

BIDDING DOCUMENTS
FOR
Second Block of 1 x 500 MW HVDC Back to Back Station at
Bheramara (Bangladesh) at existing Bheramara HVDC Station
associated with Second SASEC Bangladesh-India Electrical
Grid Interconnection Project



PART-III: CONDITIONS OF CONTRACT AND CONTRACT
FORMS



Power Grid Company of Bangladesh Ltd.

ISO 9001:2008 Certified

(An Enterprise of Bangladesh Power Development Board)

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PART-3 : CONDITIONS OF CONTRACT AND CONTRACT FORMS

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These General Conditions of Contract (GCC) are based on the Model Form of International Contract for Process Plant Construction published by the Engineering Advancement Association of Japan (ENAA). The Multilateral Development Banks (MDBs) participating in the procurement harmonization process gratefully acknowledge the contribution of ENAA to the advancement of good contracting practices in their member countries. The GCC contain general clauses to be applied on all contracts. The GCC in this Section, read in conjunction with the Special Conditions of Contract in Section 8 and other documents listed therein, should be a complete document expressing all the rights and obligations of the contracting parties. The General Conditions herein shall not be altered.

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General Conditions

A. Contract and Interpretation

1. Definitions

- 1.1 The following words and expressions shall have the meanings hereby assigned 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.

“SCC” means the Special 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.

“*Employer*” means the person named as such in the SCC 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 SCC to perform the duties delegated by the Employer.

“Contractor” means the person(s) 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 SCC appointed by agreement between the Employer and the Contractor to make a decision on or to settle any dispute or difference between the Employer and the Contractor referred to him or her by the parties pursuant to GCC Sub-Clause 44.... (Dispute Board) hereof.

"The Bank" means the financing institution named in the SCC.

"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, 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, precommissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc... as the case may require.

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

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

"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, upon which the period until the Time for Completion shall be counted from.

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

“Precommissioning” 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 (Functional Guarantees) to the Contract Agreement 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.

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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 record in writing; |

- (d) the word “tender” is synonymous with “bid”, “tenderer” with “bidder” and “tender documents” with “bidding documents”; and
- (e) “written” or “in writing” means 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 in its basic characteristics or in purpose or utility from its components.

4. Communications

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

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

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

5. Law and Language

5.1 The Contract shall be governed by and interpreted in accordance with laws of the country specified in the SCC.

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

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

6. Fraud and Corruption

6.1 ADB's Anticorruption Policy requires Borrowers (including beneficiaries of ADB-financed activity), as well as Bidders, suppliers, and contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, ADB:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
 - (ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

- (iii) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
 - (v) “integrity violation” means any act, as defined under ADB’s Integrity Principles and Guidelines, which violates ADB’s Anticorruption Policy including corrupt, fraudulent, coercive, or collusive practice, abuse, and obstructive practice;
 - (vi) “obstructive practice” means (a) deliberately destroying, falsifying, altering or concealing of evidence material to an ADB investigation; (b) making false statements to investigators in order to materially impede an ADB investigation; (c) failing to comply with requests to provide information, documents or records in connection with an Office of Anticorruption and Integrity (OAI) investigation; (d) 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 (e) materially impeding ADB’s contractual rights of audit or access to information.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;
 - (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation;

- (d) will sanction impose remedial actions on a firm or an individual, at any time, in accordance with ADB's Anticorruption Policy and Integrity Principles and Guidelines (both as amended from time to time), including declaring ineligible, either indefinitely or for a stated period of time, to participate¹ in ADB-financed, or administered or supported activities or to benefit from an ADB-financed, administered or supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations; and
- (e) will have the right to require suppliers and contractors to permit ADB or its representative to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB.

