduct for Contractor's and Subcontractor's Personnel (in the reporting period and in the past), etc.
- j. environmental and social supervision:
 - (i) environmentalist: days worked, areas inspected and numbers of inspections of each (road section, work camp, accommodations, quarries, borrow areas, spoil areas, swamps, forest crossings, etc.), highlights of activities/findings (including violations of environmental and/or social best practices, actions taken), reports to environmental and/or social specialist/construction/site management;
 - (ii) sociologist: days worked, number of partial and full site inspections (by area: road section, work camp, accommodations, quarries, borrow areas, spoil areas, clinic, HIV/AIDS center, community centers, etc.), highlights of activities (including violations of environmental and/or social requirements observed, actions taken), reports to environmental and/or social specialist/construction/site management; and
 - (iii) community liaison person(s): days worked (hours community center open), number of people met, highlights of activities (issues raised, etc.), reports to environmental and/or social specialist /construction/site management.
- k. Grievances: list new grievances (e.g. number of allegations of SEA and SH) received in the reporting period and number of unresolved past grievances by date received, complainant's age and sex, how received, to whom referred to for action, resolution and date (if completed), data resolution reported to complainant, any required follow-up (Cross-reference other sections as needed):
 - (i) Worker grievances;
 - (ii) Community grievances
- l. Traffic, road safety and vehicles/equipment:

- (i) traffic and road safety incidents and accidents involving project vehicles & equipment: provide date, location, damage, cause, follow-up;
 - (ii) traffic and road safety incidents and accidents involving non-project vehicles or property (also reported under immediate metrics): provide date, location, damage, cause, follow-up;
 - (iii) overall condition of vehicles/equipment (subjective judgment by environmentalist); non-routine repairs and maintenance needed to improve safety and/or environmental performance (to control smoke, etc.).
- m. Environmental mitigations and issues (what has been done):
- (i) dust: number of working bowsters, number of waterings/day, number of complaints, warnings given by environmentalist, actions taken to resolve; highlights of quarry dust control (covers, sprays, operational status); % of rock/ spoil lorries with covers, actions taken for uncovered vehicles;
 - (ii) erosion control: controls implemented by location, status of water crossings, environmentalist inspections and results, actions taken to resolve issues, emergency repairs needed to control erosion/sedimentation;
 - (iii) quarries, borrow areas, spoil areas, asphalt plants, batch plants: identify major activities undertaken in the reporting period at each, and highlights of environmental and social protection: land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation;
 - (iv) blasting: number of blasts (and locations), status of implementation of blasting plan (including notices, evacuations, etc.), incidents of off-site damage or complaints (cross-reference other sections as needed);
 - (v) spill clean-ups, if any: material spilled, location, amount, actions taken, material disposal (report all spills that result in water or soil contamination);
 - (vi) waste management: types and quantities generated and managed, including amount taken offsite (and by whom) or reused/recycled/disposed on-site;
 - (vii) details of tree plantings and other mitigations required undertaken in the reporting period;
 - (viii) details of water and swamp protection mitigations required undertaken in the reporting period.
- n. compliance:
- (i) compliance status for conditions of all relevant consents/permits, for the Work, including quarries, etc.): statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance;
 - (ii) compliance status of C-ESMP/ESIP requirements: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
 - (iii) compliance status of Health and Safety Management Plan re: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance

- (iv) other unresolved issues from previous reporting periods related to environmental and social: continued violations, continued failure of equipment, continued lack of vehicle covers, spills not dealt with, continued compensation or blasting issues, etc. Cross-reference other sections as needed.
- (v) Contractor incident management data will be verified on a continuous basis (based on the risk) in accordance with client requirements (240-94140379 Occupational Health & Safety Data Verification and Assurance). Monthly internal verifications to be conducted and quarterly letter of assurances to be submitted to GCD construction SHEQ Department.
- (vi) Contractor manpower calculation for performance measurement will be as per client requirements, as stipulated in Group Capital Division contractor manpower calculation work instruction 240-94140631 (latest revision).
- (vii) SHE Statistical and Non-Statistical Reports, dashboards, presentations will be as per the Client requirements. Reporting must not be later than the 3rd of every month. (Reporting format will be made available to the Contractor prior to contract award).
- (viii) SHE performance shall be evaluated against the Client Requirements (240-56927739-Group Capital Execution Assurance Construction SHEQ Operational plan)
- (ix) All OHS incident reporting, recording, classification and investigation will be done according to the requirements set out in the Eskom document 32-95 (latest version)

List of Appendix's

(Refer GCC 22.2.3)

Employer's Requirements Section VII

Salient Features of Labour & Environment Protection Laws

SALIENT FEATURES OF SOME MAJOR LABOUR LAWS

APPLICABLE TO ESTABLISHMENTS ENGAGED IN BUILDING AND OTHER CONSTRUCTION WORK

List of Appendices		
Volume 3 Employers Requirements	Appendix A -	Site Information
	Appendix B -	Quality Specification
	Appendix E -	Environmental Management
	Appendix F -	Water Supply
	Appendix G -	Design Review Procedure
	Appendix H -	Grid Code
	Appendix I -	SHE Specification

Section IX - Particular Conditions of Contract

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

Particular Conditions of Contract (PCC)

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

PCC 1. Definitions	<p>The Employer is: Eskom Holdings SOC LTD.</p> <p>The Project Manager is: Lwando Limba, Programme Manager</p> <p>The Banks are: International Bank for Reconstruction and Development (IBRD) also known as The World Bank (Bank), African Development Bank (AfDB) and New Development Bank (NDB).</p> <p>Country of Origin: all countries and territories as indicated in Section V of the bidding documents, Eligible Countries.</p> <p>Insert new definition:</p> <p>“Agreement” means the Operations and Maintenance Agreement, dated as of [____], by and between the Employer and the Contractor attached to the Contract as Appendix 9</p> <p>“Deposit Materials” means, collectively, the source code version of all Contractor proprietary software included in the Technical Materials and the source code of any third party software included in the Technical Materials other than commercially available, off-the-shelf software, in each case together with all associated programmer’s documentation, flow-charts, diagrams, and notes sufficient to enable a reasonably skilled programmer to maintain and support the software independent of the owner of the software.</p> <p>“Defect or defects” means a failure of any part of the works or services executed by the Contractor, any part of the Facilities, or any Plant, materials, equipment or components used in the works or services executed by the Contractor to meet or comply with the Minimum Functional Specifications, prudent industry practices or any other provision of this Contract (fair wear and tear excepted) which is attributable to:</p> <p>(a). any design or engineering for which the Contractor is responsible.</p> <p>(b). Plant, equipment, materials or workmanship not being in accordance with the Minimum Functional Specifications, prudent industry practices or any other provision of the Contract; and/or</p>
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	<p>(c). failure by the Contractor to comply with any other obligation under the Contract.</p> <p>“Escrow Agent” means the person as defined in PCC 15.3.</p> <p>“Escrow Agreement” means the agreement as defined in PCC Clause 15.3.</p> <p>“Electrical Interconnection Point” means that point at the high voltage side of the main step-up transformer at which the Facilities is to be interconnected with the electricity grid.</p> <p>“Electrical Interconnection Requirements” means the requirements for the Facilities’ interconnection with the electricity grid as specified in the Minimum Functional Specifications.</p> <p>“Interconnection Facilities” means all structures, facilities, equipment, auxiliary equipment, devices and apparatus described in the Minimum Functional Specifications to be constructed and installed by Contractor in accordance with the Electrical Interconnection Requirements and the terms of this Contract for the purpose of interconnecting the Facility with the electricity grid at the Electrical Interconnection Point.</p> <p>“Latent Defects Period” means a period of ten years calculated from the end of the Defects Liability Period “Latent Defect” means a defect which was not, and would not have been discovered on reasonable inspection, by the Employer during the Defect Liability Period (without requiring any inspection not ordinarily carried out by the Employer during that period). Should the Employer undertake an inspection over and above the reasonable inspection, such inspection shall not place a greater responsibility on the Employer to have discovered the defect.</p> <p>“Major Components” means the Batteries, Battery Management System, HVAC, Energy Management System, Power Conversion Systems, transformer, Switch Gears, Fire System and Associated Equipment as defined in the BESS Standard.</p> <p>“Mandatory Spare Parts” means the spares that are required to recover in the shortest possible time from a pending or potential plant failure, or a low impact failure which will compromise either safety, legal or statutory compliance or continuity of electricity (generation or network) supply.</p>
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	<p>Mandatory Spare Parts is also referred to a Critical Spare Parts in the Contract and Appendices</p> <p>“O&M Plant” means all equipment that needs to be maintained and/or operated as set out in BESS and PV Operations and Maintenance Scope of Work BESS_Dx –SE-C19 and 474-12510 respectively</p> <p>“Serial Defects” means an identical or substantially similar defect which occurs in a Major Component in respect of the same parts or same components which defect:</p> <ul style="list-style-type: none"> (i) appears in five (5) or more of the Major Components of the Facilities supplied by the Contractor under this Contract; and/or (ii) appears in 10% or more of all Major Components supplied by the Contractor to all third parties and in each case is discovered within ten years (10) from the date of Operational Acceptance. <p>Same parts or same components shall in this context mean such parts or components produced to the same or substantially same design, engineering and/or manufacturing process or for the same or similar purpose.</p> <p>“SDL&I Obligations” means the Contractor’s obligations as fully described in Employers Requirement.</p> <p>“Services” means services performed by the Contractor in terms of the Agreement</p> <p>“Technical Information” means any and all information, documentation, plans, specifications, drawings, calculations, designs, graphs, sketches, design details, models, and any other construction and engineering documents related to the Facilities that is developed, acquired or licensed by Contractor, or that is developed, acquired, or licensed by any of Contractor’s Subcontractors and required to be delivered by Contractor under this Contract.</p> <p>“Technical Materials” means methods, software, Intellectual Property Rights, confidential information, Technical Information, processes and systems</p>
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<p>PCC 3.1 Interpretation</p>	<p>Insert the new clause PCC 3.1 (f) to read as follows</p> <p>“person” or “Party” includes a corporation, company, firm, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or any of the foregoing that is recognised by the laws of the Republic of South Africa as the subject of rights and duties, and references to a “person” (or to a word incorporating a person) or a Party shall be construed so as to include that person’s successors, assigns or transferees to the extent permitted under the relevant agreement or the laws of the Republic of South Africa;</p>
<p>PCC 5.1. Law and Language</p>	<p>PCC 5.1 The Contract shall be interpreted in accordance with the laws of: The Republic South Africa (RSA)</p>
<p>PCC 5.2. Law and Language</p>	<p>PCC 5.2 The ruling language is: English</p>
<p>PCC 5.3. Law and Language</p>	<p>PCC 5.3 The language for communications is: English</p>
<p>PCC 7.3. Scope of Facilities [Spare Parts]</p>	<p>PCC 7.3 The Contractor agrees to supply spare parts for the entire duration of the Agreement.</p> <p>The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Plant. Other spare parts and components shall be supplied as promptly as possible. In addition, in the event of termination of the production of spare parts, advance notification will be made to the Employer of the pending termination, with sufficient time to permit the Employer to procure the needed requirement. Following such termination, the Contractor will furnish to the extent possible and at no cost to the Employer the blueprints, drawings and specifications of the spare parts, if requested.</p>
<p>PCC 7.4 Scope of Facilities</p>	<p>Insert new clause 7.4 to read as follows:</p> <p>PCC 7.4 The Contractor shall provide the Employer with at least one (1) year’s notification in the event that it intends to make any technological changes or terminate production of items listed as Mandatory Spare Parts.</p> <p>PCC 7.4.1 The Contractor shall supply sufficient Mandatory Spare Parts to the Employer to ensure that Plant availability of 95% is maintained.</p>

	PCC 7.4.2 The Contractor shall provide a list of the Mandatory Spare Parts together with the unit costs and required quantities in Schedule 5 (“Spares”).
PCC 8.1 Time for Commencement and Completion	PCC 8.1 The Contractor shall commence work on the Facilities from the Effective Date for determining Time for Completion as specified in the Contract Agreement.
PCC 8.2 Time for Commencement and Completion	PCC 8.2 The Time for Completion of the Facilities shall be [a minimum of 6 and maximum of 8 months from the Effective Date as described in the Contract Agreement. And Operation & Maintenance (O&M) of the O&M Plant for a period of 5 years from the date of Operational Acceptance of the Facilities. The complete Operation & Maintenance is part of this Contract, the scope of work, service level agreement and specific payment for O&M is consolidated and Annexed as “Appendix 9” to the bidding document as “ Part of Operations and Maintenance Agreement For Lot A 140 MWh at Melkhout and Lot B 6MWh (BESS) and 2.04 MW (PV)at Rietfontein BESS and PV Plants “
PCC 9.1 Contractor’s Responsibilities	Insert the words “and carry out the Services” in the second line. The amended clause to read as follows: The Contractor shall design, manufacture including associated purchases and/or subcontracting, install and complete the Facilities and carry out the Services 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.
PCC 9.6 Contractor’s Responsibilities	PCC 9.6 - Substitute the word ‘legal entities’ with ‘firms’ in lines 2 and 4.
PCC 9.13 Child Labour	Insert new sub-clause 9.13 to read as follows: The Contractor, including its Subcontractors, shall not employ or engage a child under the age of 15 unless the national law specifies a higher age (the minimum age). The Contractor, including its Subcontractors, shall not employ or engage a child between the minimum age and the age of 18 in a manner that is likely to be hazardous, or to interfere with, the child’s

	<p>education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development.</p>
<p>PCC 9.19 Contractor’s Responsibilities</p>	<p>Insert a new clause 9.19 to read as follows:</p> <p>PCC 9.19</p> <p>The Contractor shall comply with the Employer’s Policies and Procedures as well as the World Bank Group Environmental and Social Framework (ESF) during the execution of the Contract to the extent that their activities are covered in these documents.</p> <p>The WBG ESF are available at: http://pubdocs.worldbank.org/en/837721522762050108/Environmental-and-Social-Framework.pdf</p> <p>Throughout the duration of the Contract the Contractor shall be responsible for monitoring, implementation and compliance to environmental and social norms for the Facilities in accordance with this contract. The Environmental Authorisation granted for the facility shall be legally binding on the Contractor and forms part of this contract. Detailed Environmental specification are contained in in Section VII of the Employer’s Requirements to the Contract.</p>
<p>PCC 9.21 Contractor’s Responsibilities</p>	<p>Insert new clause 9.21 to read as follows:</p> <p>PCC 9.21</p> <p>The Contractor shall maintain all records and accounts pertaining to the works, during the execution thereof and for a period of 5 (five) years after Operational Acceptance and shall ensure that his Subcontractors do likewise. The Employer and its other authorised representatives and agents have the right to examine, audit, copy and inspect the said records and accounts at all reasonable times during the execution of the Contract and during the said 5 (five) year period.</p>
<p>PCC 9.22 Contractor’s Responsibilities</p>	<p>Insert new sub-clause 9.22 to read as follows:</p> <p>PCC 9.22</p> <p>The Parties acknowledge and agree that (a) as of the Effective Date, the Contractor and entity providing the Services are the same legal entity, and (b) for the avoidance of doubt, if at any time after the Effective Date the entity providing the Services and the Contractor are no longer the same legal entity, then the Contractor further acknowledges and agrees that (i) the Employer’s objective is for the Contractor and the entity providing of the Services , on a collaborative and coordinated basis, to design, supply, install, test, commission, operate and maintain the Facilities in accordance with the terms of this Contract and the Agreement , (ii) the Parties intend that this</p>

	<p>Contract will promote and support such objective, and that this Contract shall be performed and interpreted in a way that gives greatest effect to this purpose, and (iii) during the period from the Effective Date until Operational Acceptance, the Contractor shall use commercially reasonable efforts to coordinate its activities under this Contract with the activities under the Agreement and the Employer in order to reduce duplicative efforts, maximize efficiencies, resolve disputes collaboratively and expeditiously, and minimize delays. The Contractor shall take no action which could reasonably be expected to relieve the entity providing the Services from any obligation or liability under the Agreement or to give rise to any claim by the entity providing the Services against the Employer or the Contractor.</p>
<p>PCC 10.3 Employer’s Responsibilities</p>	<p>Delete GCC 10.3 and replace with the following: PCC 10.3 The Employer shall acquire and pay for all permits, approvals and licenses that are listed as Eskom obligations in Section VII of the Employer’s Requirements. The Contractor shall acquire and carry all costs associated with obtaining 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 are not listed as Employer’s obligations under Section VII of the Employer’s Requirements.”</p>
<p>PCC 10.4 Employer’s Responsibilities</p>	<p>Amend GCC 10.4 as follows: PCC 10.4 Delete the word “its best” appearing on the first sentence of GCC 10.4. Insert the follow sentence at the end of GCC 10.4 after the word “obtain” Whilst the Employer, if requested, will endeavour to assist the Contractor to obtain the permits, approvals and/or licenses referred to above the Employer will not be liable for any delays and costs that arise from the failure of Contractor to obtain the permits timeously.</p>
<p>PCC 10.5, Employer’s Responsibilities</p>	<p>Delete 10.5 in its entirety and replace with the following: The Employer shall supply Employer Personnel for witnessing and observing the Pre-commissioning, Commissioning and Guarantee Tests. The Contractor 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 to properly carry out Pre-commissioning, Commissioning and Guarantee Tests, all in</p>

	accordance with the provisions of the Contract in the manner thereupon specified or as otherwise agreed upon by the Employer and the Contractor.
PCC 10.6 Employer's Responsibilities	Delete 10.6 and replace with the following: The Contractor shall be responsible for the continued operation of the Facilities after Completion, in accordance with GCC Sub-Clause 24.8, and the Employer shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with GCC Sub-Clause 25.2.
PCC 10.7 Employer's Responsibilities	Amend GCC 10.7 as follows: Replace GCC clause 10 with GCC clause 10.5 and GCC 10.6 and replace Employer with Contractor and replace "save " with "including" All costs and expenses involved in the performance of the obligations under this GCC Clause 10 .5 and 10.6 shall be the responsibility of the Contractor including those to be incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GCC Sub-Clause 25.2."
PCC 10.9 Employer's Responsibilities	Insert a new clause 10.9 to read as follows: PCC 10.9 Nothing contained in the Contract shall prevent the Employer from appointing a third party to carry out any of its obligations in terms of this Contract.
PCC 12.2 Terms of Payment	Insert the words " Services and" after the word "the" in the second line .Amended clause to read as follows : "No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Services and Facilities or any part(s) thereof."
PCC 12.5 Terms of Payment	Insert new sub-clause 12.5 to read as follows: PCC 12.5 The Contractor agrees and acknowledges that the Employer shall have no obligation to make any payment to the Contractor under this Contract at any time when the Operator remains in breach or default under the Agreement, and that the Employer may withhold or retain part or all of any payment due to the Contractor hereunder as far as is reasonably necessary to ensure the performance of the Operator's obligations in accordance with the Agreement.
PCC 13.3. 1 Securities	The amount of Performance Security, as a percentage of the Contract Price for the Facility, shall be in following stages: First Stage: The value of the Contract Performance Security shall be 08% (Eight percent) of the Contract Value {i.e. total sum of the Supply (Abroad & Employer's country), Service (Freight, Design, Installation & Civil Works) & value of O&M contract} and will remain valid until Operational Acceptance of the Facilities.

	<p>Second Stage: The value of the Contract Performance Security shall be 08% (Eight percent) of the Contract Value {i.e. total sum of the Supply (Abroad & Employer’s country), Service (Freight, Design, Installation & Civil Works) & value of O&M contract} starting from the Operational Acceptance of the Facilities, valid till the end of 5th year of the Agreement. Contractor needs to furnish the revised Contract Performance Security in the Second Stage amounting to 08% of the total Contract Value as mentioned above within the validity period of the Contract Performance Security submitted at First Stage. In case of extension for Operational Acceptance, the validity of the Performance Security will be extended suitably.</p> <ul style="list-style-type: none"> • In case the Contractor fails to furnish the Contract, Performance Security mentioned under the Second Stage within the indicated time period as mentioned above (Within the due validity period of the existing Performance Security) Employer at their sole discretion will forfeit the Contractor’s Performance Security furnished at the respective stage. • Contract Performance Security submitted at the Second Stage shall be released to the Contractor without any interest not later than 75 (Seventy-Five) days after the successful completion of the complete O&M period (5 Years) subject to the approval and acceptance of the O&M period deliverables by the Project Manager • O&M Period will start from the Operational Acceptance of the Facilities • The Contractor will be responsible to operate and maintain the Plant after Commissioning till the Operational acceptance of Facilities, without any additional cost to the Employer. <p>GCC 13.3.1 – insert the following at the end of the para: If the performance security is a bank guarantee, it shall be issued either (a) by bank from the Employer’s country; or (ii) by a foreign bank through a correspondent South African Bank; or (c) directly by a foreign bank which has been determined in advance to be acceptable to the Employer.</p>
<p>PCC 13. 3.3 Securities</p>	<p>Amend GCC 13.3.3 as follows :</p> <p>The Performance Security shall not be reduced on the date of the Operational Acceptance.</p>

<p>PCC 13. 4 Securities</p>	<p>Insert a new clause as PCC 13.4 to read as follows:</p> <p>PCC 13.4.</p> <p>If the reason that the Contractor is to provide a replacement or to extend the period of validity of the Performance Security is due to:</p> <ul style="list-style-type: none"> (a) a delay for which the Contractor is responsible under the Contract the Contractor shall be responsible for the cost of the replacement or extended security, (b) a delay for which the Employer is responsible under the Contract the Employer shall be responsible for the cost of the replacement or extended security, or (c) (c) periods of delay for which the Employer and the Contractor are responsible the cost of the replacement or extended security shall be shared between the Contractor and Employer in a proportion equal to the portion of delay for which each is responsible.
<p>PCC 13.5. Environment, Social, Performance Security</p>	<p>Insert new clause 13.5. Environment, Social, SDL&I Performance Security to read as follows:</p> <p>PCC 13.5.1</p> <p>The Contractor shall obtain (at its cost) an irrevocable, on demand bank guarantee (the “Environment, Social, SDL&I Performance Security”) for proper performance of the Contractor’s Environment, Social, SDL&I Obligations, in the amount of 2% (two percent) of the Contract Price, in the currencies and proportions in which the Contract Price is payable.</p> <p>PCC 13.5.2</p> <p>The Contractor shall deliver the Environment, Social, SDL&I Performance Security to the Employer on or before the Effective Date. The Environment, Social, SDL&I Performance Security shall be issued by an entity from within a country (or other jurisdiction) accepted by the Employer and shall be in the form set forth in Section X to the Standard Bidding Documents titled “Contract Forms”, or in another form accepted by the Employer.</p> <p>PCC 13.5.3</p> <p>The Contractor shall ensure that the Environment, Social, SDL&I Performance Security is valid and enforceable until the Contractor has fulfilled the Contractor’s Environment, Social, SDL&I Obligations. If the terms of the Environment, Social, SDL&I Performance Security</p>

	<p>specifies its expiry date, and the Contractor has not fully complied with its Environment, Social, SDL&I Obligations twenty-eight (28) days prior to the expiry date, the Contractor shall extend the validity of the Environment, Social, SDL&I Performance Security until the Contractor's Environment, Social, SDL&I Obligations have been fulfilled.</p> <p>PCC 13.5.4 The Employer shall not make a claim under the Environment, Social, SDL&I Performance Security, except for amounts to which the Employer is entitled in the event of:</p> <p>PCC 13.5.4.1 failure by the Contractor to extend the validity of the Environment, Social, SDL&I Performance Security, in which event the Employer may claim the full amount of the Environment, Social, SDL&I Performance Security and retain the proceeds as cash security; or</p> <p>PCC 13.5.4.2 failure by the Contractor to timeously comply with any of its Environment, Social, SDL&I Obligations.</p>
<p>PCC 13.6 Environment, Social, SDL&I Performance Security</p>	<p>Insert new clause 13.6. to read as follows</p> <p>PCC 13.6 If it is determined that the Employer has made a claim under the Environment, Social, SDL&I Performance Security that it was not entitled to make, the Employer shall refund the excess amount claimed and pay interest thereon to the Contractor, calculated at the rate from the date on which the amount was paid to the Employer to the date on which it is refunded to the Contractor.</p>
<p>PCC 14.1 Taxes and Duties</p>	<p>Insert the word "and Services" after the word "Facilities " in the second last line. Amended clause to read as follows" 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 and Services in and outside of the country where the Site is located.</p>
<p>PCC 14.2 Taxes and Duties</p>	<p>Amend GCC 14.2 and add new subparagraph as 14.2 (c) PCC 14.2 (c) Contractor shall pay on behalf of the Employer the following taxes and duties which will be reimbursed to the Contractor at actuals upon submission of proof of payments.</p>

	<p>For the avoidance of doubt, it is expressly recorded that the Contractor is liable for all the South African taxes that may be applicable to any of its employees who are not primarily resident in the Republic of South Africa.</p>
<p>PCC 14.5 Taxes and Duties</p>	<p>Insert new clause 14.5 to read as follows: PCC 14.5</p> <p>If any duty, exemption, reductions, allowances or privileges may be available to the Employer in the Employer’s country, the Contractor shall use its best endeavours (by making available the Certificate of Origin/EUR1) to enable the Employer to benefit from such savings to the maximum allowable.</p>
<p>PCC 15.1 License/Use of Technical Information</p>	<p>Insert the words “and O&M Plant in Appendix 9” after the word “Plant” / Amended clause to read as follows: For the operation and maintenance of the Plant and O&M Plant in Appendix 9 and Appendix B of Rietfontein 474-12510 respectively , the Contractor hereby grants a non-exclusive and non-transferable license (without the right to sub-license) to the Employer under the patents, utility models or other industrial property rights owned by the Contractor or by a third Party from whom the Contractor has received the right to grant licenses thereunder, and shall also grant to the Employer a non-exclusive and non-transferable right (without the right to sub-license) to use the know-how and other technical information disclosed to the Employer under the Contract. Nothing contained herein shall be construed as transferring ownership of any patent, utility model, trademark, design, copyright, know-how or other intellectual property right from the Contractor or any third Party to the Employer.</p>
<p>PCC 15.2 License/Use of Technical Information</p>	<p>Delete GCC 15.2 in its entirety and replace with the following: PCC 15.2</p> <p>Contractor hereby grants a royalty free, non-exclusive license to the Employer, its agents and/or its third-party contractors (including the provider of the Services under the Agreement), until the Facility permanently ceases operation, under any Technical Materials owned by Contractor. Notwithstanding any provision hereof to the contrary, nothing contained herein shall be construed as transferring ownership of any Technical Materials from the Contractor or any third party to the Employer, its agents, or any third-party contractors (including the provider of Services under the Agreement). Each Party shall retain ownership of any Intellectual Property Rights it owned prior to the Effective Date.</p>
<p>PCC 15.3</p>	<p>Insert new clause 15.3 to read as follows PCC 15.3</p>

License/Use of Technical Information	<p>Within thirty (30) days following the date of Operational Acceptance or, if earlier, the date on which this Contract is terminated pursuant to GC Sub-Clause 42.2, (a) the Parties shall enter into an escrow agreement (the “Escrow Agreement”) with a reputable third party escrow agent agreed upon by the Parties (the “Escrow Agent”) regarding the escrow of the Deposit Materials, and (b) the Contractor shall deliver the Deposit Materials to the Escrow Agent. As promptly as is practicable after the development by Contractor of any updates, supplements, improvements, enhancements or other modifications or developments of or to the Deposit Materials and no less frequently than once each calendar year after the execution of the Escrow Agreement, Contractor shall deliver to the Escrow Agent such updates, supplements, improvements, enhancements and other modifications or developments of or to the Deposit Materials. The Escrow Agreement shall provide that the Employer, its agents and its third-party contractors shall have access to the Deposit Materials upon expiration or earlier termination of the Agreement. Contractor hereby grants the Employer a non-exclusive, royalty-free license to use, copy, modify, and prepare derivative works of the Deposit Materials for the purpose of operating and maintaining the Facility</p>
PCC 16.1 Confidential Information	<p>Add the following sentence at the end of the last paragraph of GCC 16.1</p> <p>“For the purposes of this clause the Employer’s shareholders, financiers and external advisors are not a third Party.”</p>
PCC 17.2.4 Representatives	<p>Delete the word “Completion” in the second line and replace with “Operational Acceptance”. The amended clause to read as follows:</p> <p>From the commencement of installation of the Facilities at the Site until Operational Acceptance, the Contractor’s Representative shall appoint a suitable person as the Construction Manager. The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as the Construction Manager’s deputy.</p>
PCC 19 Subcontractors	<p>Insert new sub-clause 19.7 to read as follows:</p> <p>PCC 19.7</p> <p>The Contractor shall require all Subcontractors to obtain, maintain and keep in force during the time in which they are engaged in performing their obligations in terms of the Contract, insurance</p>

	coverages that are consistent with Contractor's customary practices for such types of subcontracts for projects of similar type and capacity to the Facilities and with the requirements of GCC Clause 34, if applicable.
PCC 21.1 Plant	<p>Insert the a new paragraph after the word "Site"</p> <p>The Contractor's obligations shall include but not be limited to packing, shipping, receiving, unloading and marshalling of all Plant, materials, supplies and other items required for the Facilities (including but not limited to Plant, materials, supplies, and Contractor's Equipment required for this contract), whether such items are sourced from within or outside of the Country.</p>
PCC 21.3.4 Procurement	Delete the word "best" in the fourth line. The amended clause to read as follows "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 endeavor 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.
PCC 21.3.5 Transportation	<p>Insert new clause 21.3.5</p> <p>PCC 21.3.5</p> <p>The Contractor shall arrange for and ensure the security of all Plant, materials, supplies and other items required for the purposes of the Contract (including Plant, materials, supplies, and contractor's Equipment required for the contract period) while in transport or in storage off or on the Site. The Contractor shall warehouse or otherwise provide appropriate storage (in accordance with manufacturers' recommendations) for all Plant, materials, supplies, and other items required for permanent and temporary construction, and shall provide for the procurement or disposal of, as appropriate, all soil, gravel and similar materials required for the performance of its obligations in terms of the Contract.</p>
PCC 22.1.2 Contractor's supervision	<p>Delete GCC 22.1.2 in its entirety and replace with a new clause to read as follows:</p> <p>PCC 22.1.2.</p> <p>The Contractor shall give or provide all necessary superintendence during the installation of the Facilities, including the effecting of all legal appointments required to be made by it in terms of the OHSa, the Construction Regulations and any other regulations to the OHSa</p>

	<p>that may be applicable from time to time. The Construction Manager or its deputy shall be constantly on the Site to provide fulltime superintendence of the installation. The Contractor shall provide and employ only technical personnel who are skilled, competent and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand and trained to understand the hazards associated with the work being performed and who have the authority to ensure that precautionary measures are implemented.</p>
<p>PCC 22.2.1 Engagement of Staff and Labour</p>	<p>Delete the following paragraph in GCC 22.2.1 “The Contractor shall provide and employ on Site...the necessary skills” in its entirety and replace the deleted paragraph with the following:</p> <p>“The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labour as submitted in the Resource Plan submitted by the Contractor to the Project Manager in compliance with Clause 9 and 19, Part 2 of the Employers Specification for Labour and Industrial relations. The Contractor will utilise local labour as specified in Clause 10 of the Employers Specification for Labour and Industrial Relations”.</p>
<p>PCC 22.2.2 Persons in the Service of Employer</p>	<p>Insert the following in GCC 22.2.2 after the word “Personnel”</p> <p>“Subject to clause 14 of the Employers Specifications for Labour and Industrial relations the Contractor or its sub-contractors shall not recruit or attempt to recruit staff and labour from another Contractor”</p>
<p>PCC 22.2.3 Labour Laws</p>	<p>Insert the following in GCC 22.2.3 after the phrase “ all their legal rights”</p> <p>“The Contractor shall also comply with all industry agreements as required in Clause 6 of the Employers Specifications for Labour and Industrial Relations.</p> <p>It is the responsibility of the Contractor to ensure it is aware of, conversant with and takes into consideration all the South African Constitutional provisions relating to Labour, South African Labour Laws, relevant Bargaining Council or Industry Agreements, other Collective Agreements as well as the specific labour climate, role of trade unions, and prevalent facts that leads to labour instability within the South African Labour market.”</p>
<p>PCC 22.2.3 Installations</p>	<p>Delete the following paragraph in GCC 22.2.3 “The Contractor shall...labour of its Subcontractors” and replace with the following:</p> <p>“The Contractor shall operate its industrial relations efficiently and effectively and will make every reasonable attempt to avoid unlawful, riotous, industrial unrest or disorderly conduct or behaviour by or</p>

	amongst its employees and the labour of its sub-contractors. The Contractors must strictly comply with the provisions of Employers Specification for Labour and Industrial Relations.”
PCC 22.2.4 Installations	Delete GCC 22.2.4 in entirety “The Contractor shall...that of the Contractor” and replace with the following: PCC 22.2.4 “The Contractor shall pay at least the minimum Wage Rates prescribed in the Wage Schedules of the applicable Bargaining Council and comply with the conditions of employment established by Bargaining Council that is applicable to it. In the event that the works performed by the Contractor and or any of its sub-contractors falls outside the scope of a Bargaining Councils Agreements then the Contractor and or its Sub-contractor will comply with the Bargaining Councils Agreements whose scope of work is most closely related to the works performed by the Contractor and or Sub-contractor. All Contractors and Sub-Contractors must comply with one of the Bargaining Councils as defined in Clause 2.2.1 of the Employers Specification for Labour and Industrial Relations. Contractors must also observe the exclusions as set out in Clause 3, of the Employers Specification for Labour and Industrial Relations.”
PCC 22.3.3 Contractor’s Equipment	Delete the word “use its best” in the first line. The amended clause to read as follows “The Employer will, if requested, endeavor 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.
PCC 22 A Interconnection	Insert a new clause 22 A to read as follows: PCC 22A.1 Employer shall make the relevant portions of its electricity grid available at the Electrical Interconnection Point for interconnection with the Interconnection Facilities of the Facilities at least [three (3)] months prior to Completion; provided, however, that (a) Employer’s failure to timely comply with the obligations in this Sub-Clause shall not be (i) a material breach of its obligations under the Contract in accordance with GC Sub-Clause 42.3.1(a), or (ii) an event of Force Majeure pursuant to GC Sub-Clause 37.1, and, (b) the Contractor may instead submit an Application for Change Proposal pursuant to GC Clause 39 in respect of any cost incurred, or a notice of a claim for an extension of the Time for Completion pursuant to GC Clause 40, in each case in respect of such failure or delay.
PCC 24.2	Amend 24.2 to read as follows :

Completion of the Facilities	<p>The Contractor shall supply the operating and maintenance personnel for Pre-commissioning of the Facilities or any part thereof. .The Employer shall supply Employer Personnel for witnessing and observing the Pre-commissioning of the Facilities or any part thereof.</p> <p>The Contractors shall provide the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Pre-commissioning of the Facilities or any part thereof.</p>
PCC 24.3 Completion of the Facilities	<p>Amend GCC 24.3 as follows</p> <p>Replace “Employer” with the “Contractor” to read as follows</p> <p>As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the <u>Contractor</u> and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters have been provided by the <u>Contractor</u> in accordance with GCC Sub-Clause 24.2, the Contractor shall commence Pre-commissioning of the Facilities or the relevant part thereof in preparation for Commissioning, subject to GCC Sub-Clause 25.5.</p> <p>Insert a new paragraph to read as follows:</p> <p>“Within seven (7) days after receipt of the notice from the Contractor under GCC Sub-Clause 24.1, the Employer shall supply the Employer Personnel for observing and witnessing all test for Pre-commissioning of the Facilities or any part thereof”</p>
PCC 25. 1.2 Commissioning and Operational Acceptance	<p>Amend GCC 25.1.2 as follows</p> <p>PCC 25.1.2</p> <p>Replace the “Employer” with the “Contractor” amending the GCC to read as follows:</p> <p>The <u>Contractor</u> shall supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Commissioning.</p> <p>Insert a new paragraph to read as follows:</p> <p>“Pursuant to GCC Sub-Clause 25.1.1, the Employer shall supply the operating and maintenance personnel for observing and witnessing all commissioning of the Facilities or any part thereof”</p>
PCC 25.2.1 Commissioning and Operational Acceptance	<p>Amend GCC 25.2.1 as follows</p> <p>PCC 25.2.1</p> <p>Delete a phrase “and any repeats thereof” at the end of the last sentence of GCC Sub-Clause 25.2.1.</p>

<p>PCC 26.2 Completion Time Guarantee</p>	<p>PCC 26.2</p> <p>Applicable rate for liquidated damages: 0.7% per Week</p> <p>The Liquidated Damages for delay is applicable only if the entire Facility is not commissioned by the Time for Completion as mentioned in the bidding document.</p> <p>The above rate applies to the price of the part/s of the Facilities, as quoted in the Price Schedule, for that part for which the Contractor fails to achieve Completion within the schedule Time for Completion.</p> <p>Maximum deduction for liquidated damages: 10.0%</p>
<p>PCC 27.2 Defect Liability</p>	<p>Amend the first paragraph of GCC 27.2 as follows:</p> <p>PCC 27.2</p> <p style="padding-left: 40px;">Delete a phrase “five hundred and forty (540)” and replace it with “seven hundred and thirty (730)”</p> <p style="padding-left: 40px;">Delete a phrase “one year” and replace it with “two years”</p>
<p>PCC 27.11 Defect Liability</p>	<p>Insert new sub-clause 27.11 to read as follows:</p> <p>PCC 27.11 Serial Defects</p> <p>27.11.1 If, at any time during the period of the Defects Liability Period or the Latent Defect Liability Period, either Party becomes aware of any defect which possibly constitutes a Serial Defect, such Party shall notify the other within twenty one (21) days of becoming aware thereof and the following provisions shall apply:</p> <p style="padding-left: 40px;">27.11.1.1 the Contractor shall perform any immediate measures to continue the operation of the Facilities as may reasonably be deemed necessary by the Contractor.</p> <p style="padding-left: 40px;">27.11.1.2 the Contractor shall within one month following the date of such notice perform an investigation (including an inspection of the Facilities and a root cause analysis) to ascertain whether a Serial Defect exists, and, if so, the cause and nature of such Serial Defect;</p> <p style="padding-left: 40px;">27.11.1.3 the Contractor shall within thirty (30) days following the completion of the investigation contemplated pursuant to PC Sub-Clause 27.11.1.2, submit a report to the Employer which shall set out (i) whether in the Contractor’s opinion a Serial Defect exists in the Facilities, (ii) if so, the Contractor’s recommendations for remedying such Serial Defect, (iii) the affected parts, components and Plant together with all relevant</p>

	<p>documentation relating thereto, and (iv) copies of the root cause analysis report in respect of this Serial Defect.</p> <p>27.11.1.4 The Employer shall, within twenty one (21) days of receipt of the Contractor’s report confirm in writing to the Contractor either (i) that it accepts the findings set out in the Contractor’s report, in which case the provisions of PC Sub-Clause 27.11.3.1 and PC Sub-Clause 27.11.3.2 shall apply, or (ii) that the Employer does not accept the findings set out in the report and the reasons therefor in which case the provisions of PC Sub-Clause 27.11.2 shall apply.</p> <p>27.11.2 Where the Parties disagree as to whether there is a Serial Defect, its extent and/or the remedial measures required, then such Dispute may be referred to Dispute resolution pursuant to GC Clause 46 hereof. The Dispute Board or the arbitral panel, as applicable, shall be required, having carried out such investigations (including another root cause analysis) as it shall deem appropriate, to give a written opinion as soon as reasonably practicable on the matters in Dispute between the Parties under this PC Sub-Clause 27.11.2.</p> <p>27.11.3 Where the Parties agree, or where it is determined by the Dispute Board or an arbitral panel, as applicable, that a Serial Defect exists, the following provisions shall apply:</p> <p>27.11.3.1 the Contractor shall carry out all repairs and replacements agreed or determined by the Dispute Board or the arbitral panel, as applicable, as being necessary to rectify the Serial Defect as soon as reasonably practicable. Notwithstanding the Contractor’s recommendations for remedying such Serial Defect or the written opinion given by the Dispute Board or the arbitral panel, as applicable, the Contractor shall repair or replace all components and/or parts at the Facility which are determined to suffer from a Serial Defect, regardless of whether the said components or parts are actually defective.</p> <p>27.11.3.2 The Contractor shall be liable for a period of five (5) years from the date of repair or replacement of any components or parts in the Facility in terms of this PC Sub-Clause 27.11.3 for any defects that may arise in such component or part.</p>
<p>PCC 27.12</p>	<p>Insert a new clause “Latent Defects” to read as follows:</p>

Defects Liability	<p>PCC 27.12</p> <p>The Contractor shall execute all work required to remedy Latent Defects as may be notified by (or on behalf of) the Employer on or before the expiry date of the Latent Defect Liability Period.</p> <p>If the Contractor fails to so remedy any notified Latent Defects the provisions of GC Sub-Clause 27.7 shall apply mutatis mutandis.</p> <p>If the work of remedying of any such Latent Defects may affect the performance of the Facilities, the Employer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within twenty-eight (28) days after the Latent Defect in question is remedied. These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the cost of the Contractor.</p>
PCC 28.5 Functional Guarantees	<p>Insert new clause 28.5 to read as follows:</p> <p>PCC 28.5</p> <p>The Contractor warrants that the Functional Guarantees accepted by the Project Manager at Operational Acceptance shall be met and maintained for a period of five (5) years from Operational Acceptance. To the extent that the levels accepted by the Project Manager at Operational Acceptance and pursuant to tests conducted under the Functional Guarantees, are not met at any time during the period of five (5) years from Operational Acceptance the Contractor shall take all steps necessary to ensure that the Functional Guarantees are met including but not limited to the repair or replacement of defective parts of the Facilities. Notwithstanding anything to the contrary contained in this Agreement this warranty and the Contractor’s liability in terms hereof will not be limited by any provision in this Contract.</p>
PCC 29.1 Patent indemnity	<p>Insert the word “c) and provision of the Services “ after the word “country” in the last line of the first paragraph.</p>
PCC 33.2 Loss of or Damage to Property. Accident or Injury to Workers. Indemnification	<p>Amend only the first paragraph of GCC 33.2 and insert the following at the end of the last sentence or after the word “claim”</p> <p>“Provided, that:</p> <p>(a) the Contractor shall not settle or compromise such proceedings or claim in a manner that (a) imposes any obligation on the party indemnified by the Employer, or (b) does not unconditionally release the parties indemnified by the Employer, in each case without the prior written approval of the Employer.</p>