B. Subject Matter of Contract

7. Scope of Facilities

- 7.1 Unless otherwise expressly limited in the Employer's Requirements, the Contractor's obligations cover the provision of all Plant and the performance of all Installation Services required for the design, the manufacture (including procurement, quality assurance, construction, installation, associated civil works, Precommissioning and delivery) of the Plant and the installation, completion and commissioning of the Facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Section, Employer's Requirements. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labor, materials, equipment, spare parts (as specified in GCC 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 (Scope of Works and Supply by the Employer) to the Contract Agreement.
- 7.2 The Contractor shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.
- 7.3 In addition to the supply of Mandatory Spare Parts included in the

¹ Whether as a contractor, nominated subcontractor, consultant, manufacturer or supplier, or service provider; or in any other capacity (different names are used depending on the particular bidding document). A nominated subcontractor is one which either has been: (i) included by the bidder in its prequalification application or bid because it brings specific and critical experience and know-how that are accounted for in the evaluation of the bidder's prequalification application or the bid; or (ii) appointed by the Employer.

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

8. Time for Commencement and Completion

- 8.1 The Contractor shall commence work on the Facilities within the period specified in the SCC and without prejudice to GCC Sub-Clause 26.2 hereof, the Contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in the Appendix 4 (Time Schedule) to the Contract Agreement.
- 8.2 The Contractor shall attain Completion of the Facilities or of a part where a separate time for Completion of such part is specified in the Contract, within the time stated in the SCC or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.

9. Contractor's Responsibilities

- 9.1 The Contractor shall design, manufacture including associated purchases and/or subcontracting, install and complete the Facilities in accordance with the Contract. When completed, the Facilities should be fit for the purposes for which they are intended as defined in the Contract.
- 9.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities including any data as to boring tests provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site if access thereto was available and of other data readily available to it relating to the Facilities as of the date 28 days prior to bid submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.
- 9.3 The Contractor shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under GCC 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 services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under GCC Clause 1 (Country of Origin). Any subcontractors retained by the Contractor shall be from a country as specified in GCC Clause 1 (Country of Origin).
- 9.6 The Contractor shall permit ADB to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by ADB, if so required by ADB.
- 9.7 If the Contractor is a joint venture or consortium of two or more *persons*, all such *persons* shall be jointly and severally bound to the Employer for the fulfillment of the provisions of the Contract and shall designate one of such *persons* to act as a leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Employer.

10. Employer's Responsibilities

- 10.1 All information and/or data to be supplied by the Employer as described in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement shall be deemed to be accurate, except when the Employer expressly states otherwise.
- 10.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in that Appendix.
- 10.3 The Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which (a) such authorities or undertakings require the Employer to obtain in the Employer's name, (b) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract, and (c) are specified in the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement.
- 10.4 If requested by the Contractor, the Employer shall use its best endeavors to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be,

to obtain.

- 10.5 Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature, including those required by the Contractor to properly carry out Precommissioning, Commissioning and Guarantee Tests, all in accordance with the provisions of the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement at or before the time specified in the program furnished by the Contractor under GCC 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, except those 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 imposed by the Contract, then the additional cost reasonably incurred by the Contractor in consequence thereof shall be added to the Contract Price.

C. Payment

11. Contract Price

- 11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.
- 11.2 Unless an escalation clause is provided for in the SCC, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise provided in the Contract.
- 11.3 Subject to GCC 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 (Terms and Procedures of Payment) to the Contract Agreement, which also outlines the procedures to be followed in making application for and processing payments.
- 12.2 No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Facilities or any part(s)

thereof.

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

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

13. Securities

13.1 Issuance of Securities

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

13.2 Advance Payment Security

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

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

13.3 Performance Security

13.3.1 The Contractor shall, within 28 days of the notification of contract award, provide a security for the due performance of the Contract in the amount specified in the SCC.

13.3.2 The security shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Employer, and shall be in one of the forms of *bank guarantees* provided in the bidding documents, as stipulated by the Employer in the SCC, or in another form acceptable to the Employer.

13.3.3 Unless otherwise specified in the SCC, the security shall be reduced by half on the date of the Operational Acceptance. The Security shall become null and void, or shall be reduced pro rata to the Contract Price of a part of the Facilities for which a separate Time for Completion is provided, 540 days after Completion of the Facilities or 365 days after Operational Acceptance of the Facilities, whichever occurs first; provided,

however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC 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 and up to the amount specified in the SCC.