	<p>(b) neither Party shall make any statement nor release anything regarding the proceedings or claim to the media whether for publication or off the record, without the consent of the other Party.</p> <p>(c) the Employer shall (i) be kept fully informed of the progress of the matter, (ii) be furnished with copies of all pleadings and notices filed, correspondence and briefs to counsel, and (iii) receive advance notice of and be entitled to attend all meetings relating to the matter.</p> <p>(d) the Employer shall be entitled to appoint independent lawyers to hold a watching brief;</p> <p>(e) the proceedings will be conducted at the entire risk and cost of the Contractor.</p> <p>(f) the Employer shall cooperate with the Contractor’s insurers to the extent required by such insurers;</p> <p>(g) the Contractor shall furnish information to its insurers as they may reasonably require; and</p> <p>(h) the Employer shall be entitled to require the Contractor to provide security for any costs that may be incurred by the Employer or be awarded against it.</p>
<p>PCC 34.2 Insurance</p>	<p>Delete GCC 34.2 and replace with the following:</p> <p>The Employer shall be named as additional insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1, except for the Third Party Liability, Workers’ Compensation and Employer’s Liability Insurances, and the Contractor’s Subcontractors shall be named as additional insureds under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1 except for the Cargo Insurance During Transport, Workers’ Compensation and Employer’s Liability Insurances.</p> <p>The Contractor shall be included as additional insured under all insurance policies taken out by the Employer pursuant to GCC Sub-Clause 34.5, and the Contractor’s Subcontractors shall be included as additional insureds under all insurance policies taken out by the Employer pursuant to GCC Sub-Clause 34.5.</p> <p>The Contractor shall be named in the certificate of insurance to be provided by the Employer.</p>
<p>PCC 34.6 Insurance</p>	<p>Amend GCC 34.6 as follows:</p> <p>Delete the following paragraph:</p> <p>“If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC Sub-Clause 34.1, the Employer may</p>

	<p>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.”</p>
<p>PCC 42.1.2 Termination</p>	<p>Insert the words “and the Services “after the word “Facilities” in the last line. Amended clause to read as follows”</p> <p>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 and the Services”.</p>
<p>PCC 42.1.3 Termination</p>	<p>Insert the following after 42.1.3(e) “provided, however, that</p> <ul style="list-style-type: none"> (i) Contractor shall use all reasonable efforts to minimize any termination costs under this GC Clause 42.1.3. (ii) prior to making any termination payment pursuant to this GC Clause 42.1, Contractor shall (a) if Employer so requests, execute and deliver all such papers and take all such steps, including legal assignments, as required for the purpose of fully vesting in Employer all contractual rights of Contractor under all subcontracts, purchase orders, warranties, guarantees and other agreements, and (to the extent permitted under applicable law) all rights of Contractor under applicable permits and (b) comply with the requirements of PCC 47(Liens); <p>and</p> <ul style="list-style-type: none"> (iii) Contractor shall, within fourteen (14) days of any such termination, make available for review by Employer all invoices and other documentation as are sufficient to enable Employer to verify the performance of the Facilities and or Installation Services and or Facilities and the Contractor’s costs associated therewith, in order to determine the amount of the termination payment due thereunder. <p>The termination payment shall not include the costs of future anticipated profit.</p>

<p>PCC 42.1.4 Termination</p>	<p>Insert new sub-clause 42.1.4 to read as follows:</p> <p>PCC 42.1.4</p> <p>Payment of the termination under this GC Sub- Clause 42.1 shall be the sole and exclusive liability of Employer to the Contractor, and the sole and exclusive remedy to the Contractor, with respect to termination of this Contract, pursuant to this GC Sub-Clause 42.1.</p>
<p>PCC 42.2.2 Termination for Contractor's Default</p>	<p>Insert a new sub-clause (e) under sub-clause 42.2.2 to read as follows:</p> <p>"(e) if the Contractor has reached the Maximum liquidated damages as provided for in PCC26.2."</p>
<p>PCC 42.2.3 Termination for Contractor's Default</p>	<p>Amend sub-clause 42.2.3 by inserting the following words after the last paragraph:</p> <p>The Parties shall continue to perform their respective obligations hereunder until the date of termination of the Contract.</p>
<p>PCC 43.1. Assignment</p>	<p>Amend GCC 43.1 and insert the following as a second paragraph</p> <p>Notwithstanding the above the Employer may on written notice to the Contractor cede and delegate its rights and obligations under this Contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Employer and or the Electricity Supply Industry and the Electricity Distribution Industry.</p>
<p>PCC46. Disputes and Arbitration</p>	<p>PCC 46.1 Appointment of the Dispute Board</p> <p>The Parties shall appoint a DB as and when a dispute arises.</p> <p>The DB shall comprise of three members</p> <p>Insert the following at the end of the first paragraph of this Sub-Clause:</p> <p>The term “dispute” shall be interpreted in the widest sense and shall include any dispute or difference in connection with or in respect of the conclusion or existence of the Contract, the carrying into effect of the Contract, the interpretation or application or the provisions of the Contract, the Parties respective rights and/or obligations in terms of and/or arising out of the Contract and/or the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of the Contract.</p>

	<p>PCC 46.1 Delete the following words in the last paragraph of 46.1: “Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire when the Operational Acceptance Certificate has been issued in accordance with GCC Sub-Clause 25.3.”</p> <p>Amended clause to read as follows “The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone”.</p> <p>PCC 46.2 Appointment (if not agreed) is to be made by:</p> <ul style="list-style-type: none"> (i). In case the Contractor is a South African firm: South African Institutes of Electrical and Civil Engineers (ii). In case the Contractor is a firm from a foreign country: Court of Arbitration of the International Chamber of Commerce, Paris. <p>PC 46.5 Procedure to settle disputes in respect of DB’s decisions:</p> <ul style="list-style-type: none"> (i) Contract with foreign Contractor: Any dispute not settled amicably and in respect of which the DB’S decision (if any) has not become final and binding shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with such Rules. (ii) Contract with National Contractor: Any dispute not settled amicably and in respect of which the DB’S decision (if any) has not become final and binding shall be referred to arbitration in accordance with the Laws of Employer’s Country and shall be conducted in terms of the Arbitration Foundation of Southern Africa’s commercial arbitration rules. (iii) “A foreign Contractor has the option to select the arbitration process applicable to domestic contractors instead of international arbitration. Arbitration in accordance with the Laws of the Country and the arbitration rules and process set forth in Section VIII [Arbitration Rules and Process for Domestic Contractors] shall accordingly also apply (instead of (i) above) to foreign contractors who have elected to accept arbitration in accordance with sub-paragraph (n) in the Letter of Bid.
PCC 47	Insert new clause 47 to read as follows:

<p>Liens</p>	<p>PCC 47</p> <p>The Contractor shall at all times keep the Plant, Installation Services and Facilities or any part thereof and/or the Site or any part thereof free of all third party (including Subcontractors') liens and other encumbrances.</p> <p>The Contractor (a) hereby unconditionally and irrevocably waives, and (b) shall cause all Subcontractors to unconditionally and irrevocably waive pursuant to the terms and conditions of its subcontracts, in each case, all and any liens, rights of retention and other security interests, hypothecs and the like that it would otherwise have over any of the Plant, or any part thereof and/or the Site or any part thereof.</p> <p>Contractor warrants and guarantees that title to the Facilities and all work, materials, supplies and Plant provided hereunder shall pass to Employer free and clear of, and the Facilities, the Site and any and all interests and estates therein and any and all improvements and materials placed on the Site shall be free and clear of, all liens, claims, security interests and other encumbrances made by, through or under Contractor or any Subcontractor.</p> <p>In the event of any nonconformity to the requirements of this clause , Contractor promptly (a) shall defend Employer's title to the Facilities and such work, materials, supplies and Plant Installation Services and Facilities, or to the Site and such interests, estates, improvements and materials, as the case may be, and (b) shall remove and discharge any such lien, claim, security interest or other encumbrance(provided, that if Contractor is unable to so promptly remove and discharge any such encumbrance, Contractor may provide to Employer in lieu thereof a bond or other collateral, in form and substance satisfactory to Employer, to fully indemnify Employer against any loss and expense resulting, directing or indirectly, from such liens, claims, security interests or other encumbrances).The Contractor shall maintain all records and accounts pertaining to the Plant, Installation Services, Site and Facilities, during the execution thereof of the Facilities and for a period of five (5) years after Operational Acceptance and shall ensure that his Subcontractors do likewise. The Employer's Personnel and the Employer's other authorised representatives and agents have the right to examine, audit, copy and inspect the said records and accounts at all reasonable times during the execution of the Facilities and during the said five (5) year period.</p>
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<p>PCC 48. Contractor's Invoice</p>	<p>Insert new clause 48 to read as follows</p> <p>PCC 48</p> <p>If VAT is payable on any amount certified by the Project Manager for payment under the Contract, the Contractor shall ensure that his invoice complies with the requirements of a Tax Invoice under the Value Added Tax Act no. 89 of 1991 (as amended). No payment shall be made by the Employer on invoices not meeting this requirement and the Employer shall not be liable for interest for such non-payment</p>
<p>PCC 49. Employer's Policies and Procedures</p>	<p>Insert new clause to read as follows:</p> <p>PCC 49</p> <p>The Contractor shall, in and about the performance of the Contract, observe and comply with the Employer Policies and Procedures.</p> <p>The Employer or the Project Manager may modify, or issue alternative or new Employer Policies and Procedures from time to time. Any such change shall be communicated by the Project Manager to the Contractor in writing.</p> <p>If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) cost as a result of any such change, the Contractor shall give notice to the Project Manager and shall be entitled subject to GC Sub-Clause 45.1 [<i>Contractor's Claims</i>] to:</p> <ul style="list-style-type: none"> (a) an extension of time for any such delay, if Completion is or will be delayed, under GC Sub-Clause 40.1 [<i>Extension of Time for Completion</i>]; and (b) payment of any such cost, which shall be included in the Contract Price. <p>After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause GC 39.2 [<i>Change in the Facilities</i>] to agree or determine these matters.</p>
<p>PCC 50. Acceleration</p>	<p>Insert new clause to read as follows</p> <p>PCC 50</p> <p>If, at any time the Project Manager wishes to instruct the Contractor to accelerate in circumstances where the Contractor is not in culpable delay the Project Manager shall have the right to issue an instruction in terms of GC Sub-Clause 39.1 [<i>Change in the Facilities</i>] in order to give effect to such acceleration; provided that the Project Manager shall</p>

	<p>not, unless otherwise agreed by the Contractor, be entitled to instruct such acceleration:</p> <ul style="list-style-type: none"> (i) so as to achieve completion prior to the Time for Completion as at the Contract Date; and/or (ii) at a time when it would not be reasonable for an experienced contractor to achieve the required acceleration given the available remaining period. <p>The provisions of GC Sub-Clause 40.1(a) will not apply in relation to a change which is an instruction to accelerate under this Sub-Clause. Unless otherwise approved by the Project Manager under the Contract, if the Contractor incurs (or will incur) additional Cost as a result of an acceleration under this GC Sub-Clause, the Contractor shall give notice to the Project Manager and shall be entitled subject to GC Sub-Clause 45.1 [<i>Contractor's Claims</i>] to payment of any such cost. After receiving this notice, the Project Manager shall proceed in accordance with GC Sub-Clause 39.2 [<i>Change in the Facilities</i>] to agree or determine this cost which shall be included in the Contract Price.</p>
<p>PCC 51. Employer's Claims and Set Off</p>	<p>Insert new clause to read as follows</p> <p>PCC 51.</p> <p>If the Employer considers itself to be entitled to any payment under any clause or otherwise in connection with the Contract, the Employer shall give notice and particulars to the Contractor. The notice shall be given as soon as practicable and no later than twenty-eight (28) days after the Employer becomes aware of the event or circumstances giving rise to the claim. The notice shall specify the clause or other basis of the claim, and shall include substantiation of the amount to which the Employer considers itself to be entitled in connection with the Contract. The Contractor shall pay any such undisputed amount within thirty (30) days of such notice. Interest shall accrue thereafter on the balance of any unpaid amounts of such undisputed payments at a rate of the then applicable for USD, the Secured Overnight Financing Rate (SOFR); for GBP, Sterling Overnight Index Average (SONIA); for JPY, the Tokyo Overnight Average Rate (TONA); for Euro, EURIBOR; and for any other foreign currency, that would be agreed at the pre-contract discussion stage plus two percent (2%) per annum until paid in full. Alternately, this amount (plus interest) may be included as a deduction in the Contract Price and Payment Certificates. The Employer shall only be entitled to make any deduction from an</p>

	amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this PC
PCC 53 Electricity, Water and Gas	<p>Insert new clause PCC 53 to read as follows:</p> <p>PCC 53</p> <p>The Contractor shall be responsible for the provisions of all power, water and other services it may require for the performance of its obligations in terms of the Contract</p>
PCC 54 SDL&I Undertakings	<p>Insert new clause PCC 54 to read as follows:</p> <p>PCC 54</p> <p>54.1 The Contractor’s SDL&I Commitments are reflected in the bid in subsection titled “Supplementary Information” in Section VI of the Standard Bidding Documents.</p> <p>54.2 The Contractor undertakes to achieve and fulfil the Contractor’s SDL&I Obligations by the date of Operational Acceptance as a primary obligation under this contract.</p>
PCC 55 SDL&I implementation	<p>Insert new clause PCC 55 to read as follows:</p> <p>PCC 55.1</p> <p>The Contractor shall within sixty (60) days after the Effective Date develop and submit to the Employer an Implementation Schedule for the Contractor’s SD & L Obligations. The Implementation Schedule shall incorporate a detailed time programme showing the Contractor’s planned timing for completion of his obligations prior to Operational Acceptance.</p> <p>PCC 55.2</p> <p>Upon receipt by the Employer of the Implementation Schedule, the Employer must within five (5) days:</p> <ol style="list-style-type: none"> a) accept the form of the programme detailed therein; or b) reject the form of the programme and require that the Contractor must resubmit an amended Implementation Schedule for approval by the Employer within five (5) working days of receiving notice of such rejection.
PCC 56 SDL & I Progress Reports	<p>Insert new clause to read as follows:</p> <p>PCC 56</p>

	<p>The Contractor shall submit quarterly SDL & I Progress Reports to the Employer. The quarters are calendar quarters being January through March, April through June, July through September and October through December</p> <p>The Contractor shall provide the details below in the SD & L Progress Reports for all goods and services procured or subcontracted to the designated category of supplier:</p> <ul style="list-style-type: none">• Scope subcontracted.• Details of skilled developed• Value & duration of a contract.• Identification of the Supplier Category, e.g. BWO;• Legal Name and Company registration number of the Supplier.• Contact person & contact details;• Any relevant information <p>The Contractor's final compliance assessment to the requirement relating to the procurement spend within South Africa and subcontracting will be based on the total contract value excluding the foreign portion of the spend</p>
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Section X - Contract Forms

Table of Forms

Notification of Intention to Award	334
Beneficial Ownership Disclosure Form	337
Letter of Acceptance	339
Contract Agreement	340
Appendix 1. Terms and Procedures of Payment	344
Appendix 2. Price Adjustment	350
Appendix 3. Insurance Requirements	351
Appendix 4. Time Schedule	357
Appendix 5. List of Major Items of Plant and Installation Services and List of Approved Subcontractors	358
Appendix 6. Scope of Works and Supply by the Employer	359
Appendix 7. List of Documents for Approval or Review	360
Appendix 8. Functional Guarantees	361
Performance Security Form– Bank Guarantee	408
Performance Security Form- Conditional Bank Guarantee	411
Advance Payment Security	413

Notification of Intention to Award

[This Notification of Intention to Award shall be sent to each Bidder that submitted a Bid.]

[Send this Notification to the Bidder's Authorized Representative named in the Bidder Information Form]

For the attention of Bidder's Authorized Representative

Name: *[insert Authorized Representative's name]*

Address: *[insert Authorized Representative's Address]*

Telephone/Fax numbers: *[insert Authorized Representative's telephone/fax numbers]*

Email Address: *[insert Authorized Representative's email address]*

[IMPORTANT: insert the date that this Notification is transmitted to Bidders. The Notification must be sent to all Bidders simultaneously. This means on the same date and as close to the same time as possible.]

DATE OF TRANSMISSION: This Notification is sent by: *[email/fax]* on *[date]* (local time)

Notification of Intention to Award

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

Project: *[insert name of project]*

Contract title: *[insert the name of the contract]*

Country: *[insert country where RFB is issued]*

Loan No. /Credit No. / Grant No.: *[insert reference number for loan/credit/grant]*

RFB No: *[insert RFB reference number from Procurement Plan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period, you may:

- a) request a debriefing in relation to the evaluation of your Bid, and/or
- b) submit a Procurement-related Complaint in relation to the decision to award the contract.

1. The successful Bidder

Name:	<i>[insert name of successful Bidder]</i>
Address:	<i>[insert address of the successful Bidder]</i>
Contract price:	<i>[insert contract price of the successful Bid]</i>

2. Other Bidders *[INSTRUCTIONS: insert names of all Bidders that submitted a Bid. If the Bid's price was evaluated include the evaluated price as well as the Bid price as read out.]*

Name of Bidder	Bid price	Evaluated Bid Cost
[insert name]	[insert Bid price]	[insert evaluated cost]
[insert name]	[insert Bid price]	[insert evaluated cost]
[insert name]	[insert Bid price]	[insert evaluated cost]
[insert name]	[insert Bid price]	[insert evaluated cost]
[insert name]	[insert Bid price]	[insert evaluated cost]

3. Reason/s why your Bid was unsuccessful

[INSTRUCTIONS: State the reason/s why this Bidder's Bid was unsuccessful. Do NOT include: (a) a point by point comparison with another Bidder's Bid or (b) information that is marked confidential by the Bidder in its Bid.]

4. How to request a debriefing

DEADLINE: The deadline to request a debriefing expires at midnight on [insert date] (local time).

You may request a debriefing in relation to the results of the evaluation of your Bid. If you decide to request a debriefing, your written request must be made within three (3) Business Days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the Bidder, contact details; and address the request for debriefing as follows:

Attention: [insert full name of person, if applicable]

Title/position: [insert title/position]

Agency: [insert name of Employer]

Email address: [insert email address]

Fax number: [insert fax number] **delete if not used**

If your request for a debriefing is received within the 3 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Contract Award Notice.

5. How to make a complaint

Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, [insert date] (local time).

Provide the contract name, reference number, name of the Bidder, contact details; and address the Procurement-related Complaint as follows:

Attention: *[insert full name of person, if applicable]*

Title/position: *[insert title/position]*

Agency: *[insert name of Employer]*

Email address: *[insert email address]*

Fax number: *[insert fax number]* **delete if not used**

At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

Further information:

For more information see the [Procurement Regulations for IPF Borrowers \(Procurement Regulations\)\[https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=4005\]](https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=4005) (Annex III). You should read these provisions before preparing and submitting your complaint. In addition, the World Bank’s Guidance “[How to make a Procurement-related Complaint](http://www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework#framework)” [<http://www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework#framework>] provides a useful explanation of the process, as well as a sample letter of complaint.

In summary, there are four essential requirements:

3. You must be an ‘interested party’. In this case, that means a Bidder who submitted a Bid in this bidding process, and is the recipient of a Notification of Intention to Award.
4. The complaint can only challenge the decision to award the contract.
5. You must submit the complaint within the period stated above.
6. You must include, in your complaint, all of the information required by the Procurement Regulations (as described in Annex III).

6. Standstill Period

DEADLINE: The Standstill Period is due to end at midnight on *[insert date]* (local time).

The Standstill Period lasts ten (10) Business Days after the date of transmission of this Notification of Intention to Award.

The Standstill Period may be extended as stated in Section 4 above.

If you have any questions regarding this Notification, please do not hesitate to contact us. On behalf of the Employer:

Signature: _____

Name: _____

Title/position: _____

Telephone: _____

Email: _____

Beneficial Ownership Disclosure Form

(To be submitted by all JV Partners in case of JV and all subcontractors in case of both JV or single bidders)

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

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful Bidder. In case of joint venture, the Bidder must submit a separate Form for each member. In both cases of JV or single bidders, all sub contractors must complete the form. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Bidder is any natural person who ultimately owns or controls the Bidder by meeting one or more of the following conditions:

- *directly or indirectly holding 25% or more of the shares*
- *directly or indirectly holding 25% or more of the voting rights*
- *directly or indirectly having the right to appoint a majority of the board of directors or*

RFB No.: *[insert number of RFB process]*

Request for Bid No.: *[insert identification]*

To: *[insert complete name of Employer]*

In response to your request in the Letter of Acceptance *dated [insert date of letter of Acceptance]* to furnish additional information on beneficial ownership: *[select one option as applicable and delete the options that are not applicable]*

(i) we hereby provide the following beneficial ownership information.