14. Taxes and Duties

- 14.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the country where the Site is located.
- 14.2 Notwithstanding GCC Sub-Clause 14.1 above, the Employer shall bear and promptly pay all customs and import duties as well as other local taxes like, e.g., a value added tax (VAT), imposed by the law of the country where the Site is located on the Plant specified in Price Schedule No. 1 and that are to be incorporated into the Facilities.
- 14.3 If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the country where the Site is located, the Employer shall use its best endeavors to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.
- 14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date 28 days prior to the date of bid submission in the country where the Site is located (hereinafter called "Tax" in this GCC 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.
- 16.4 The above provisions of this GCC Clause 16 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.
- 16.5 The provisions of this GCC Clause 16 shall survive termination, for whatever reason, of the Contract.

E. Execution of the Facilities

17. Representatives 17.1 Project Manager

If the Project Manager is not named in the Contract, then within 14 days of the Effective Date, the Employer shall appoint and notify the Contractor in writing of the name of the Project Manager. The Employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give 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 14 days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Employer in writing to approve the person so appointed. If the Employer makes no objection to the appointment within 14 days, the Contractor's Representative shall be deemed to have been approved. If the Employer objects to the appointment within 14 days giving the reason therefor, then the Contractor shall appoint a replacement within 14 days of such objection, and the foregoing provisions of this GCC 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, the Contractor's Representative or the Construction Manager shall appoint a suitable person to act as the Construction Manager's deputy.

17.2.5 The Employer may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC Sub-Clause 22.4. The Employer shall provide evidence of the same, whereupon the Contractor shall remove such person from the Facilities.

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

18. Work Program

18.1 Contractor's Organization

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

18.2 Program of Performance

Within 28 days after the Effective Date, the Contractor shall submit to the Project Manager a detailed program of performance of the Contract, made in a form acceptable to the Project Manager and showing the sequence in which it proposes to design, manufacture, transport, assemble, install and precommission the Facilities, as well as the date by which the Contractor reasonably requires that the Employer shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve Completion, Commissioning and Acceptance of the

Facilities in accordance with the Contract. The program so submitted by the Contractor shall accord with the Time Schedule included in the Appendix (Time Schedule) to the Contract Agreement and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion given in the SCC and any extension granted in accordance with GCC Clause 40, and shall submit all such revisions to the Project Manager.

18.3 Progress Report

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

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

18.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the program referred to in 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 5 (List of Major Items of Supply and Services and List of Approved Subcontractors) to the Contract Agreement 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 (List of Major Items of Supply and Services and List of Approved Subcontractors for Major Items) to the Contract Agreement, the Contractor may employ such Subcontractors as it may select, at its discretion.
- 19.4 Each 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 sub-contractor's obligations extend beyond the expiry date of the relevant Defects Liability Period and the Project Manager, prior to that date, instructs the Contractor to assign the benefits of such obligations to the Employer, then the Contractor shall do so.

20. Design and Engineering

20.1 Specifications and Drawings

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

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

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

20.2 Codes and Standards

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

20.3 Approval/Review of Technical Documents by Project Manager

20.3.1 The Contractor shall prepare or cause its Subcontractors to prepare, and furnish to the Project Manager the documents listed in the Appendix (List of Documents for Approval or Review) to the Contract Agreement for its approval or review as specified and in accordance with the requirements of GCC 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 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 14 days, then the said document shall be deemed to have been approved by the Project Manager.

20.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with the Contract or that it is contrary to good engineering practice. If the Project Manager disapproves a document, he shall specify the reasons for his decision.

20.3.4 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC 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 45.3 hereof. If such dispute or difference is referred to a Dispute Board, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Dispute Board upholds the Contractor's view on the dispute and if the Employer has not given notice under Sub-Clause 45.3 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Dispute Board shall decide, and the Time for Completion shall be extended accordingly.

20.3.6 The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the

Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.

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

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

21.2 Employer-Supplied Materials

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

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

- (a) The Contractor shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks and lines provided to it in writing by *or on behalf of* the Employer.
- (b) If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the Contractor shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by *or on behalf of* the Employer, the expense of rectifying the same shall be borne by the Employer.