Details of beneficial ownership

Identity of Beneficial Owner	Directly or indirectly holding 25% or more of the shares (Yes / No)	Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)	Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Bidder (Yes / No)
<i>[include full name (last, middle, first), nationality, country of residence]</i>			

OR

(ii) *We declare that there is no Beneficial Owner meeting one or more of the following conditions:*

- directly or indirectly holding 25% or more of the shares
- directly or indirectly holding 25% or more of the voting rights
- directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder

OR

(iii) *We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Bidder shall provide explanation on why it is unable to identify any Beneficial Owner]*

- directly or indirectly holding 25% or more of the shares
- directly or indirectly holding 25% or more of the voting rights
- directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Bidder]"

Name of the Bidder: *[insert complete name of the Bidder]

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

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

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

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

* In the case of the Bid submitted by a Joint Venture specify the name of the Joint Venture as Bidder. In the event that the Bidder is a joint venture, each reference to "Bidder" in the Beneficial Ownership Disclosure Form (including this Introduction thereto) shall be read to refer to the joint venture member.

** Person signing the Bid shall have the power of attorney given by the Bidder. The power of attorney shall be attached with the Bid Schedules.

Letter of Acceptance

To: _____

This is to notify you that your Bid dated _____ for execution of the _____ for the Contract Price in the aggregate of _____, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to furnish (i) the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms and (ii) the additional information on beneficial ownership in accordance with BDS ITB 46.1, within eight (8) Business days using the Beneficial Ownership Disclosure Form, included in Section X, - Contract Forms, of the bidding document.

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

Contract Agreement

THIS AGREEMENT is made the _____ day of _____, _____,

BETWEEN

(1) _____, a corporation incorporated under the laws of _____ and having its principal place of business at _____ (hereinafter called “the Employer”), and (2) _____, a corporation incorporated under the laws of _____ and having its principal place of business at _____ (hereinafter called “the Contractor”).

WHEREAS the Employer desires to engage the Contractor to design, manufacture, test, deliver, install, complete and commission certain Facilities, viz. _____ (“the Facilities”), and the Contractor has agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

Article 1. Contract Documents

1.1 Contract Documents (Reference GCC Clause 2)

The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:

- (a) This Contract Agreement and the Appendices hereto
- (b) Letter of Bid and Price Schedules submitted by the Contractor
- (c) Particular Conditions
- (d) General Conditions
- (e) Specification
- (f) Drawings
- (g) Other completed Bidding forms submitted with the Bid
- (h) Any other documents forming part of the Employer’s Requirements
- (i) Any other documents shall be added here

1.2 Order of Precedence (Reference GCC Clause 2)

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

1.3 Definitions (Reference GCC Clause 1)

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

Article 2. Contract Price and Terms of Payment

2.1 Contract Price (Reference GCC Clause 11)

The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of: _____, _____ as specified in Price Schedule No. 5 (Grand Summary), and _____, _____, or such other sums as may be determined in accordance with the terms and conditions of the Contract.

2.2 Terms of Payment (Reference GCC Clause 12)

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

Article 3. Effective Date

3.1 Effective Date (Reference GCC Clause 1)

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

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

3.2 If the conditions listed under 3.1 are not fulfilled within two (2) months from the date of this Contract notification because of reasons not attributable to the Contractor, the Parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Completion and/or other relevant conditions of the Contract.

Article Communications

4. 4.1 The address of the Employer for notice purposes, pursuant to GCC 4.1 is: _____.

4.2 The address of the Contractor for notice purposes, pursuant to GCC 4.1 is: _____.

Article 5. Appendices

5.1 The Appendices listed in the attached List of Appendices shall be deemed to form an integral part of this Contract Agreement.

5.2 Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

IN WITNESS WHEREOF the Employer and the Contractor have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

Signed by, for and on behalf of the Employer

[Signature]

[Title]

in the presence of _____

Signed by, for and on behalf of the Contractor

[Signature]

[Title]

in the presence of _____

APPENDICES

Appendix 1	Terms and Procedures of Payment
Appendix 2	Price Adjustment
Appendix 3	Insurance Requirements
Appendix 4	Time Schedule
Appendix 5	List of Major Items of Plant and Installation Services and List of Approved Subcontractors
Appendix 6	Scope of Works and Supply by the Employer
Appendix 7	List of Documents for Approval or Review
Appendix 8	Functional Guarantees

Appendix 1.

Terms and Procedures of Payment

In accordance with the provisions of GCC Clause 12 (Terms of Payment), the Employer shall pay the Contractor in the following manner and at the following times, on the basis of the Price Breakdown given in the section on Price Schedules. Payments will be made in the currencies quoted by the Bidder unless otherwise agreed between the Parties. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

TERMS OF PAYMENT

Schedule No. 1. Plant and Equipment Supplied from Abroad

In respect of plant and equipment supplied from abroad, the following payments shall be made:

- Ten percent (10%) of the total CIP amount [of Schedule 1 & 5 (Mandatory spare parts from abroad)] as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favour of the Employer. The advance payment security may be reduced in proportion to the value of the plant and equipment delivered to the site, as evidenced by shipping and delivery documents.
- Eighty percent (80%) of the total or pro rata CIP amount [of Schedule 1 & 5 (Mandatory spare parts from abroad)] upon Incoterm “CIP”, upon delivery to the carrier within forty-five (45) days after receipt of documents.
- Five percent (5%) of the total or pro rata CIP amount [of Schedule 1 & 5 (Mandatory spare parts from abroad)] issue of the Completion Certificate, within forty-five (45) days after receipt of invoice, within forty-five (45) days after receipt of invoice.
- Five percent (5%) of the total or pro rata CIP amount [of Schedule 1 & 5 (Mandatory spare parts from abroad)] upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.
- Payment terms relating to Schedules 6, 7, 8 and 9 are prescribed in Appendix 9 containing the O&M contract conditions

Schedule No. 2. Plant and Equipment Supplied from within the Employer's Country

In respect of plant and equipment supplied from within the Employer's Country, the following payments shall be made:

- Ten percent (10%) of the total EXW amount [of Schedule 2 & 5 (Mandatory spare parts from within the Employer's country)] as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favour of the Employer. The advance payment security may be reduced in proportion to the value of the plant and equipment delivered to the site, as evidenced by shipping and delivery documents.
- Eighty percent (80%) of the total or pro rata EXW amount [of Schedule 2 & 5 (Mandatory spare parts from within the Employer's country)] upon Incoterm "CIP", upon delivery to the carrier within forty-five (45) days after receipt of documents.
- Five percent (5%) of the total or pro rata EXW amount [of Schedule 2 & 5 (Mandatory spare parts from within the Employer's country)] upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice, within forty-five (45) days after receipt of invoice.
- Five percent (5%) of the total or pro rata EXW amount [of Schedule 2 & 5 (Mandatory spare parts from within the Employer's country)] upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.
- Payment terms relating to Schedules 6,7, 8 & 9 are prescribed in Appendix 9 containing the O&M contract conditions

Schedule No. 3. Design Services

In respect of design services for both the foreign currency and the local currency portions, the following payments shall be made:

- Ten percent (10%) of the total design services amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer.
- Ninety percent (90%) of the total or pro rata design services amount upon acceptance of design in accordance with GCC Clause 20 by the Project Manager within forty-five (45) days after receipt of invoice.

Schedule No. 4. Installation Services and other Services

In respect of installation services for both the foreign and local currency portions, the following payments shall be made:

- Ten percent (10%) of the total installation services amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of work performed by the Contractor as evidenced by the invoices for installation services.
- Eighty percent (80%) of the measured value of work performed by the Contractor, as identified in the said Program of Performance, during the preceding month, as evidenced by the Employer's authorization of the Contractor's application, will be made monthly within forty-five (45) days after receipt of invoice.
- Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.
- Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.
- Payment terms relating to schedule 9 (Operation and Maintenance) are prescribed in Appendix 9 containing the O&M contract conditions

In the event that the Employer fails to make any payment on its respective due date, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate, per month for period of delay until payment has been made in full, as follows.

- I. the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands
- or
- II. The following rates will be applicable; For USD, the Secured Overnight Financing Rate (SOFR); for GBP, Sterling Overnight Index Average (SONIA); for JPY, the Tokyo Overnight Average Rate (TONA); for Euro, EURIBOR; and for any other foreign currency, that would be agreed at the pre-contract discussion stage.

PAYMENT PROCEDURES

Method of Payment

The procedures to be followed in applying for certification and making payments shall be as follows: In case of a South African bidder, following additional clauses will be applicable

- (a) The Contractor (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the Employer's VAT number 4740101508 on each invoice he submits for payment.
- (b) All invoices issued by a VAT registered vendor, containing the following particulars.
 - The word "Tax Invoice" in a prominent place
 - The name, address and VAT number of the supplier
 - The name, address and VAT registration number of the recipient
 - Invoice number and date of issue
 - Full and proper description of the goods and services
 - Quantity or volume of the goods and services provided
 - Value of the supply, tax charge and consideration for the supply.
- (a) All invoices shall be raised in the name of Employer, Eskom Holdings SOC Limited, Sandton, South Africa.
- (b) Handwritten alterations to invoices on items required by the VAT Act and other statutory requirements are not accepted.
- (c) Payments can only be processed upon receiving a valid TAX invoice complying to all legislative requirements.
- (d) In case of supply from within South Africa or wherever Value Added Tax (VAT) is applicable in the tendering process, if there is difference in Harmonised System Nomenclature/Services Accounting Code (HSN/SAC) classification and corresponding rate of VAT of an item as confirmed/deemed confirmed by the bidder in its bid and HSN/SAC and corresponding rate of VAT as interpreted under any interpretation/ judgment/ Notification/ Circular issued under the VAT law before or after the award of contract, South African VAT reimbursable to the bidder/Bidder shall be lower of the VAT applicable at the rate as confirmed/deemed confirmed in the bid or actual VAT paid/payable by the bidder for that item.
- (c) While raising invoice/proforma invoice for Supply of Goods from within South Africa, Contactor shall bill to and ship to the address of the Employer where the Goods or part thereof is to be Supplied and mention VATSA of Employer. In case of Supply of Services from within South Africa, the Bidder shall invoice the Employer using the VAT of Employer in the

Province in which the service or part thereof is to be rendered. In the event that the Bidder fails to provide the invoice in the form and manner prescribed under the VAT Act and Rules, the Employer shall not be liable to make any payment against such invoice.

- (d) The recovery of Tax Deducted at Source (TDS) under VAT/Income Tax Act and any other acts as per Govt. regulation related to this work shall be done by the Employer. TDS so deducted by Employer shall be deposited with the relevant tax authorities and TDS certificates shall be issued using Permanent Account Number (PAN), Taxpayer Identification Number (TIN), and Tax Account Number of Employer accordingly. Relevant challans and copies of the TDS certificates shall be forwarded to Employer for filing necessary returns. In case, wherever SAP E-filing system is applicable, the relevant information would be given to the Employer for issuing TDS certificate, filing returns, etc.
- (e) Notwithstanding anything above or elsewhere in the Contract, in the event that the input tax credit of the VAT charged by the Bidder is denied by the tax authorities to the Employer for reasons associated with non-compliance/ incorrect compliance by the Bidder, the Employer shall be entitled to recover such amount from the Bidder by way of adjustment from any of the subsequent invoices submitted by the Bidder to the Employer. In addition to the amount of VAT, the Employer shall also be entitled to recover interest and penalty, in case any interest and/or penalty are imposed by the tax authorities on the Employer for incorrect/wrong ailment of Input Tax Credit. The Employer shall determine whether the denial of credit is linked to the non-compliance/ incorrect compliance of the Bidder and the said determination shall be binding on the Bidder.
- (f) Any income tax payable in respect of supervisory services rendered by foreign Seller under the Contract shall be as per the South African Income Tax Act and shall be borne by SELLER. It is up to the bidder/seller to ascertain the amount of these taxes and to include them in his bid price. The bidder will have to bear all income tax liability, if any both Corporate as well as for his personal.
- (g) The Employer shall make payments promptly within thirty (45) days of submission of an invoice/claim by the Contractor, complete in all respects and supported by the requisite documents and fulfilment of stipulated conditions, if any. All the payment shall be released to the Contractor directly.
- (h) All payments to be made directly to the Contractor shall be made by the Employer through electronic payment mechanism (SAP e-payment) for which necessary details shall be tied up during execution of the Contract. However, a request for payment to be released through cheque shall be considered on case to case basis and merit of the same.
- (i) In case of Contractor being a Joint Venture of two or more firms, the payment under the Contract shall be received by the Lead Partner on behalf of the Joint Venture, as per power conferred to it in the Power of Attorney. The payment under the Contract, however, can also be received by other Partner (s) based on authorization of the Lead Partner.

The day the payment is made, a mail stating the "Bill number, net payment amount and details of the bank from where the payment has been made" will be sent to the Contractor.

Note: Pro-rata shall refer to functionally complete part(s) of the facilities, for which rates are identified in the contract.

- (j) Within one week of receiving a payment certificate from the Project Manager in terms of GCC 12, the Contractor provides the Employer with a tax invoice in accordance with the Employer's procedures stated in the Works Information, showing the amount due for payment equal to that stated in the payment certificate.
- (k) If the Contractor does not provide a tax invoice in the form and by the time required by this contract, the time by when the Employer is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the Employer in terms of GCC 12 is then calculated from the delayed date by when payment is to be made.
- (l) All payments under the Contract shall be released to the Contractor directly.
- (m) Importation Documents to be attached for Imports
 - a. Customs Invoice reflecting foreign currency and amount
 - b. Bill of Entry (SAD500)
 - c. SARS customs Release Notification documents
 - d. Commercial Invoice
 - e. Customs Worksheet
 - f. Bill of Lading (Sea Freight) or Airway Bill (Air Freight)

The above documents must tie –up.

- (n) Foreign Beneficiary Invoices to be attached reflecting foreign currency amount for services. May not claim more than amount on foreign invoices
- (o) Import and services to be claimed on separate invoices.
- (p) No transfer can be made without an Exchange control approval.
- (q) Vat to be claimed separately referring to Foreign invoices
- (r) Service need to be paid directly overseas and may not be paid into a CFC account.
- (s) Foreign CPA calculation together with Index needs to be attached.

Appendix 2.

Price Adjustment

The prices quoted by the Bidder for the Procurement of Design, Engineering, Supply, Construction, Installation, testing and Commissioning of Battery Energy Storage System (BESS) and Solar Photovoltaic **shall not** be subject to price adjustment during the performance of the contract.

The prices quoted by the Bidder for the 5 Years Plant Operation and Maintenance Services **shall** be subject to price adjustment during the performance of the contract.

Appendix 3.

Insurance Requirements

Insurances to be Taken Out by the Contractor

In accordance with the provisions of GCC Clause 34, the Contractor shall at its expense take out and maintain in effect or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld.

(a) Property insurance

Covering loss of or damage by any insured cause including fidelity guarantee to contractor's insured property

Amount	Amount Deductible	Parties Insured	From	To
Deductible amount as per the Employer's policy	As per Contractor's insurance policy	Contractor (the interests of the project noted)	As per the territorial limits of the Contractor's policy including transit	As per the territorial limits of the Contractor's policy including transit

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to completion of the Facilities, with 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.

The total value of the contract effective from the commencement of the contract up to and including the completion, and, or early termination of the contract. The interest of Employer is to be noted under the Construction, Works and Maintenance insurance.

Amount	Deductible limits	Parties Insured	From	To
Deductible amount as per the Employer's policy	As per Contractor's insurance policy	Contractor (the interests of the project noted)	Commencement date of the contract works on site	Completion, handover

(c) Transportation Insurance

Cover for loss or damage to equipment in transit relating to this project

Amount	Deductible limits	Parties Insured	From	To
Deductible amount as per the Employer's policy	As per Contractor's insurance policy	Contractor (the interests of the project noted)	Commencement date of the contract works on site	Completion, handover + Defect Liability period

(d) Automobile Liability Insurance

Comprehensive insurance cover uses of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the Facilities.

Amount	Deductible limits	Parties Insured	From	To
Market or replacement value of the vehicles	As per Contractor's insurance policy	Contractor (the interests of the project noted)	Commencement date of the contract works on site	As per the territorial limits of the Contractor's policy including transit

(e) SASRIA insurance

Covering loss or damage of automobile due to civil commotion, labour disturbances, riots, strikes, lockout or public disorder or any related act or activity which is calculated or directed to bring about any of the above.

Amount	Deductible limits	Parties Insured	From	To
Market or replacement value of the vehicles	As per Contractor's insurance policy	Contractor (the interests of the project noted)	As per the territorial limits of the Contractor's policy including transit	As per the territorial limits of the Contractor's policy including transit

(f) Automobile Insurance (Owned by Employer)

Comprehensive insurance cover uses of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the Facilities.

Amount	Deductible limits	Parties Insured	From	To
Deductible amount as per the Employer's policy	As per Contractor's insurance policy	Contractor (the interests of the project noted)	Commencement date of the contract works on site	As per the territorial limits of the Contractor's policy including transit

(g) Environmental liability

Legal liability caused by and being the consequence of an identifiable environmental impairment arising in the course of the Contractor carrying out the project.

Amount	Deductible limits	Parties Insured	From	To
Deductible amount as per the Employer's policy	As per Contractor's insurance policy	Contractor (the interests of the project noted)	Commencement date of the contract works on site	As per the territorial limits of the Contractor's policy including transit

(h) Cyber liability

Cover for loss of data due to cyber related incidences

Amount	Deductible limits	Parties Insured	From	To
Deductible amount as per the Employer's policy	As per Contractor's insurance policy	Contractor (the interests of the project noted)	Commencement date of the contract works on site	As per the territorial limits of the Contractor's policy including transit

(i) Directors and Officers liability

Cover for management liability, company securities, investigation, non-executive director protection, extradition, outside directorship, bodily injury and property damage defense costs, assets and liberty and public relations expenses.

Amount	Deductible limits	Parties Insured	From	To
Deductible amount as per the Employer's policy	As per Contractor's insurance policy	Contractor (the interests of the project noted)	Commencement date of the contract works on site	As per the territorial limits of the Contractor's policy including transit

(j) 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. This needs to continue for a period of at least 12 months after the completion date or early termination date.

Amount	Deductible limits	Parties Insured	From	To
Bodily injury or death - Amount required by law	Amount required by law	Contractor (the interests of the project noted)	Commencement date of the contract works on site	Completion and handover
Loss of or damage to property - Replacement value if not insured, deductible if insured	As per Contractor's insurance policy	Contractor (the interests of the project noted)	Commencement date of the contract works on site	Completion, handover + Defect Liability period

(k) Workers' Compensation

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed as well as per the Statutory requirements per the laws of the country in which the Contractors employees are domiciled effective from the commencement of the contract and continue for a period of at least 12 months after completion and, or early termination of the contract.

Amount	Deductible limits	Parties Insured	From	To
Amount required by law	Amount required by law	Contractor (the interests of the project noted)	Commencement date of the contract works on site	Completion and handover

(l) Employer's Liability

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

Amount	Deductible limits	Parties Insured	From	To
Amount required by law	Amount required by law	Contractor (the interests of the project noted)	Commencement date of the contract works on site	Completion and handover

(m) Other Insurances

The Contractor is also required to take out and maintain at its own cost the following insurances: **None**

The Employer shall be named as additional insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as additional insureds under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1 except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances. The Contractor shall be named as additional insured under all insurance policies taken out by the Employer pursuant to GCC Sub-Clause 34.5, and the Contractor's Subcontractors shall be named as additional insureds under all insurance policies taken out by the Employer pursuant to GCC Sub-Clause 34.5.

Insurances To Be Taken Out By The Employer

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

Insurance against	Minimum amount of cover or minimum limit of indemnity
Assets All Risk	As per the schedule of deductibles
Works Insurance	As per the schedule of deductibles
Transportation	As per the schedule of deductibles
Motor Fleet and Mobile Plant	As per the schedule of deductibles
Terrorism	As per the schedule of deductibles
General and Public Liability	As per the schedule of deductibles
Environmental Liability	As per the schedule of deductibles
Cyber Liability	As per the schedule of deductibles
Directors and officers	As per the schedule of deductibles

Appendix 4.
Time Schedule

Appendix 6.

Scope of Works and Supply by the Employer

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

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

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

Personnel

Charge to Contractor (if any)

None

Facilities

Charge to Contractor (if any)

None

Works

Charge to Contractor (if any)

None

Supplies

Charge to Contractor (if any)

None

Appendix 7.

List of Documents for Approval or Review

Pursuant to GCC Sub-Clause 20.3.1, the Contractor shall prepare, or cause its Subcontractor to prepare, and present to the Project Manager in accordance with the requirements of GCC Sub-Clause 18.2 (Program of Performance), the following documents for

A. Approval

1.

2.

3.

B. Review

1.

2.

3.

Appendix 8.

Functional Guarantees

1. General

This Appendix sets out

- (a) the functional guarantees referred to in GCC Clause 28 (Functional Guarantees)
- (b) the preconditions to the validity of the functional guarantees, either in production and/or consumption, set forth below
- (c) the minimum level of the functional guarantees
- (d) the formula for calculation of liquidated damages for failure to attain the functional guarantees.
- (e) Part II Employer's Requirements Section 2.