22.1.2 Contractor's Supervision

The Contractor shall give or provide all necessary superintendence during the installation of the Facilities, and the

Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

22.2 Labor

22.2.1 Engagement of Staff and Labor

- (a) Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labor, local or otherwise, and for their payment, housing, feeding and transport.
- (b) The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labor that has the necessary skills.
- (c) The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labor and personnel to be employed on the Site into the country where the Site is located. The Employer will, if requested by the Contractor, use his best endeavors in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national or government permission required for bringing in the Contractor's personnel.
- (d) The Contractor shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to the place where they were recruited or to their domicile. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Employer may provide the same to such personnel and recover the cost of doing so from the Contractor.

22.2.2 Persons in the Service of Employer

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

22.2.3 Labor Laws

- (a) The Contractor shall comply with all the relevant labor Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.
- (b) The Contractor shall at all times during the progress of the

Contract use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labor of its Subcontractors.

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

22.2.4 Rates of Wages and Conditions of Labor

- (a) The Contractor shall pay rates of wages, and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.
- (b) The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages and allowances as are chargeable under the Laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

22.2.5 Working Hours

- (a) No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours stated in the SCC, unless:
 - (i) otherwise stated in the Contract,
 - (ii) the Project Manager gives consent, or
 - (iii) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Project Manager.
- (b) If and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Project Manager's consent thereto, the Project Manager shall not unreasonably withhold such consent.
- (c) This 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

- (a) Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for

the Employer's Personnel as stated in the Specification.

- (b) The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

22.2.7 Health and Safety

- (a) The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
- (b) The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the performance of the Contract, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.
- (c) The Contractor shall send, to the Project Manager, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Project Manager may reasonably require.

22.2.8 Funeral Arrangements

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

22.2.9 Records of Contractor's Personnel

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

22.2.10 Supply of Foodstuffs

The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the

purposes of or in connection with the Contract.

22.2.11 Supply of Water

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

22.2.12 Measures against Insect and Pest Nuisance

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

22.2.13 Alcoholic Liquor or Drugs

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

22.2.14 Arms and Ammunition

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

22.2.15 Prohibition of All Forms of Forced or Compulsory Labor

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

22.2.16 Prohibition of Harmful Child Labor

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

22.3 Contractor's Equipment

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

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

22.3.3 The Employer will, if requested, use its best endeavors to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the

export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.

22.4 Site Regulations and Safety

The Employer and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Employer, with a copy to the Project Manager, proposed Site regulations for the Employer's approval, which approval shall not be unreasonably withheld.

Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.

22.5 Opportunities for Other Contractors

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

22.5.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services.

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

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

22.6 Emergency Work

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

If the Contractor is unable or unwilling to do such work immediately, the

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

22.7 Site Clearance

22.7.1 Site Clearance in Course of Performance

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

22.7.2 Clearance of Site after Completion

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

22.8 Watching and Lighting

The Contractor shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Facilities, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.

23. Test and Inspection

23.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Plant and any part of the Facilities as are specified in the Contract.

23.2 The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

23.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Employer and the Project Manager or their designated representatives to attend the test and/or inspection.

23.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.

If the Employer or Project Manager or their designated representatives fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.

- 23.5 The Project Manager may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.
- 23.6 If any Plant or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Plant or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC 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 a Dispute Board for determination in accordance with GCC Sub-Clause 45.3.
- 23.8 The Contractor shall afford the Employer and the Project Manager, at the Employer's expense, access at any reasonable time to any place where the Plant are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice.
- 23.9 The Contractor agrees that neither the execution of a test and/or inspection of Plant or any part of the Facilities, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GCC 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 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 (Scope of Works and Supply by the Employer) to the Contract Agreement for Precommissioning of the Facilities or any part thereof.

Pursuant to the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement, the Employer shall also provide, within the said seven (7) day period, the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Precommissioning of the Facilities or any part thereof.

24.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the 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 Precommissioning 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 Precommissioning are completed and, in the opinion of the Contractor, the Facilities or any part thereof is ready for Commissioning, the Contractor shall so notify the Project Manager in writing.

24.5 The Project Manager shall, within 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 7 days after receipt of the Contractor's repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's repeated notice.

If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within 7 days

after receipt of the Contractor's repeated notice, and the above procedure shall be repeated.