2. Preconditions

The Contractor gives the functional guarantees (specified herein) for the facilities, subject to the following preconditions being fully satisfied:

All Specified scope requirements met, including the complete site acceptance test

3. Functional Guarantees

Subject to compliance with the foregoing preconditions, the Contractor guarantees as follows:

3.1 Production Capacity

At Operational Acceptance the following Functional Guarantees shall be met:

- Available Energy Capacity (MWh) Discharged/ Charged –shall be:
 - 140MWh BESS for Melkhout
 - 6MWh BESS for Rietfontein

- Power Capacity for the life of the installation (MW) shall be:
 - 35MW for Melkhout
 - 1.5MW for Rietfontein
 - 2.04MW PV for Rietfontein

- Uptime or Availability for BESS shall be: 95%

- Uptime or Availability for PV shall be: $\geq 99.5\%$ for first year operational period and $\geq 98.5\%$ for second year operational period
- Rated Efficiency shall be as declared by the bidder

After Operational Acceptance the following Functional Guarantees shall be met with the duration of the Performance Warranty Period

- Available Energy Capacity (MWh) Discharged/ Charged –shall be:
 - 140MWh BESS for Melkhout
 - 6MWh BESS for Rietfontein
- Power Capacity for the life of the installation (MW) shall be:
 - 35MW BESS for Melkhout
 - 1.5MW BESS for Rietfontein
 - 2.04MW PV for Rietfontein
- Uptime or Availability for BESS shall be: 95%
- Uptime or Availability for PV shall be: $\geq 99.5\%$ for first year operational period and $\geq 98.5\%$ for second year operational period

and/or

3.2 Raw Materials and Utilities Consumption

Maximum charging energy per cycle is = Rated Output energy (MWh)/Rated efficiency

Recharge, to full capacity, shall occur during low load network conditions which are between 23h00 – 05h00.

Any recharge for purposes other than contracted operational requirements shall be regarded as excess recharge energy and subject to penalisation.

4. Failure in Guarantees and Liquidated Damages

4.1 Failure to Attain Guaranteed Production Capacity

If the production capacity of the facilities attained in the guarantee test, pursuant to GCC Sub-Clause 25.2, is less than the guaranteed figures specified in para. 3.1 above, but the actual production capacity attained in the guarantee test is not less than the minimum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications and/or additions to the Facilities, pursuant to GCC Sub-Clause 28.3, then the Contractor shall pay liquidated damages at the rate of *1% of the DSI contract value* for every complete one percent

(1%) of the deficiency in the production capacity of the Facilities, or at a proportionately reduced rate for any deficiency, or part thereof, of less than a complete one percent (1%).

4.2 Raw Materials and Utilities Consumption in Excess of Guaranteed Level

If the actual measured figure of specified raw materials and utilities consumed per unit (or their average total cost of consumption) exceeds the guaranteed figure specified in para. 3.2 above (or their specified average total cost of consumption), but the actual consumption attained in the guarantee test, pursuant to GCC Sub-Clause 25.2, is not more than the maximum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications and/or additions to the Facilities pursuant to GCC Sub-Clause 28.3, then the Contractor shall pay liquidated damages at the rate of *[1% of the DSI contract value]* for every complete one percent (1%) of the excess consumption of the Facilities, or part thereof, of less than a complete one percent (1%).

4.3 Minimum Levels

Notwithstanding the provisions of this paragraph, if as a result of the guarantee test(s), the following minimum levels of performance guarantees (and consumption guarantees) are not attained by the Contractor, the Contractor shall at its own cost make good any deficiencies until the Facilities reach any of such minimum performance levels, pursuant to GCC Sub-Clause 28.2:

- (a) production capacity of the Facilities attained in the guarantee test: ninety-five percent (95%) of the guaranteed production capacity (the values offered by the Contractor in its Bid for functional guarantees represents 100%).

and/or

- (b) average total cost of consumption of all the raw materials and utilities of the Facilities: one hundred and five percent (105%) of the guaranteed figures (the figures offered by the Contractor in its Bid for functional guarantees represents 100%).

4.4 Limitation of Liability

Subject to paragraph. 4.3 above, the Contractor's aggregate liability to pay liquidated damages for failure to attain the functional guarantees shall not exceed Ten percent (10 %) of the Contract price.

4.5 Penalties

The penalties to be levied monthly for non-adherence to the functional guarantees of the facilities during the life of the plant shall be calculated as follows:

4.5.1. Efficiency related penalty

- a) The Contractor's monthly Reports shall contain at a minimum the following information in order to determine if the Functional Guarantees are met:
1. Available Energy Capacity (MWh) Discharged/Charged against a minimum of :
 - 140MWh BESS for Melkhout
 - 6MWh BESS for Rietfontein
 2. Power Capacity for the installation (MW) against a minimum of:
 - 35MW BESS for Melkhout
 - 1.5MW BESS for Rietfontein
 - 2.04MWPV for Rietfontein
 3. Report on energy used for charging against the maximum allowed values based on the following formula:

$$E_c = \frac{E_o}{\eta} \quad (1)$$

where:

E_c : Maximum charging energy per cycle [MWh]

E_o : Rated Output energy [MWh]

η : Rated efficiency

4. Uptime or Availability against a minimum of 95% as defined below.
- b) Failure to meet the above Functional Guarantees will result in the Penalty formulas below being applied to the Contractor.
- c) The penalties to be levied monthly for non-adherence to the functional guarantees of the facilities during the life of the plant shall be calculated as follows:

$$E_p = \max\left(E_c - \frac{1}{\eta}(E_o + (ES_n - ES_o)), 0\right) \times BCR \quad (2)$$

where:

E_p :	Monthly Energy Shortfall Penalty [R]
E_c :	Total charging energy in the month [MWh]
E_o :	Total discharge (output) energy in the month [MWh]
ES_n :	Energy Stored (in MWh available discharge) at the end of the month
ES_0 :	Energy Stored (in MWh available discharge) at the start of the month
η :	Rated efficiency
BCR:	Base Charging Rate (as escalated annually) [R/MWh]

4.5.2. Capacity availability related penalty for the BESS

- 4.5.2.1. The Contractor shall maintain all BESS equipment to ensure Annual Equipment Availability not less than 95%.
- 4.5.2.2. Equipment Availability includes the availability of Batteries, Battery Management System (BMS), Power Conversion System (PCS), Energy Management System (EMS) as well as the power evacuation system for BESS up to interface with the system of power utility. i.e. 22kV indoor switchgear input termination (during discharging).
- 4.5.2.3. BESS Equipment Availability is the percentage of hours that the BESS is available during the year. The Availability Guarantee shall begin upon Operational acceptance till the end of O&M period.
- 4.5.2.4. BESS annual equipment availability shall be calculated as follows:

$$A = \left(1 - \frac{\sum T_{acc}}{8760} \right) \times 100\% \quad (1)$$

where:

- A : Equipment availability [%]
 T_{acc} : Accountable BESS outage duration [h]

- 4.5.2.5. Accountable BESS outage duration is the elapsed time of accountable BESS outages from the instant the BESS experiences reduced capacity or is out of service to the instant it is returned to service or full capacity. If the BESS experiences reduced capacity but is determined by the Employer to be available for service even if the Employer elects not to immediately return the equipment to full capacity, such time will be discounted from the outage duration.

- 4.5.2.6. Liquidated Damages for shortfall in equipment availability shall be charged if the actual equipment availability is less than the contracted equipment availability.
- 4.5.2.7. If the annual equipment availability for BESS is less than 95% during any year, then Contractor shall compensate the Employer an amount calculated as per the following formula.

$$COM = \left(\frac{95 - A}{100} \right) \times BAR \times C \times 8760 \quad (2)$$

where:

COM : Capacity Availability Penalty. Compensation payable to the Employer [R]

A : Annual BESS Equipment Availability [%]

C : Power capacity of the facility [MW]

BAR: Base Availability Rate [R/MW] calculated as:

$$BAR = \frac{\text{Annualised Capex} + \text{Fixed Opex}}{C \times 0.95 \times 8760} \quad (3)$$

Annualised Capex: Annualised Capital Outlay

Fixed Opex: Annual fixed O&M is defined by the Operating and Maintenance costs deemed not related to utilization, which will escalate as per the contracted escalation.

Where the Annualised Capital Outlay is defined by the Initial Costs of the Project (from the bid), annualized by the following formula:

$$\text{Annualised Capex} = \text{Initial Costs} \times r \times \frac{1}{1 - (1 + r)^{-20}} \quad (4)$$

with r defined as the discount rate.

- 4.5.3. Liquidated Damages for Solar Photovoltaic

Refer Appendix D of Rietfontein Specification document 474-12510.

- 4.5.4. Guarantee on Performance and Availability for Solar Photovoltaic

4.5.4.1. The Contractor provides the following guaranteed values for the Provisional Acceptance Tests (PAT), Intermediate Acceptance Tests (IATs), and Final Acceptance Tests (FATs):

- a. **Performance Ratio (PR)**
- b. **Plant Availability**

4.5.4.2. These Performance Guaranteed Values for the PV Facility are verified during the Provisional Acceptance Test, Intermediate Acceptance Tests, and Final Acceptance Tests.

4.5.4.3. The guaranteed Performance Ratio shall be evaluated at 100% plant availability. The actual Plant Availability is guaranteed and evaluated separately.

4.5.4.4. . The Contractor is required to provide Performance Guaranteed Values as indicated in Table 1 below.

Table 15: Plant Performance Guarantees

Parameter	Minimum Required by Employer	Guaranteed by Contractor
Guaranteed annual average Performance Ratio for first year of operation – for Intermediate Acceptance Test	78 %	
Guaranteed annual average Plant Availability for first year of operation – for Intermediate Acceptance Test	99.5 %	
Guaranteed annual average Performance Ratio for second year of operation – for Final Acceptance Test	77.5 %	
Guaranteed annual average Plant Availability for second year of operation for Final Acceptance Test	98.5 %	

4.5.4.5. With regards to the “Guaranteed annual average Performance Ratio for first year of operation - for Intermediate Acceptance Test” provided in **Table 15**, the Contractor is required to provide a monthly breakdown of this Performance Ratio guarantee, along with estimation of solar irradiation on module plane, in a tabular format as shown in **Table 16** below.

4.5.4.6. Refer to Sections 4.11.4 (*Tests after Substantial Completion*) and 4.11.5 (*Tests after Operational Acceptance*) for the Provisional Acceptance Tests Procedure, Intermediate Acceptance Tests Procedure and Final Acceptance Tests Procedure.

Table 16: Monthly Breakdown of Guaranteed Performance Ratio for first year

Month	Breakdown of first year annual guarantee PR (%)	Estimated Solar Irradiation on Module Plane (kWh/m ²)
January		

Month	Breakdown of first year annual guarantee PR (%)	Estimated Solar Irradiation on Module Plane (kWh/m ²)
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		
Annual Average		

- 4.5.4.7. The PR guaranteed for the Provisional Acceptance Test will be the corresponding monthly average PR (shown in **Table 16**) during which the PAT is performed. If the PAT duration covers period of two consecutive months, then the guaranteed PR during PAT is calculated based on weighted average PR of the two respective months.

Appendix 9: Operation and Maintenance Agreement

“APPENDIX 9”

Operations and Maintenance Agreement

**“Provision of 5 Years Operation & Maintenance of
Battery Energy Storage Systems at
Eskom Substations”**

At

**Lot A : Eskom Melkhout Substation,
Koega Local Municipality, Eastern Cape, South Africa**

and

**Lot B: Eskom Mier Rietfontein Near Rietfontein in the ZF Mgcawu
District Municipality (Dawid Kruiper Local Municipality),**

Northern Cape Province, South Africa

DEFINITION AND INTERPRETATION:

In this Agreement, and for the purposes of this Appendix the following capitalised words and expressions shall have the following meanings and cognate expressions shall have the corresponding meanings

“Additional Services”	means any additional works or services which are requested as such by the Employer under Clause 6 or are expressly identified as being Additional Services in this Agreement;
“Annual Fee”	means the fee payable by the Employer to the Contractor for the provision of Annual Fee Services
“Approval”	means any permission, permit, approval, consent, licence, authorization, registration, grant, exemption, acknowledgement or agreement to be obtained from any competent authority by either Party under any Law to enable either Party to perform its obligations in accordance with the provisions of this Agreement;
“Availability”	means a 95% availability of the BESS and 99.5% PV.
“BESS”	means a Battery Energy Storage Systems supplied under the Contract including without limitation the batteries, Battery Management Systems, Energy Management System, Protection Control Systems, controller(s), Battery switchgear and transformer(s);
“BESS Operation and Maintenance Scope of Work”	means the BESS and PV Operation and Maintenance Scope of Work _Dx-SE-C19 and Appendix B of Rietfontein specification document 474-12510. contained in Annexure 1
Commencement Date	means the date of Operational Acceptance in the Contract;
“Corrective Maintenance”	means maintenance carried out after fault recognition and intended to put an item into a state in which it can perform a required function. Also known as breakdown maintenance.
“Desired Condition”	means for the BESS and PV the same being in a good and proper working order and available for and capable of operation;
“Good Industry Practice”	means the practices, methods, acts, techniques and standards in accordance with best international practice which are prudent and in accordance with applicable

	and generally accepted good practice for Contractors on battery storage projects exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Contractor engaged and experienced in the supply, operation and maintenance of O&M Plant of similar size, nature and complexity as the O&M Plant in similar physical conditions and environment under similar obligations to those set out in this Agreement;
“O&M Manuals”	means the operation and maintenance manuals, the BESS, associated BESS equipment and site security system maintenance standard and other relevant reference documents (including warranty service manual) relevant to the BESS and PV ,associated BESS and PV equipment and site security system provided to the Employer under the Contract;
Other Services	Means Preventative and Corrective Maintenance on an as when required basis , Procurement of Spare Parts and Training carried out by the Contractor in accordance with the provisions of this Agreement
Other Services Fees	means fees payable by the Employer for Other Services provided by the Contractor
“ O&M Plant”	means all equipment that needs to be maintained and/or operated as set out in BESS and PV Operations and Maintenance Scope of Work BESS_Dx –SE-C19 and Appendix B of Rietfontein specification document 474-12510.
O&M Price	means prices for operations and maintenance contained in Schedule 6, 7, 8 and 9.
“Preventative Maintenance”	means maintenance carried out at predetermined intervals or according to prescribed criteria and intended to reduce the probability of failure or the degradation of the functioning of an item;
“Programme of Preventative Maintenance”	means the programme for the provision of Preventative Maintenance to be provided and updated by the Contractor
“SCADA”	means the supervisory control and data acquisition system;
“Services”	Means the scope of work as set out in the BESS Operations and Maintenance Scope of Work BESS_Dx–

SE-C19 and Appendix B of Rietfontein specification document 474-12510.

“Spare Parts”

means the spare components provided or to be provided by the Contractor for incorporation into the O&M Plant but which are not incorporated at the time of supply;

“Term”

means the period commencing upon Commencement Date and ending five (5) years from such date unless:

- (i) this Agreement is terminated by either Party in accordance with the terms of this Agreement, or
- (ii) the Parties agree to extend the Term

2. CONTRACTOR’S OBLIGATIONS

2.1. General Obligations

2.1.1. During the Term of the Agreement, the Contractor shall perform the Operation and Maintenance services as described in ANNEXURE 1 (BESS Operation and Maintenance Scope of Work reference “BESS_Dx-SE-C19” and Appendix B of Rietfontein specification document 474-12510.) (hereafter the “Services”), in accordance with Annexure 1 and in accordance with the other conditions relating to prescribed related to the operational performance under Section - VII (Employer’s Requirement) of the Bid Document.

2.1.2. The Services shall be executed:

- i) In accordance with all applicable laws and Permits;
- ii) In accordance with Good Industry Practice;
- iii) In accordance with the O&M Manuals;
- iv) In good and workmanlike manner, using good quality materials, plant, goods and equipment fit for the purpose for which they are intended;
- v) In accordance with the requirements of approved BESS O&M standards
- vi) In compliance with the Bank’s Anti-Corruption Guidelines and its prevailing sanctions policies and procedures as set forth in the WBG’s Sanctions Framework, as set forth in Appendix B to the GCC; and
- vii) In compliance with the Employers Environment and Social policies and procedures as well as the World Bank Group Environmental and Social Framework (ESF).

2.1.3. The Contractor shall be deemed to have allowed correct and sufficient O&M Price to cover all its obligations under the Agreement and Contract and shall be deemed to have allowed the necessary resources to enable it to perform the Services in accordance with requirements of the Agreement and Contract to the standards and in the manner required. The Contractor’s failure to acquaint itself with or assess any applicable condition shall

- neither relieve it from the responsibility for performing its obligations under the Agreement and Contract nor entitle the Contractor to any additional costs or any other relief.
- 2.1.4. The Contractor's failure to acquaint itself with or assess any applicable condition shall neither relieve it from the responsibility of for performing its obligations under the Agreement nor entitle the Contractor to any additional costs or any other relief.
- 2.1.5. The Employer and its advisors and shareholder, the Bank and Regulatory Bodies shall have the right to conduct audits, on Services rendered by the Contractor and compliance by the Contractor with applicable laws, health, safety and Environment requirements and all other relevant requirements. The Contractor shall provide the aforementioned entities with all necessary access and documents required for the purpose of the audits. Such audits shall be conduct as and when it is deemed necessary.
- 2.1.6. For Services performed on a continuous basis, the O&M Annual Fees and Other Services Fees shall be deemed to be all-inclusive and the Contractor shall obtain all required Government Approvals and bear any costs related thereto (including any shift or permitted overtime working, allowances, wage orders, night shift differentials, etc.).
- 2.1.7. The Contractor shall ensure availability of such components, consumable, Spare Parts, and Contractor's Equipment as may be necessary for the performance of the Services. The Contractor shall ensure that such Contractor's Equipment does not interfere with the operational or structural integrity of the O&M Plant.
- 2.1.8. The Contractor shall make available to the Employer the O&M Manuals and shall also provide the Employer with updates and revisions to the O&M Manuals to the extent that such updates and revisions are necessary and applicable to the performance of the Services. The Contractor shall provide the Employer with a latest version of update available of all the updated O&M Manuals at the end of the Term or early termination of the Agreement for any reason.
- 2.1.9. The Contractor shall ensure that any warranties or guarantees provided under the Contract and this Agreement are not invalidated or adversely affected by any act or omission of the Contractor during the period of such warranties or guarantees.
- 2.1.10. The Contractor shall provide monthly reports from the SCADA system. Notwithstanding the aforesaid the Employer may as and when required request collect the data generated by the SCADA system in respect of the O&M Plant from the Contractor.
- 2.1.11. Prior to the end of the Term or termination of the Agreement, the Contractor shall at no additional cost install an additionally extended terminal from the SCADA system remotely and at the Site to enable the Employer to continue to access data relating to the O&M Plant for the life of the O&M Plant.

- 2.1.12. The Contractor shall notify and communicate to the Employer about any condition which may cause any malfunction or failure in the O&M Plant in accordance with requirements of the BESS Operation and Maintenance Scope of Work.
- 2.1.13. The Contractor shall be responsible and hereby accepts the risk of the transport of all components, consumables, and Contractor's Equipment and other things required for the performance of its obligations under this Agreement. Without prejudice to the generality of the foregoing the Contractor shall:
- i) be responsible for packing, loading, transporting, receiving, and unloading, storing and protecting all components, consumables, Contractor's Equipment and other things required to perform its obligations under this Agreement; and
 - ii) provide all necessary signs or directions which may be required to transport all components, consumables, Contractor's Equipment and other things required to carry out its obligations under this Agreement to the Site and obtain all necessary permissions which may be required from relevant authorities or third party land owners for the use of the access roads to the boundary of the Site.
- 2.1.14. The Contractor shall handle all imported components, consumables and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance 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 applicable laws or regulations.
- 2.1.15. Risk of loss with respect to any components and consumables and other items provided by the Contractor and incorporated or to be incorporated into any part of the O&M Plant pursuant to this Agreement shall pass to the Employer at the end of the Term or early termination of the Agreement for any reason.
- 2.1.16. At the end of the Term or in the event of early termination of this Agreement for any reason the Contractor shall comply with the end of contract requirements as set out in **ANNEXURE 1** (BESS and Solar PV's Operation and Maintenance Scope of Work).
- 2.2. Service Obligations
- The Contractor shall provide the Services as set out in and in accordance with the requirements in BESS Operations and Maintenance Scope of Work and the O&M Manuals. The Services provided by the Contractor shall include but not be limited to the following:
- 2.2.1. Preventative Maintenance
- 2.2.1.1. During the Term and as and when required the Contractor shall carry out the Preventative Maintenance in accordance with the terms of this Agreement, the BESS Operation and Maintenance Scope of Work, the O&M Manuals and as may otherwise be required in order to maintain the O&M Plant in the Desired Condition, but shall not include Corrective Maintenance.

- 2.2.1.2. The Contractor shall provide to the Employer one month (1) prior to the commencement of the Term a Programme for the provision of the Preventative Maintenance in accordance with this Agreement on a yearly basis approved by the Employer in the format agreed by the Parties.
- 2.2.1.3. The Contractor shall update the Programme of Preventative Maintenance on an annual basis or when instructed by the Employer to do so. The Contractor shall issue each updated Programme of Preventative Maintenance to the Employer on the anniversary of the Commencement Date or within 10 (ten) Business Days of being instructed to do so. This updated Programme of Preventative Maintenance shall be subject to the Employer's approval.
- 2.2.1.4. The Contractor shall use reasonable endeavours (but without being required to prejudice its other obligations under this Agreement) to program and carry out the Preventative Maintenance on such dates and at such times as will maximise Availability and energy output of the O&M Plant and consistent with the Employer's requirements including using reasonable endeavours to avoid any shutdown of the BESS when the Eskom power system is constrained.
- 2.2.1.5. If the Contractor fails to carry out the Preventative Maintenance in accordance with the requirements of this Agreement the Employer may give written notice to the Contractor requiring the Contractor to carry out the Preventative Maintenance. If the Contractor fails to carry out the Preventative Maintenance in accordance with this Agreement within 20 (twenty) days of the Employer's written notice then the Employer shall be entitled to retain a third party to carry out such Preventative Maintenance and to recover any costs incurred by the Employer from the Contractor. Any Preventative Maintenance carried out by a third party shall be at the Contractor's risk (and shall not invalidate any warranty, guarantee or obligation under this Agreement or the Contract) provided that such Preventative Maintenance is carried out to the standards required by this Agreement. The Contractor will co-operate with the Employer, facilitates and permit the use of all required information, materials and other matter (including Contractor's documents and all other drawings, CAD materials, technical data, software, models, plans, designs, programs, diagrams, evaluations, details, specifications, schedules, reports, calculations, manuals or other documents or recorded information (electronic or otherwise) which have been or are at any time prepared by or on behalf of the Contractor under this Agreement or otherwise for and/or in connection with the Services) and generally does all things reasonably required by the Employer to achieve this end.

2.2.2. Corrective Maintenance

- 2.2.2.1. As and when required the Contractor shall carry out any Corrective Maintenance in accordance with this Contract, the BESS and PV Operation and Maintenance Scope of Work and the O&M Manuals shall be used in carrying out of all works and services required to effect any repair which may be required to the O&M Plant.

- 2.2.2.2. Any Corrective Maintenance which is required as a result of the Contractor's failure to comply with its obligations under this Contract or an act of negligent or omission by the Contractor shall be for the Contractor's own cost. Nothing in this Contract shall limit the Contractor's obligations or liability to correct defects (as defined in the Contract) and for the avoidance of doubt the Contractor shall not be entitled to any payment under this Agreement for the correction of defects pursuant to the Contract.
- 2.2.2.3. As soon as either Party is aware of additional Corrective Maintenance they shall give immediate notice to the other Party.
- 2.2.2.4. Where the Corrective Maintenance is required the Contractor shall immediately proceed to carry out the Corrective Maintenance in order to effect any repair to the O&M Plant and to return the O&M Plant to the Desired Condition. The Contractor shall proceed diligently with such Contractor Cost Corrective Maintenance and shall complete the same as soon as reasonably practicable for the performance of the O&M Plant.
- 2.2.2.5. Without prejudice to the Contractor's obligations Clause 2.2.2.4 within five (5) Business Days of the Contractor becoming aware of a requirement for Contractor Cost Corrective Maintenance the Contractor shall provide to the Employer the information referred to in Clause 2.2.2.6 a – g below.
- 2.2.2.6. Where the Corrective Maintenance required is the Employer Cost Corrective Maintenance the Contractor shall provide the Employer within five (5) Business Days of the Contractor becoming aware of the need for such the Employer Cost Corrective Maintenance provide to the Employer a proposal which shall include:
- (a) details of the Corrective Maintenance required including a prognosis of the cause of the event giving rise to the need for the Corrective Maintenance;
 - (b) a method statement setting out the Contractor's proposal for carrying out the Corrective Maintenance;
 - (c) a proposed cost together with a detailed breakdown thereof for the carrying out of the Corrective Maintenance; which shall be calculated in accordance with
 - (d) a programme for the carrying out of the Corrective Maintenance which shall be prepared on the basis of the Contractor carrying out and completing the Corrective Maintenance as soon as reasonably practicable and in accordance with Good Industry Practice;
 - (e) any protective or mitigation measures which the Contractor would recommend pending completion of the Corrective Maintenance;
 - (f) details of any anticipated O&M Plant down time on a per day basis;
 - (g) Any other relevant information requested by the Employer acting reasonably ("a Proposal").

- 2.2.2.7. In the event of a dispute between the Parties as to whether any Corrective Maintenance required is Contractor Cost Corrective Maintenance or the Employer Cost Corrective Maintenance such dispute shall be resolved in accordance with the provisions of this Agreement. Notwithstanding the existence of such dispute the Employer may instruct the Contractor to proceed with the Corrective Maintenance pending resolution of such dispute.
- 2.2.2.8. Within five (5) days of receipt of the Contractor's Proposal the Employer shall either:
- (a) confirm to the Contractor whether it wishes the Contractor to carry out the Employer Cost Corrective Maintenance in accordance with the Proposal in which case the Contractor shall carry out such Corrective Maintenance in accordance with this Agreement and within the time stated in the Proposal, and the Employer shall pay the Contractor in accordance with Clause 23; or
 - (b) respond in writing with comments in respect of the Contractor's Proposal in which case the Contractor shall re-issue the Proposal having considered and had due regard for the Employer's comments and the provisions of this Clause 2.2.2.8 shall re-apply; or
 - (c) Confirm to the Contractor that it does not wish the Contractor to carry out the Employer Cost Corrective Maintenance.
- 2.2.2.9. For the avoidance of doubt any failure by the Employer to respond to a Proposal shall constitute a rejection and not an acceptance of the Proposal.
- 2.2.2.10. Notwithstanding Clauses 2.2.2.6 to 2.2.2.8 the Employer may at any time instruct the Contractor to proceed with any Employer Cost Corrective Maintenance notwithstanding that a cost and/or time for completion of such Corrective Maintenance may not have been agreed in which case the Contractor shall carry out and complete such Corrective Maintenance within a reasonable time and shall be entitled to the cost of carrying out such the Employer Cost Corrective Maintenance, which shall be valued in accordance with Clause 23.
- 2.2.2.11. If the Contractor fails to carry out the Corrective Maintenance in accordance with the requirements of this Agreement the Employer may give written notice to the Contractor requiring the Contractor to carry out the Corrective Maintenance. If the Contractor fails to carry out the Corrective Maintenance in accordance with this Agreement within twenty (20) days of the Employer's written notice then the Employer shall be entitled to retain a third party to carry out such Corrective Maintenance and to recover the additional costs incurred by the Employer from the Contractor. Any Corrective Maintenance carried out by a third party pursuant to this Clause 2.2.3.11 shall be at the Contractor's risk (and shall not invalidate any warranty, guarantee or obligation under this Agreement or the Contract) provided that such Corrective Maintenance is carried out to the standards required by this Agreement. The Contractor will co-operate with the Employer and facilitates and permits the use of all required information, materials and other matter (including Contractor's

documents and all other drawings, CAD materials, technical data, software, models, plans, designs, programs, diagrams, evaluations, details, specifications, schedules, reports, calculations, manuals or other documents or recorded information (electronic or otherwise) which have been or are at any time prepared by or on behalf of the Contractor under this Agreement or otherwise for and/or in connection with the Services) and generally does all things reasonably required by the Employer to achieve this end.

3. FUNCTIONAL GUARANTEES/WARRANTIES

- 3.1. Technical and Functional Performance Guarantee
 - 3.1.1. The Contractor shall be responsible for meeting the performance guarantee of the O&M Plant as described in the Agreement.
 - 3.1.2. In case of failure to meet the functional guarantees as described in Annexure 2, the Contractor shall be liable to pay applicable Liquidated damages as described in the Contract (Section X – Contract Forms, Appendix 8 – Functional Guarantees) and represented in Annexure-2 of this Agreement.
- 3.2. General Repair Warranty
 - 3.2.1. All repairs and replacements performed by the Contractor pursuant to the Agreement, shall cover a two year warranty for defects in materials and workmanship
 - 3.2.2. The Contractor shall disassemble, transport, repair or replace and reinstall any defective equipment parts and/or re-perform any defective work covered by this warranty, at no cost or expense to the Employer.
 - 3.2.3. In the event that the Contractor replaces parts that failed during the final year of the Term in accordance with its obligations under the Agreement, the Contractor hereby warrants to Employer that the replacement parts installed in the O&M Plant during such period shall not fail due to a defect for one (1) year following the date of installation of such replacement parts; provided that in no event shall any such warranty extend beyond earlier of;

- i) the period that is one (1) year following the expiration of the Term or
 - ii) the date of any termination of the Agreement for reasons other than attributable to Contractor. During such period, if the Agreement is not in effect for any reason other than being terminated by Employer for cause, Contractor's obligation will be limited to supplying all needed parts on to the Site delivered basis. For the avoidance of doubt, this clause may survive the termination or expiry (as the case may be) of the Agreement for a period of one (1) year.
- 3.2.4. Any latent defect which may not come to knowledge or discovered in the course of normal inspection/operation during two years from the operational acceptance but may arise within a period of 8 (eight) years from expiry of warranty period of two years, shall be under warranty by free replacement/rectification.
- 3.2.5. Any acceptance by Employer in terms of this Agreement shall in no way relieve the Contractor of his obligations under the Agreement.
- 3.3. Guarantee of compliance in relation to Curtailment Plans (acoustic or other curtailment plans)
The Contractor shall comply with all curtailment plans linked to acoustic requirement, load management or Applicable Law and Curtailment Plans provided by the Employer in accordance with Performance Standards and Technical Specifications. If either the Contractor or the Employer detects a variation with respect to the Curtailment Plans or in noise emission the Contractor will, at its own expense, characterise the problem, isolate the source of the problem and propose solutions to solve the problem to the Employer (at the Employer's expenses in all cases other than cases where it's ascertained that the deviation was caused by a non-respect of the obligations under the Agreement).
- 3.4. Grid Connection and balance of electricity commitments
- 3.4.1. The Contractor acknowledges that to allow the Employer to inject the energy generated by the O&M Plant to the Grid and the Contractor must comply with the requirements prescribed by applicable law, Good BESS Industry Practices, Performance Standards and for Battery Energy Storage Systems grid connection code is specified in terms of the Electricity Regulation Act (Act 4 of 2006), as amended. The Battery Energy Storage System shall, for the duration of its generation licence issued by National Energy Regulator of South Africa (NERSA), comply with the provisions of the South African Grid Code (SAGC) and all other applicable codes, rules and regulations approved by NERSA. Failure to comply with such requirements may cause the Employer to either: (i) not be able to inject the energy; and/or (ii) be subject to penalties payable to the Grid operator NERSA.

The Contractor undertakes to diligently comply with the requirements referred to in the BESF Code and balance of electricity commitments, as prescribed under the Grid documents as provided by or on behalf of the Employer from time to time (or of which the Contractor otherwise becomes aware), and/or with the reasonable requests of the Employer associated with the compliance therewith.

4. PERFORMANCE STANDARDS

- 4.1. Contractor shall perform its obligations under the Agreement in compliance with the Agreement and following (collectively, the "Performance Standards") as from time to time in force:
- 4.1.1. The applicable laws, and the requirements from the Grid Operator/NERSA;
 - 4.1.2. The Permits and all the related documents;
 - 4.1.3. No. 85 of 1993 Occupational Health and Safety Act (OHSA)
 - 4.1.4. The terms of the Agreement;
 - 4.1.5. The functional Guarantee;
 - 4.1.6. The O&M manuals including the manufacturers recommendations;
 - 4.1.7. Employer's health and safety manuals and procedures and EMP;
 - 4.1.8. The Site Regulations;
 - 4.1.9. Environmental Social management plan as attached in the bidding document, provided by the Employer, as updated from time to time through the Employer's written notice to the Contractor;
 - 4.1.10. Battery Energy Storage Systems Industry Practice;
 - 4.1.11. Any relevant and reasonable instructions issued by the Employer, relevant to the scope of the Agreement, to the Contractor at least 15 days before the implementation of such instructions without any cost to the Contractor.
 - 4.1.12. The terms of Contractor insurances directly relating to the Project] and
 - 4.1.13. Comply with all operation and maintenance obligations as set out under this Agreement or do anything which results in a breach of the Employer's obligations under this Agreement.
 - 4.1.14. The Contractor shall comply with the Employer's Environmental and Social Policies and Procedures as well as the World Bank Group Environmental and Social Framework during the execution of the Agreement to the extent that their activities are covered in these documents.

The World Banks Environmental and Social Framework is found at the following link:
<http://pubdocs.worldbank.org/en/837721522762050108/Environmental-and-Social-Framework.pdf>

- 4.2. Notwithstanding any other provision in the Agreement, the Contractor shall have no responsibility or obligation:
- (a) save and to the extent that the Contractor is required to do so pursuant to the provisions of Additional Services, to ensure that the O&M Plant complies with the requirements of Applicable Law and Permits, if and to the extent that the same are introduced or amended following the Commencement Date; or
 - (b) save and to the extent that the Contractor is required to do so pursuant to the provision of Additional Services to ensure that the O&M Plant (as a whole or in part) complies with any noise or acoustic emissions requirements under applicable laws, if and to the extent that the same are introduced or amend following the Commencement Date.

- 4.3. The Contractor shall not do or omit to do anything in the performance or discharge of its obligations or the exercise of its rights under the Agreement or in breach of the contract, which would cause any breach of any of the terms of the other Contract be in breach of the Performance Standards, it shall, on demand of the Employer, indemnify the Employer against any direct losses arising from a breach of this Clause by the Contractor, always subject to the aggregate liability cap of the Contractor (except as otherwise agreed herein).
- 4.4. If the Contractor is aware of a conflict between any of the above requirements, it shall inform the Employer accordingly and the Parties shall discuss and agree upon the manner in which such conflict shall be resolved failing which the dispute resolution provisions shall apply.

5. ADDITIONAL SERVICES

- 5.1. Employer may, with respect to the O&M Plant, request that the Contractor to perform work, provide services, or supply other equipment or parts, not included within Services for the successful operation of the O&M Plant during the Term. Any such requested service or supply that the Parties mutually agree to in writing shall, subject to any specific terms and conditions agreed with respect to such service or supply, be an "Additional Service".

6. SERVICE PERSONNEL

- 6.1. The Contractor shall provide the Services and any Additional Services to be performed on Site using a sufficient number of suitably skilled, qualified and experienced (including any licensing, certifications or training required by applicable laws or the local Transmission/Distribution system operator) and adequately equipped and properly trained Personnel and/or Subcontractors, all appropriately skilled and experienced in their respective trades or occupations as may be reasonably necessary to fulfil its obligations hereunder in relation to the Services and Additional Services.
- 6.2. The Employer may request the Contractor to remove (or cause to be removed) any Person or Subcontractor employed on the operation of the O&M Plant, including the Contractor's Representative if applicable, who:
- i) engages in material or persistent misconduct or lack of reasonable care.
 - ii) carries out duties incompetently or negligently.
 - iii) fails materially to conform with any provisions of the Contract.
 - iv) engages in conduct which is prejudicial to safety, health or the protection of the environment or in violation of any related Performance Standards or applicable laws.
 - v) Engages in conduct which might reasonably result in a breach of any provision of the contract and threaten public health, safety or security.
- 6.3. The Employer shall give notice to the Contractor of the same giving reasons and request the Contractor to replace such Personnel with a suitable candidate. The Contractor shall then as soon as reasonably possible but no later than seven (7) days upon receiving such notice from the Employer look into the facts and claims of the case in all sincerity and deploy the required actions.
- 6.4. Contractor shall have full supervision and control over its Personnel at the Site and shall maintain appropriate order and discipline among such personnel and shall cause any Subcontractor to maintain similar standards with respect to such Subcontractor's personnel at the Site.
- 6.5. The Contractor shall be responsible for all matters relating to labour relations, working conditions, training, employee benefits, employee drug testing in accordance with the Contractor's standard drug testing policy, safety programs and related matters pertaining to its employees and other Personnel engaged by the Contractor. The Contractor shall at all times have full supervision and control over its employees and other personnel engaged by it and shall at all times maintain appropriate order and discipline amongst its Personnel and shall cause any Subcontractor (or any subcontractor appointed by

such Subcontractor) to maintain similar standards with respect to such Subcontractor's (or any subcontractor appointed by such Subcontractor) employees and Personnel.

- 6.6. The Contractor shall furnish the Contractor's Personnel with such Contractor's Equipment as is necessary to perform the Services in accordance with this Agreement.. The Contractor shall supply the Employer with the relevant training records of the Contractor's Personnel engaged or to be engaged in the performance of the Services to verify their ability to fulfil the tasks comprised in the Services. The Contractor shall supply the Employer with the curricula vitae of the Contractor's Personnel engaged or to be engaged in the performance of the Services which contain the experience of the Contractor's Personnel on similar projects. The Employer shall on reasonable grounds have the right to reject any of the Contractor's Personnel.

7. HEALTH AND SAFETY PRECAUTIONS

- 7.1. During the performance of the Services, the Contractor shall:
- 7.2. Comply with the health and safety standards and any health and safety procedures established by the Contractor and same shall be approved by the Employer after the Commencement Date.
- 7.3. Take all precautions required by applicable laws or Site Regulations, or otherwise according to the Performance Standards, for the health and safety of the Contractor, its affiliates and Subcontractors in the performance of the Services and any other Persons with temporary or perpetual access to the Site; provided that the foregoing shall not limit the Employer's responsibility as per the Occupational Health and Safety Act 85 of 1993 (OHSA), the National Environmental Management Act 107 of 1998 (NEMA), Eskom's Health and Safety Standards, specifications and Procedures related to the Site
- 7.4. The Employer may modify, or issue new or alternative Site Health and Safety Rules and/or the Employer Policies and Procedures from time to time. Any such change shall be communicated in writing to the Contractor.
- 7.5. The Contractor shall notify the Employer, 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 Employer may reasonably require.

8. CONSUMABLES, SPARE PARTS, TOOLS AND CONTRACTOR'S EQUIPMENT

- 8.1. Consumables and Tools

During the Term the Contractor shall supply, at no additional cost to the Employer, consumables and Tools to the extent required for the performance of the Services. All consumables provided by the Contractor in the performance of its Services, shall be compatible with the applicable requirements of the O&M Manuals and applicable laws.

- 8.2. Equipment and Spare Parts

Contractor shall supply, at no additional cost to the Employer, equipment and Spare Parts to the extent required for its performance of the Services and to maintain its obligations thereunder. The Contractor has the right to use renovated Equipment and Spare Parts. At the start of the Term the Contractor shall provide the Employer with an inventory. At the end of the Term or upon termination of the Agreement for any reason, the Contractor will replenish the inventory to the levels indicated at the start of the Term.

If the Contractor intends to use any refurbished Major Components, it will seek prior written approval from the Employer. Contractor's right to procure and use renovated / refurbished Spare Parts is subject to:

- i) Standards of good workmanship and Good BESS Industry Practice;
- ii) Compliance with the applicable requirements of the Reference Documents;
- iii) The Spare Part(s) are of the type being replaced or of another type insofar as same does not invalidate any applicable Type Certification of the Equipment;
- iv) The same warranty as equivalent new parts in terms of scope, nature and duration;
- v) Being renovated in conformity with the original equipment manufacturer's standards, and (v) being listed in the monthly maintenance report when used (track record of the Part). However, the Contractor shall immediately reinstate and order new items in order to replace the refurbished items provided for emergency purposes such renovated/refurbished parts will be allowed by Employer only for any long lead items and also considering uninterrupted generation from the Project. However, the Contractor shall immediately reinstate and order new items in order to replace the refurbished items provided for emergency purposes.

8.3. Inspection of Replaced Parts

The Contractor shall give to the Employer seven (7) days' written notice when the Replaced Part is being transported to the Site. Contractor shall permit Employer to inspect, at Employer's sole cost and expense, any part which is removed and replaced by a Spare Part (such Part, a "Replaced Part"); provided however, any such inspection:

- (i) Must not include physical alteration or disassembly of such Replaced Part; and
- (ii) must not result in any material increased costs to Contractor or delay Contractor in the performance of its obligations under the or any Contract with, or warranty from, its Subcontractors, unless Employer agrees to cover such material increased cost.

8.4. Prices of Consumables, Spare Parts and Contractor's Equipment

Subject to VAT, other taxes & import duties, the O&M Price payable to Contractor under the Agreement shall include (in addition to other components included in such Price) the costs of any and all items required in connection with the performance of the Services including but not limited to parts, equipment, consumables, Spare Parts and the Contractor's Equipment

8.5. Risk of Loss or Damage to Consumables, Spare Parts and Contractor's Equipment

Contractor shall:

- (i) Be responsible at its own cost for the safe transportation and delivery to Site and adequate storage; of all consumables, Spare Parts, and Contractor's Equipment, in each case, required for carrying out of the Services.
- (ii) Bear the risk of loss and damage to all such consumables and Spare Parts during transportation to the Site and, thereafter up to the end of the Term. and
- (iii) At all material times bear all risk in any and all Contractor's Equipment, Spare Parts on or off the Site and whether remaining separate or temporarily attached to the O&M Plant.

8.6. Title to the Contractor's Equipment

- 8.6.1. Contractor shall retain title to any and all Contractor's Equipment on or off the Site and whether remaining separate or temporarily attached to the O&M Plant until transfer of Title occurs.
- 8.6.2. The Contractor shall ensure availability of such components, consumable, Spare Parts, and Contractor's Equipment as may be necessary for the performance of the Services.
- 8.6.3. The Contractor shall ensure that such Contractor's Equipment does not interfere with the operational or structural integrity of the O&M Plant.

9. COMMUNICATION AND REPORTING

During the Term, the Contractor shall exchange information and reports on daily, weekly, monthly, quarterly and at an annual basis:

9.1. Monthly Reports

The Contractor shall provide the Employer with the Monthly Performance Report by no later than the fifth (5th) day from the end of each month.

9.2. Emergency Notices

Upon obtaining actual knowledge thereof, the Contractor shall promptly notify the Employer verbally (with written notice to follow within three (3) Days) of any emergency or other hazardous condition or occurrence that the Contractor reasonable believes could cause an immediate threat to the safe operation of the O&M Plant and/or the safety of Persons.

If, by reason of an emergency arising in the course of, as a result of or otherwise in connection with and during the performance of the Services, any protective or remedial work is necessary as a matter of urgency to prevent damage to the O&M Plant, the Contractor must immediately perform that work, provided that, the Contractor shall have no obligation to perform such portions of the protective or remedial work which would be in violation with the Performance Standards, be a material breach of the contract or would cause a threat to the safety of Persons or property or would otherwise not be reasonably

practicable or possible; and provided further, that the Contractor shall have no obligation to retrofit or upgrade the O&M Plant except if otherwise agreed.

Without prejudicing the liability attributable to the Contractor for failure to comply with the provisions of the paragraph above, it is clarified that if the Contractor does not perform the protective or remedial works referred to above immediately, the Employer may appoint a Replacement Contractor to perform such works. If the work (or parts thereof) which were performed or caused to be performed by the Employer is work which the Contractor was liable to do at its own expense under the Agreement, the costs incurred by the Employer as a result of appointing a Replacement Contractor shall be (substantiated to the Contractor on an open book basis and be) considered due and payable to the Employer and set off shall apply.

9.3. Meetings

A representative of each of Contractor and Employer (the "Representatives") shall meet (either at the Site or alternatively at such other location as may be agreed between the Parties) at weekly, monthly or quarterly intervals or such other period as is agreed especially for the purposes set forth below:

- i) to discuss projected dates for performance of the Services and the Additional Services in the following: daily, weekly, monthly or quarterly;
- ii) to discuss, the calculated Availability for the past Month under **Error! Reference source not found.** [Functional Guarantees]; and
- iii) To review the Services and Additional Services performed in the past month.

9.4. Visitors Log Book

The Contractor shall maintain a log book for the O&M Plant to record the identity and activity of all visitors to Site. The Contractor shall cause that all personnel and representatives of each Party or any third parties visiting the Site shall be required to record their identity, the date, time and purpose of any visit to site, the nature of any work performed thereon and such other details for which log books may reasonably be used. It is clarified that the Contractor shall not permit unauthorised third party access to the Site unless such third parties have been authorised by the Employer, are required to inspect or access the Site in accordance with Applicable Law or for performance of Services. Copies of these logs shall be provided to the Employer within ten (10) Business Days following its written request. Contractor shall create a digital back up of such logs at least every month.

9.5. Annual Calendaring of Preventative and Corrective Maintenance Services

At the latest two (2) months from Commencement Date, and two (2) months prior the beginning of each year during the Term thereafter, the Contractor shall send to the Employer a maintenance plan with projected dates and times which the Contractor shall perform the Preventative and Corrective Maintenance Services on the O&M Plant, with the parties using reasonable efforts to minimize any O&M Plant downtime during Operational periods of the "Maintenance Services Calendar". Such Preventative and Corrective

Maintenance Services Calendar may be postponed by the Employer for 5 business days; provided, that the Preventative and Corrective Maintenance Services Calendar shall be developed in accordance with the Operating Manual and the terms of the Agreement. The dates and times in the Preventative and Corrective Maintenance Services Calendar may be amended thereafter by mutual agreement of the Parties failing which the dispute resolution provisions in the Contract will apply. For clarity, the Preventative and Corrective Maintenance Service Calendar shall include a maintenance plan established in accordance with the Operating and Maintenance Manual.

9.6. Status Reviews

As reasonably required, or requested by the Employer, the Representatives shall meet to discuss and review

- (i) The information contained in the Monthly Performance Reports,
- (ii) The Availability,
- (iii) Any technical issues which may have arisen with respect to the performance, availability or maintenance and servicing of the O&M Plant,
- (iv) Maintenance Services and Repair Services performed during the preceding calendar month / maintenance period,
- (v) Any and all failures by a O&M Plant, and
- (vi) Maintenance Services to occur during the next calendar month / maintenance period.

10. CONTRACTOR'S PERMITS

Prior to the time in which such Permits are required in order to perform the relevant Services and/or Additional Services, as applicable the Contractor shall obtain and maintain, as applicable, throughout the Term of the Agreement all Permits (the "Contractor Permits") required by the Applicable Law, Good BESS Industry Practices, Performance Standards and Technical Specifications which should be issued in the name of Contractor or are otherwise attributable or necessary to the provision of the Services and/or Additional Services, other than such Permits as are required to be obtained by Employer pursuant to Employer Permits.

The Contractor's designated employees shall be authorised in terms of Wires Operating Authorisation Standard, 240-70413865: Power Delivery Operating Training Standard, 240-70413681: Portfolio of Evidence for Authorisation, Eskom's Operating Regulations for High Voltage Systems (ORHVS) as well as Eskom Low Voltage Regulations. 240-7041386534: during the term of this Agreement.

The Contractor shall be responsible for obtaining and maintaining the Permits, which may be required in order for the Contractor to lawfully perform the Services in accordance with this Agreement and for complying with and discharging any conditions of such Permits. The Contractor shall indemnify the Employer against all losses incurred as a result of a failure by the Contractor to comply with its obligations under this Agreement.

All necessary Training and Permits needed for operation and maintenance of the Plant shall be transferred to the Employer at the end of Term or early termination of this Agreement for any reason.

11. CONTRACTOR’S MANAGER AND PROJECT MANAGER

On or prior to the commencement of the Term, the Contractor shall designate a duly qualified and experienced person to manage and administer the Contractor’s activities, to act as its O&M manager and coordinator of the Agreement on the Contractor’s behalf (the “Contractor’s Manager”). and shall provide notice thereof to the Project Manager, The Contractor’s Manager shall not have authority to amend or modify the Agreement or accept any commitment which would have an effect on the Agreement. In case the Contract Manager is on leave with prior intimation to the Project Manager, the Contract Manager with equivalent competence shall be provided for the Site by the Contractor.

For the avoidance of doubt the Project Manager functions including but not limited to those recorded in GCC 17 shall mutatis mutandis apply to the Agreement.

12. COOPERATION WITH OTHER SUBCONTRACTORS

The Contractor acknowledges and agrees that the Employer or Other Subcontractors of the Employer including the Employers designated personnel’s for the BESS and PV, may be present at the Site and agrees, at no cost or expense to the Employer, to reasonably cooperate with such Other Subcontractors to allow the performance of its and their respective obligations to occur concurrently.

The Employer shall inform the Other Subcontractors of the clear demarcation of the Contractor’s scope of work so as to ensure non-interference in such work and operations by the Employer’s Other Subcontractors.

13. RESERVED RIGHTS

13.1. O&M Plant

To the extent the Contractor believes, in its reasonable discretion, that it is necessary to enhance the overall performance or safety of the O&M Plant, Contractor may propose to the Employer changes and improvements to the O&M Plant (including the software included with respect thereto) and implement such changes or improvements proposed after obtaining the prior written consent of the Employer; provided that such changes and/or improvements shall not;

- (i) Be in conflict with the Performance Standards;

- (ii) Adversely impact the technical performance of the O&M Plant or the safety of the O&M Plant;
- (iii) Adversely impact the Availability
- (iv) Increase the cost of operating the O&M Plant;
- (v) Place the Employer in breach of the technical requirements as set out by the South African Grid Code (SAGC) regulations.
- (vi) Impair or vitiate any obligations of the Contractor under the Agreement;
- (vii) Adversely affect any other Contract ; or
- (viii) Result in non-compliance with the type test certificates.

13.2. Such changes and improvements are carried out at no cost to the Employer and in accordance with this clause

14. CERTAIN NOTIFICATIONS BY CONTRACTOR

14.1. Contractor shall, upon obtaining actual knowledge thereof, promptly give the Employer notice of:

- i) any events or facts or observations that the Contractor believes could be reasonably likely:
 - (a) To have an effect on the operations of any of the O&M Plant or the performance of the Employer's obligations under the Agreement; or
 - (b) to cause an immediate threat to the safe operations of the O&M Plant (or any Plant therein) and/or the safety of Persons; provided that, in the case of this clause, the Contractor shall provide immediate verbal notice of such event, fact or observation to the Employer with notice to follow within three (3) Business Days);
- ii) any actual or proposed event that the Contractor believes would be reasonably likely to have an effect on the operation of any of the Plant or the performance of either Party's obligations under the Agreement.
- iii) any (a) violation of applicable laws, or Permit, by the Contractor's agents, officers, directors, employees, representatives and Subcontractors, Employer or any Other Subcontractor; or (b) any notices of Liens (or claims of Liens) or investigations by Governmental Authorities related to the O&M Plant.
- iv) Any actual or contemplated Change in Laws that the Contractor believes would be reasonably likely to have an adverse effect on the operation of any of the O&M Plant or the performance of either Party's obligations under the Agreement.

14.2. If the Contractor does not comply with its obligations under Certain Notifications by Contractor, the Contractor shall indemnify the Employer for any loss the Employer may suffer.

15. ASSIGNMENT AND SUBCONTRACTING

- 15.1. The Contractor shall not sublet, transfer or assign the Agreement or any part thereof without the prior written permission of the Employer. The Contractor shall not subcontract any of the Services except upon the Employer's advance written approval of the subcontracting of such works. Such approval shall refer to the specific identity of the Subcontractor and to the scope and terms of the subcontract. In any event, the Contractor shall not subcontract all, or materially all of the Operation and Maintenance Services or the ultimate supervision of the performance of such services.
- 15.2. The Contractor agrees and acknowledges that any review by, approval of or failure to approve, or rejection by the Employer as to any Subcontractor shall not relieve the Contractor of any of its obligations under the Agreement, and the Contractor shall be liable hereunder to the same extent as if any such Subcontract had not been entered into. The Contractor shall at all times ensure and cause the Subcontractors not to commit any act or omission which could release, void, impair or waive any guarantee or warranty on the O&M Plant or any part thereof.
- 15.3. The Contractor shall supervise and direct the work of all Subcontractors and shall be fully responsible for the performance of the Sub contractors, the methods, techniques, sequences and procedures of the Subcontractors. Coordinating the work of the Subcontractors and the acts and omissions of all Subcontractors and their employees, directors, officers, advisors, agents and representatives, and those of their subcontractors ("Subcontractors' Parties).
- 15.4. With regard to any Subcontract and Subcontractor's Parties, in particular, the Contractor shall ensure that all wages, labour, health and safety and social related obligations are duly performed and timely discharged in accordance with applicable laws.
- 15.5. It is agreed that if the responsibility of any such payments is transferred to the Employer pursuant to Applicable Law, the Employer shall have the right to adjust all such payments against the dues to the Contractor under the Agreement or otherwise recover the same from the Contractor under any the Agreement and Contract.
- 15.6. It shall be at the Contractor's sole responsibility to ensure the payments and discharge of all its obligations with regard to the Subcontracts and shall indemnify the Employer for any losses in relation to the Subcontracts or to Subcontractor's Parties.

16. INSPECTION AND TESTING

- 16.1. The Contractor must provide the Employer, and any other contractor or contractors employed by the Employer and their respective nominees, or other inspectors where required under the Applicable Law, the Permits, the finance documents and/or the Grid documents (collectively hereinafter referred to as the "Project Parties"), with access at any time to any place where the Services are being performed in order to inspect the progress and the manner of the Services
- 16.2. The Project Parties and their respective nominees will have the right to examine and have access to documents relating to the Services.
- 16.3. The Contractor must carry out all tests and/or inspections of the O&M Plant or Spare Parts in a lawful, professional, timely, safe and environmentally responsible manner as may be

necessary to ensure the safe, reliable, efficient, and optimal operation of the O&M Plant and in accordance with the Performance Standards, applicable laws and BESS Industry Practice. All these tests and inspections are to be carried out at the Contractor's cost, as part of O&M Services.

- 16.4. The Project Parties and their respective nominees are entitled to attend any test and/or inspection.
- 16.5. Whenever the Contractor is ready to carry out any test and/or inspection, the Contractor must give at least ten (10) days' advance notice to the Employer of such test and/or inspection and of the place and time. The Contractor shall make its best efforts to obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Project Parties to attend the test and/or inspection.
- 16.6. The Contractor must provide the Employer with a report of the results of such test and/or inspection within five (5) days after the completion of that test or inspection in question.
- 16.7. If the Employer and/or any of the Project Parties fail to attend the test and/or inspection, or if it is agreed between the Parties that the Employer and/or any of the Project Parties will not attend, then the Contractor may proceed with the test and/or inspection in the absence of the Employer's and/or any of the Project Parties' inspector and provide the Employer with a report in the approved form of the results.
- 16.8. If any Spare Parts or the O&M Plant fails to pass any test and/or inspection, the Contractor must either rectify or replace those Spare Parts or repair the O&M Plant and promptly repeat the test and/or inspection upon giving notice.
- 16.9. The Contractor agrees that neither the performance of a test and/or inspection of Spare Parts or the O&M Plant, nor the attendance by the Employer's and/or neither any of the Parties' inspectors nor the issue of any test report will release the Contractor from any of its obligations under the Agreement.
- 16.10. Inspections during the Term and at the End of the Term:

During the Term, the O&M Plant may be submitted to a general inspection performed by a contractor selected by Employer:

- 16.10.1. Inspection during the Term
- 16.10.2. From time to time during the Term, but not more than once every year (being specified that any additional tests and inspections instructed by the Employer under this Agreement will be for the Employer's account unless the tests or inspections were necessary as a result of the failure of the Contractor to fulfil its obligations under the Agreement).
- 16.10.3. End of Agreement inspection: six (6) to twelve (12) months before the end of the Term, at the convenience of the Employer.

- 16.10.4. Subject to the Employer's reasonable advance notice as to the date of such inspection, the Contractor is required to attend and assist the Employer and the designated inspector in performing such tests, without additional cost.
- 16.10.5. The final report shall be sent to the Contractor by the Employer and if any defect or damage found, same shall be rectified/replaced.
- 16.10.6. Without relieving the Contractor from its obligations and without limiting the Employer's ability to reasonably pursue the reliefs available to it, if applicable:
- i) The Contractor shall, promptly following receipt of the report, submit to the Employer (a) a recovery plan to remedy all breaches, defects and malfunctions detected in the report for which the Contractor is liable and shall perform such remedial actions without delay and/or mutually agreed action period, and (b) provide detailed measures to be put in place to prevent such defaults from recurring.
 - ii) If the Contractor fails to timely complete all remedial actions before the end of the Term, the Employer shall be entitled, at Contractor's cost and risk, to employ a replacement contractor to perform the works.
- 16.11. Employer Site Visit
- 16.11.1. If the Employer decides to visit the O&M Plant, Contractor shall provide personnel on the Site for mutual inspection with no additional cost to the Employer. If the Contractor is reasonably unable to attend such visit for unexpected reasons and/or safety reasons, the Contractor shall immediately inform the Employer. The Contractor shall reschedule a new visit within the next seven (7) days. Rescheduling of the visits thereof shall not occur more than once per year. The Employer shall adhere to the Health, Safety and Environment (HSE) practices of the Contractor.
- 16.11.2. If, upon request of the Employer made in accordance with the Employers Site Visit, the Contractor does not provide dedicated personnel for such visits, subject to the aforementioned rescheduling allowance, any downtime of O&M Plant to perform the inspections thereof shall be considered as unavailable for the purpose of Availability calculation described in **Error! Reference source not found.** [(however never exceeding eight (8) hours per given visit)]. Notwithstanding the foregoing, the Employer may request that the Contractor provide personnel on the Site for additional inspections as an Additional Service.
- 16.11.3. If, upon request for inspection of the O&M Plant by Employer made in accordance with Inspection and Testing, the Contractor provides access to O&M Plant for inspection and the Employer does not carry out such inspection, then any downtime of O&M Plant to perform the inspections thereof shall be considered as available for the purpose of Availability calculation described in **Error! Reference source not found..**

17. HAZARDOUS SUBSTANCES AND HAZARDOUS SITE CONDITIONS

- 17.1. The Contractor shall not, nor shall it permit any other Person to bring any hazardous substances on the Site, other than hazardous substances to be used by Contractor or any Subcontractor in a manner that:

- i) violate any applicable laws, or permits; and
 - ii) is inconsistent in quantity and with BESS and PV Industry Practices for operating and maintaining BESS and PV energy conversion plants, such as motor fuels, solvents and lubricants (collectively, “Permissible Materials”).
- 17.2. Contractor shall bear all responsibility and liability for:
 - i) any hazardous substances that are not Permissible Materials belonging to the Contractor or present on site; or
 - ii) The handling of, or failure to handle, Permissible Materials in violation of applicable laws or otherwise in any manner that constitutes negligence or wilful misconduct by Contractor or any Subcontractor.
- 17.3. The Contractor shall use hazardous substances in performance of the Services in accordance with the Performance Standards, applicable laws and BESS and PV Industry Practices and shall not:
 - i) utilize, or permit or cause any Subcontractor to utilize, on the Site such hazardous substances as are prohibited under Applicable Law; or
 - ii) Import or use at the Site such hazardous substances as are prohibited under Applicable Law.
- 17.4. Contractor shall maintain a regularly updated log of all material safety data sheets (MSDS) for all hazardous substances used in connection with performance of the Services at or near the Site, which shall be available for the Employer to review upon reasonable request.
- 17.5. The Contractor shall maintain an accurate record and a current inventory of all hazardous substances used in performance of the Services at or near the Site, which record shall identify quantities, location of storage, use and final disposition of such hazardous substances.
- 17.6. Contractor shall arrange at its cost for the disposal, transportation, reporting and certification (including provision of waste disposal vouchers and other certificates as required by applicable law or Permits) of hazardous substances, including waste disposal vouchers, brought onto and released at the Site by the Contractor or its Sub Contractors, which are expected to include but not be limited to used oil, grease and ethylene glycol, to the extent required by applicable laws, in each case, by licensed, insured, competent and professional Contractors in a safe manner and in accordance with applicable laws. The Contractor shall be solely liable for any response, removal, investigation, clean-up or other remedial action required by any laws related to any Contractor.
- 17.7. In the event the Contractor encounters any hazardous substance or other hazardous conditions at the Site that are inconsistent with the Performance Standard or would reasonably be expected to impact the performance of the Contractor’s obligations hereunder, the Contractor shall promptly report the condition to the Employer. In such event, the Contractor shall stop work and remove, or take other actions necessary to remedy the hazards associated with any hazardous substances such that the Contractor can resume work.
- 17.8. In addition the Contractor shall clear away from the Site all used materials, debris, rubbish, refuse or waste generated as a result of the performance of the Services

- 17.9. The Contractor shall indemnify and hold harmless the Employer against any fine, penalty or third-party claims incurred as a result of non-compliance by the Contractor with the terms of the Agreement, applicable laws, BESS and PV Industry Practice and more specifically, with its obligations under hazardous Substances and hazardous Site conditions.

18. EMPLOYER'S OBLIGATIONS

During the Term, Employer shall perform the following obligations:

18.1. Access

- 18.1.1. On and from the Commencement Date, Employer shall provide the Contractor (and its Subcontractors) access to the O&M Plant for the purpose of enabling Contractor to fulfil its obligations under the Agreement.

- 18.1.2. The Employer shall give to the Contractor and the Contractor's Personnel access to the Site to enable the Contractor and the Contractor's Personnel to carry out the Services at any time from the Commencement Date until the end of the Term or early termination of the Agreement for any reason. Such access shall include the provision by the Employer of:

- i) Such keys or access codes as may be required by the Contractor to gain unhindered access to the Site and/or the O&M Plant (as the case may be);
- ii) Access to the access roads to and on the Site.

Notwithstanding anything else contained in the Agreement all access to the Site and O&M Plant is subject to the applicable site safety, security and environmental requirements and Applicable Law (and the Contractor should comply with the same). The Employer will have the right to limit access or expel any Person off the Site.

18.2. Employer's Permits

The Contractor on behalf of the Employer shall obtain and maintain all Permits and any Permits required by Applicable Law to be obtained in the name of the Employer in order to (i) perform the Employer's obligations under the Agreement and (ii) enable the Contractor to lawfully access the Site at the point of entry to the Site and the O&M Plant.

19. SITE REGULATIONS

The Employer shall (directly or through a Subcontractor, advisor or agent) provide the Site Regulations and revisions thereof from time to time, and shall require the Contractor and its respective agents and employees to, (i) comply with the Site Regulations; and (ii) take all necessary precautions (as required by Applicable Law or otherwise) for the health and safety of all Persons (including Contractor's Personnel) at the Site.

20. CERTAIN NOTIFICATIONS BY EMPLOYER

- 20.1. The Employer shall, upon obtaining actual knowledge thereof, promptly give the Contractor, as soon as practicable, notice of:
- 20.2. Any events or facts or observations that the Employer believes has determined that would:
 - i) have a an effect on the operation of any of the O&M Plant or the performance of the Contractor's obligations under the Agreement; or
 - ii) to cause an immediate threat to the safe operation of the O&M Plant therein and/or the safety of Persons; provided that, in the case of this current Sub-Clause, the Employer shall provide as soon as possible verbal notice of such event, fact or observation to the other;
- 20.3. any (a) violation of applicable laws, including environmental laws or the terms of any Permit, by the Contractor or any Other Subcontractor or (ii) any notices of Liens (or claims of Liens) or investigations by Governmental Authorities related to the O&M Plant.
- 20.4. Failure to furnish notice pursuant to Certain Notifications by the Employer shall not affect the Contractor's obligations to perform its obligations.

21. EMPLOYER'S OWNERSHIP OF ENERGY, EQUIPMENT, SPARES AND PROJECT BENEFITS

- 21.1. The Contractor acknowledges that ownership of the energy or any benefits arising out of the operation of the Plant remains at all times, and in all circumstances with the Employer and the Contractor has no legal or equitable title to or interest in the energy or other benefit.
- 21.2. The ownership of any item (not including energy or benefits arising out of the operation of the O&M Plant) supplied by the Contractor as part of the Services and Additional Services shall be transferred to the Employer as soon as the Employer pays for the item.
- 21.3. The Contractor agrees that any benefits, including any carbon credits, renewable energy certificates or similar royalty or credit that may arise as a result of having the Facilities belong to the Employer and the Contractor shall provide all reasonable assistance requested by the Employer in order to obtain such rights and benefits.

22. PRICE AND PAYMENT

- 22.1. Annual Fee and Other Services Fee
- 22.2. During the Term the Employer shall pay the Contractor the Annual Fee quarterly in arrears for the duration of the Term for the performance of certain services, (“the Annual Fee Services”).
- 22.3. During the Term and on an as an when required basis the Contractor shall carry out Preventative Maintenance, Corrective Maintenance, Procurement of Spare Parts and Training (“Other Services”). The Employer shall, subject to the provisions of this Clause 23, pay the Contractor quarterly in arrears for Other Services (“Other Services Fee”).
- 22.4. Any sum due for Other Services shall be paid in arrears on a quarterly basis with the instalment of the Annual Fee payable for that quarter.
- 22.5. The Annual Fee and the Other Services Fee shall be inclusive of all costs to the Contractor in connection with the performance of its obligations under this Agreement in respect of the Annual Fee Services and the Other Service Fee, including without limitation, the cost of labour, components, Contractor’s Equipment, consumables, transport, fuel, accommodation and subsistence costs.
- 22.6. The Annual Fee and the Other Services Fees shall be subject to adjustment for inflation on an annual basis with the first adjustment being eighteen (18) months after the Commencement Date and subsequent adjustments for each eighteen (18) month period thereafter.

23. UPDATES OF SCADA, EMS & BMS SOFTWARE

The Contractor shall update as and when required, at no additional cost to the Employer the SCADA, EMS and BMS software, as required for the ongoing adequate operation of the O&M Plant.

24. TITLE AND RISK OF LOSS

- 24.1. Title with respect to any components and consumables and other items provided by the Contractor and incorporated or to be incorporated into any part of the O&M Plant pursuant to this Agreement shall upon the incorporation thereof into the applicable part of the O&M Plant pass to the Employer free and clear of any security provided that title to any Spare Parts delivered by the Contractor as an Additional Service shall pass to the Employer on the date such Additional Services are paid for in full.

- 24.2. Risk of loss with respect to any components and consumables and other items provided by the Contractor and incorporated or to be incorporated into any part of the O&M Plant pursuant to this Agreement shall pass to the Employer at the end of the Term or on termination of this Agreement for any reason.

25. INSURANCE

- 25.1. The Employer shall at its expense take out and maintain in effect during the performance of the Agreement the following insurances.

Table 17: Employer Insurance

Insurance against	Minimum amount of cover or minimum limit of indemnity
Assets All Risk	As per the insurance policy document.
Project insurance	As per the insurance policy document.
General and Public Liability	As per the insurance policy document.
Environmental Liability	As per the insurance policy document.
Transport (Marine)	As per the insurance policy document.
Motor Fleet and Mobile Plant	As per the insurance policy document.
Terrorism	As per the insurance policy document.
Cyber Liability	As per the insurance policy document.
Directors and Officers Liability	As per the insurance policy document
SASRIA	As per the insurance policy document

- 25.2. The Contractor shall promptly investigate all accidents, damage or destruction, diagnosis, assessment of any potential consequential effects, estimating cost of repair, arranging for any remedial action required, making of any claims under the insurance policies and co-operating with and making reports required by the Employer or insurers.
- 25.3. The Contractor shall be liable for the applicable deductible, if any
- 25.4. The Contractor provides insurances stated in the Insurance Table. The insurances provide cover for events which are at the Contractor's risk from the starting date until the end of the service period or a termination certificate has been issued

Table 18: Contractor Insurance

Insurance against	Minimum amount of cover or minimum limit of indemnity
Liability of the <i>Contractor</i> for damages arising from any negligent act, error or omission committed or alleged to have been committed by the Contractor in connection with the Services.	As the Contractor's deems it fit
Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property	The replacement cost where not covered by the <i>Employer's</i> insurance. The Employer's policy Deductible where covered by the <i>Employer's</i> insurance.
Loss of or damage to Plant and Materials	The replacement cost where not covered by the <i>Employer's</i> insurance. The Employer's policy Deductible where covered by the <i>Employer's</i> insurance.
Loss of or damage to Equipment	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy Deductible where covered by the <i>Employer's</i> insurance.
The <i>Contractor's</i> liability for loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service	Loss of or damage to property The replacement cost Bodily injury to or death of a person The amount required by the applicable law.
Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law

25.5. A copy of the Employer arranged insurance policies are attached in Schedule 9.

The Contractor shall ensure that under the aforementioned insurance policies, each of the insured has the ability to claim thereunder for a minimum period of three (3) months from the date of expiry of the insurance policies for any claims that arose prior to the expiry date.

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor, except for the Third-Party Liability and Workers' Compensation Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor, except for the Cargo, Workers' Compensation. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Agreement shall be waived under such policies.

25.6. General Insurance Requirements

25.6.1. The Contractor shall, provide copies of the corresponding insurance certificates mentioned above to the Employer.

25.6.2. If the Contractor fails to effect or maintain any insurance policy required hereunder, or fails to produce copy of the corresponding insurance certificates, the Employer may (but as no obligation), without prejudice to any other right or remedy available to it under the Agreement, procure the insurance for the relevant coverage and/or pay the premiums due. Such payments shall be recoverable and deducted from the payments to be made to the Contractor by the Employer under the Agreement. In the event that the Contractor does not pay the premium, then the Employer may pay the premium however in such case the obligations of Contractor to undertake the coverage shall continue as envisaged, irrespective of premium being paid by Employer. The premium if paid by the Employer shall be recovered from the Annual Fees payable by the Employer to the Contractor.

25.6.3. The Contractor shall comply with the conditions stipulated in each of the insurance policies to be affected under the Agreement and shall not make any alteration to the terms of any policy subscribed by it so it deviates from the requirements herein.

25.6.4. The Contractor must promptly notify to the Employer any notification received from an insurance company regarding any actual alteration to one of their policies.

25.6.5. On occurrence of any loss covered by an insurance policy contemplated under Insurance, the Contractor shall, as soon as reasonably possible, notify to insurance companies for the policy subscribed by it. The Contractor shall also take any appropriate measure to mitigate the effects to the loss to the maximum extent possible. The Contractor shall assist any assessment mandated by the insurance companies.

25.6.6. The required coverages referred to and set forth in this Article 26 (Insurance) shall in no way affect or limit the Contractor's liability with respect to its obligations under the Agreement

ANNEXURE 1.**BESS and Solar Photovoltaic Operation and Maintenance Scope of Work**

During the Term of the Agreement, the Contractor shall perform the services in accordance with the Operation and Maintenance services as described in document titled **BESS Operation and Maintenance Scope of Work** reference “**BESS_Dx-SE-C19**” and **Appendix C** of Rietfontein specification document 474-12510..

ANNEXURE 2.

Functional Guarantees

1. General

- 1.1. The following functional guarantees are being contracted for:
 - 1.1.1. Capacity warranty, where the contractor shall guarantee that the generation plant is able to deliver the minimum Power and Energy capacities.
 - 1.1.2. Availability warranty, where the contractor shall guarantee that the generation plant is able to meet the minimum Availability as required / contracted.
 - 1.1.3. Efficiency warranty, where the contractor shall guarantee that the generation plant able to meet the tendered efficiencies.
 - 1.1.4. Functional guarantee tests shall be conducted annually to confirm compliance to contractual requirements and institute corrective actions where applicable.

2. Energy capacity

- 2.1. An energy capacity test shall be performed at the time of Commissioning, in accordance with procedure mentioned below and is intended to be used to determine the dispatchable energy capacity of the BESS at the time of commencement of Operation.
- 2.2. BESS energy capacity shall be measured as follows:
 - 2.2.1. The BESS shall be discharged and charged at rated power between the lower and upper SOC¹ limit (as recommended by the OEM for current application).
 - 2.2.2. Power during charge and discharge shall be recorded at regular intervals of time documented by the OEM to provide a statistically valid resolution.
 - 2.2.3. The associated energy input (E_{in}), including all BESS functional, parasitic and auxiliary consumption and energy output (E_{out}) of the BESS shall be calculated from the recorded power.
 - 2.2.4. The above process may be repeated multiple times, with a minimum rest period between charging and discharging, if so recommended, so as to record data for a specified no. of cycles (n).
 - 2.2.5. The reference performance test value for stored energy shall be calculated as the mean of the values of E_{out} and E_{in} as measured for discharge and charge respectively.
 - 2.2.6. The procedure shall be repeated (3 cycles) with power levels at 100% of rated power and documented.
 - 2.2.7. The procedure shall be repeated (one cycle each) with power levels as referenced in document Unique Identifier 240 139687256 of rated power and documented.

Note 1): SOC recorded, shall be as reported by the Battery Management System.

2.3. The BESS shall meet the minimum energy and power capacities as contracted.

3. BESS capacity availability

3.1. The Contractor shall maintain all BESS equipment to ensure annual Availability not less than 95%.

3.2. Availability includes the availability of Batteries, Battery Management System (BMS), Power Conversion System (PCS), Energy Management System (EMS) as well as the power evacuation system for BESS up to interface with the system of power utility. i.e. 22kV indoor switchgear input termination (during discharging).

3.3. Availability is the percentage of hours that the BESS is available during the year. The availability guarantee shall begin upon Operational Acceptance till the end of O&M period.

3.4. BESS annual equipment availability shall be calculated as follows:

$$A = \left(1 - \frac{\sum T_{acc}}{8760} \right) \times 100 \quad (1)$$

Where:

A: Equipment availability [%]

T_{acc}: Accountable BESS outage duration [h]

3.5. Accountable BESS outage duration is the elapsed time of accountable BESS outages from the instant the BESS experiences reduced capacity or is out of service to the instant it is returned to service or full capacity. If the BESS experiences reduced capacity but is determined by the Employer to be available for service even if the Employer elects not to immediately return the equipment to full capacity, such time will be discounted from the outage duration.

3.6. Liquidated Damages for shortfall in equipment availability shall be charged if the actual equipment availability is less than the contracted equipment Availability.

3.7. If the annual equipment availability for BESS is less than 95% during any year, then Contractor shall compensate the Employer an amount calculated as per the following formula.

$$COM = \left(\frac{95 - A}{100} \right) \times BAR \times C \times 8760 \quad (2)$$

Where:

- COM: Capacity Availability Penalty. Compensation payable to the Employer [R]
 A: Annual BESS equipment Availability [%]
 C: Power capacity of the facility [MW]
 BAR: Base Availability Rate [R/MW] calculated as:

$$BAR = \frac{\text{Annualised Capex} + \text{Fixed Opex}}{C \times 0.95 \times 8760} \quad (3)$$

Annualised Capex: Annualised Capital Outlay

Fixed Opex: Annual fixed O&M is defined by the Operating and Maintenance costs deemed not related to utilization, which will escalate as per the contracted escalation.

Where the Annualised Capital Outlay is defined by the Initial Costs of the Project (from the bid), annualized by the following formula:

$$\text{Annualised Capex} = \text{Initial Costs} \times r \times \frac{1}{1 - (1 + r)^{-20}} \quad (4)$$

With r defined as the discount rate.

4. BESS equipment efficiency

- 4.1. The Contractor's monthly Reports shall contain at a minimum the following information in order to determine if the Functional Guarantees are met:
- 4.1.1. Available Energy Capacity (MWh) Discharged/Charged against a minimum of :
- 140MWh BESS for Melkhout
 - 6MWh BESS for Rietfontein
 - 170KW PV for Rietfontein
- 4.1.2. Power Capacity for the installation (MW) against a minimum of:
- 140MWh BESS for Melkhout
 - 6MWh BESS for Rietfontein
 - 170KW PV for Rietfontein
- 4.1.3. Report on energy used for charging against the maximum allowed values based on the following formula:

$$E_c = \frac{E_o}{h} \quad (1)$$

Where:

E_c : Maximum charging energy per cycle [MWh]

E_o : Rated Output energy [MWh]

h : Rated efficiency

1. Uptime or Availability against a minimum of 95% as defined below.
- 4.2. Failure to meet the above Functional Guarantees will result in the Penalty formulas below being applied to the Contractor.
- 4.3. The penalties to be levied monthly for non-adherence to the functional guarantees of the facilities during the life of the O&M Plant shall be calculated as follows:

$$E_p = \max\left(E_c - \frac{1}{h}(E_o + (ES_n - ES_0)), 0\right) \times BCR \quad (2)$$

Where:

E_p : Monthly Energy Shortfall Penalty [R]

E_c : Total charging energy in the month [MWh]

E_o : Total discharge (output) energy in the month [MWh]

ES_n : Energy Stored (in MWh available discharge) at the end of the month

ES_0 : Energy Stored (in MWh available discharge) at the start of the month

h : Rated efficiency

BCR: Base Charging Rate (as escalated annually) [R/MWh]

5. Guarantee on Performance and Availability for Solar Photovoltaic

5.1. Refer to Section 5.5.3 (*Liquidated Damages for Solar Photovoltaic*) in Appendix 8

(*Functional Guarantees*) of this document and Appendix D of Rietfontein specification document 474-12510.

5.2.

6. Recovery of Compensation

The above compensations shall be deducted from price of comprehensive O&M Agreement. During the free O&M period if any, compensation shall be paid by the contractor else it will be deducted from the O&M performance Security.

Performance Security Form– Bank Guarantee¹

[Guarantor letterhead or SWIFT identifier code]

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

Date: *_[Insert date of issue]*

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

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

We have been informed that _____ (hereinafter called “the Applicant”) has entered into Contract No. _____ dated _____ with the Beneficiary, for the execution of _____ (hereinafter called “the Contract”).

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

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (____)², such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall be reduced by half upon our receipt of following upon prior consent of the Employer

- (a) a copy of the Operational Acceptance Certificate; or
- (b) a registered letter from the Applicant (i) attaching a copy of its notice requesting issuance of the Operational Acceptance Certificate and (ii) stating that the Project Manager has failed to issue such Certificate within the time required or provide

¹ *The Employer should insert either the Bank Guarantee or the Conditional Guarantee.*

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.*

in writing justifiable reasons why such Certificate has not been issued, so that Operational Acceptance is deemed to have occurred.

This guarantee shall expire no later than the earlier of:³

- (a) twelve months after our receipt of either (a) or (b) above; or
- (b) eighteen months after our receipt of:
 - (i) a copy of the Completion Certificate; or
 - (ii) a registered letter from the Applicant, attaching a copy of the notice to the Project Manager that the Facilities are ready for commissioning, and stating that fourteen days have elapsed from receipt of such notice (or seven days have elapsed if the notice was a repeated notice) and the Project Manager has failed to issue a Completion Certificate or inform the Applicant in writing of any defects or deficiencies; or
 - (iii) a registered letter from the Applicant stating that no Completion Certificate has been issued but the Employer is making use of the Facilities; or
- (c) the ____ day of _____, 2____.⁴

³ This text shall be revised as and where necessary to take into account (i) partial acceptance of the Facilities in accordance with Sub-Clause 25.4 of the GCC; and (ii) extension of the Performance Security when the Contractor is liable for an extended warranty obligation pursuant to Sub-Clause 27.10 of the GCC (although in this latter case the *Employer* might want to consider an extended warranty security in lieu of the extension of the Performance Security).

⁴ Insert the date twenty-eight days after the expected expiration date of the Defect Liability Period. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

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

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

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

Performance Security Form- Conditional Bank Guarantee

Not Applicable

Date:

Loan/Credit

N°:

—

RFB

N°:

—

To: _____

Dear Ladies and/or Gentlemen,

We refer to the Contract Agreement (“the Contract”) signed on [date] between you and _____ (“the Contractor”) concerning design, execution and completion of _____.

By this letter we, the undersigned, [name of Bank], a Bank (or company) organized under the laws of _____ and having its registered/principal office at _____, do hereby jointly and severally with the Contractor irrevocably guarantee payment owed to you by the Contractor, pursuant to the Contract, up to the sum of _____, equivalent to _____ percent (%) of the Contract Price until the date of the Operational Acceptance Certificate and thereafter up to a sum of _____, equivalent to _____ percent (%) of the Contract Price, until twelve (12) months after the date of Operational Acceptance, or eighteen (18) months after Completion of the Facilities, whichever comes first.

Where it is agreed between you and the Contractor that the Facilities are to be accepted in parts, and thus where there are separate Completion and Operational Acceptance Certificates for each part, this Letter of Guarantee shall be apportioned to the value of each such part and shall reduce or expire as provided above on or following Completion or Operational Acceptance of each part.

We shall only undertake to make payment under this Letter of Guarantee upon our receipt of a written demand signed by your duly authorized officer for a specified sum, where such demand sets out the reasons for your claim under this Letter of Guarantee and is accompanied by

- (a) a copy of the written notice sent by you to the Contractor before making the claim under this Guarantee, specifying the Contractor’s breach of contract and requesting the Contractor to remedy it
- (b) a letter signed by your duly authorized officer certifying that the Contractor has failed to remedy the default within the period allowed for remedial action
- (c) a copy of your written notice to the Contractor stating your intent to claim under this Letter of Guarantee because of the Contractor’s failure to remedy the default in accordance with the request referred to in para. (a) above.

Our liability under this Letter of Guarantee shall be to pay to you whichever is the lesser of the sum so requested or the amount then guaranteed hereunder in respect of any demand duly made hereunder prior to expiry of this Letter of Guarantee, without being entitled to inquire whether or not this payment is lawfully demanded.

This Letter of Guarantee shall be valid from the date of issue until the earlier of twelve (12) months after the date of Operational Acceptance or eighteen (18) months after the date of Completion of the Facilities or, where the Facilities are to be accepted in parts, twelve (12) months after the date of Operational Acceptance or eighteen (18) months after the date of Completion of the last part or [date], whichever comes first.

Except for the documents herein specified, no other documents or other action shall be required, notwithstanding any applicable law or regulation.

If the Defect Liability Period is extended with respect to any part of the Facilities in accordance with the Contract, you shall notify us, and the validity of this Letter of Guarantee shall be extended with respect to the percentage of the Contract Price stipulated in the notification until expiry of such extended Defect Liability Period.

Our liability under this Letter of Guarantee shall become null and void immediately upon its expiry, whether it is returned or not, and no claim may be made hereunder after such expiry or after the aggregate of the sums paid by us to you shall equal the sums guaranteed hereunder, whichever is the earlier.

All notices to be given hereunder shall be given by registered (airmail) post to the addressee at the address herein set out or as otherwise advised by and between the parties hereto.

We hereby agree that any part of the Contract may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement between you and the Contractor, and this security may be exchanged or surrendered without in any way impairing or affecting our liabilities hereunder without notice to us and without the necessity for any additional endorsement, consent or guarantee by us, provided, however, that the sum guaranteed shall not be increased or decreased.

No action, event or condition which by any applicable law should operate to discharge us from liability hereunder shall have any effect and we hereby waive any right we may have to apply such law, so that in all respects our liability hereunder shall be irrevocable and, except as stated herein, unconditional in all respects.

Yours truly,

Authorized Signature

Advance Payment Security

Demand Guarantee

[Guarantor letterhead or SWIFT identifier code]

Beneficiary:*Name and Address of Employer*

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

Advance Payment Guarantee No.:*[Insert guarantee reference number]*

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

.....
 We have been informed that (hereinafter called “the Applicant”) has entered into Contract No. dated with the Beneficiary, for the execution of, (hereinafter called “the Contract”).

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum (.) is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of . (.)⁵ upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the applicant:

- (e) has used the advance payment for purposes other than the costs of mobilization in respect of the Facilities; or
- (f) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary’s bank stating that the advance payment referred to above has been credited to the Applicant on its account number _____ at _____.

⁵*The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.*

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of documentation indicating full repayment by the Applicant of the amount of the advance payment, or on the . . . day of,⁶, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

_____ [signature(s)]

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

⁶*Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*

Environmental and Social (ES), SDL&I Performance Security

ES & SDL&I Demand Guarantee

*[Guarantor letterhead or SWIFT identifier code]***Beneficiary:** *[insert name and Address of Employer]*

Date: *_ [Insert date of issue]*

ES & SDL&I PERFORMANCE GUARANTEE No.: *[Insert guarantee reference number]*

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

We have been informed that _____ (hereinafter called "the Applicant") has entered into Contract No. _____ dated _____ with the Beneficiary, for the execution of _____ (hereinafter called "the Contract").

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

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (_____),¹ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its Environmental and/or Social (ES) and/or SDL&I obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

[signature(s)]

¹ *The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency (cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.*