- 24.6 If the Project Manager fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies within 14 days after receipt of the Contractor's notice under GCC Sub-Clause 24.4 or within 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 (Functional Guarantees) to the Contract Agreement. The Employer shall promptly provide the Contractor with such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test and any repeats thereof.
- 25.2.2 If for reasons not attributable to the Contractor, the Guarantee Test of the Facilities or the relevant part thereof cannot be

successfully completed within the period from the date of Completion specified in the SCC or any other period agreed upon by the Employer and the Contractor, the Contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and GCC 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 SCC or any other agreed upon period as specified in GCC Sub-Clause 25.2.2 above; 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 7 days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.

25.3.4 If within 7 days after receipt of the Contractor's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as of the date of the Contractor's said notice.

25.4 Partial Acceptance

25.4.1 If the Contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.

25.4.2 If a part of the Facilities comprises facilities such as buildings,

for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the Contractor shall thereafter complete any outstanding minor items that are listed in the Operational Acceptance Certificate.

25.5 Delayed Precommissioning and/or Guarantee Test

25.5.1 In the event that the Contractor is unable to proceed with the Precommissioning of the Facilities pursuant to 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 Employer'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 (Terms and Procedures of Payment) to the Contract Agreement, 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 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 Precommissioning, the Contractor shall proceed without delay in performing all the specified activities and obligations under the contract.

F. Guarantees and Liabilities

26. Completion Time Guarantee

26.1 The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified) within the Time for Completion specified in the SCC pursuant to GCC 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 SCC as a percentage rate of the Contract Price or the relevant part thereof. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as "Maximum" in the SCC as a percentage rate of the Contract Price. Once the "Maximum" is reached, the Employer may consider termination of the Contract, pursuant to GCC 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 (Time Schedule) to the Contract Agreement 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 SCC. The aggregate amount of such bonus shall in no event exceed the amount specified as "Maximum" in the SCC.

27. Defect Liability

27.1 The Contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Plant supplied and of the work executed.

27.2 The Defect Liability Period shall be 540 days from the date of Completion of the Facilities (or any part thereof) or one year from the date of Operational Acceptance of the Facilities (or any part thereof), whichever first occurs, unless specified otherwise in the SCC pursuant to GCC 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 15 days), the Employer may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Employer in connection therewith shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due the Contractor or claimed under the Performance Security.

- 27.8 If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Employer because of any of the aforesaid reasons.

- 27.9 Except as provided in GCC Clauses 27 and 33, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Plant, design or engineering or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal or willful action of the Contractor.

- 27.10 In addition, any such component of the Facilities and during the period of time as may be specified in the SCC shall be subject to an extended Defect Liability Period. Such obligation of the Contractor shall be in addition to the Defect Liability Period specified under GCC 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 (Functional Guarantees) to the Contract Agreement, subject to and upon the conditions therein specified.
- 28.2 If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications and/or additions to the Plant or any part thereof

as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, modifications and/or additions, and shall request the Employer to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Employer may consider termination of the Contract, pursuant to GCC Sub-Clause 42.2.2.

- 28.3 If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Appendix (Functional Guarantees) to the Contract Agreement are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the said Appendix to the Contract Agreement is met, the Contractor shall, at the Contractor's option, either
- (a) make such changes, modifications and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Employer to repeat the Guarantee Test or
 - (b) pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the Appendix (Functional Guarantees) to the Contract Agreement.
- 28.4 The payment of liquidated damages under GCC Sub-Clause 28.3, up to the limitation of liability specified in the Appendix (Functional Guarantees) to the Contract Agreement, shall completely satisfy the Contractor's guarantees under GCC 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 28 days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the 28 day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

- 29.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Employer.

30. Limitation of Liability

- 30.1 Except in cases of criminal negligence or willful misconduct,
- (a) the Contractor shall not be liable to the Employer, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and
 - (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed a multiple of the Contract Price specified in the SCC or, if a multiple is not so specified, the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

G. Risk Distribution

31. Transfer of Ownership

- 31.1 Ownership of the Plant (including spare parts) to be imported into the country where the Site is located shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Plant from the country of origin to that country.
- 31.2 Ownership of the Plant (including spare parts) procured in the country

where the Site is located shall be transferred to the Employer when the Plant are brought on to the Site.

- 31.3 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.
- 31.4 Ownership of any Plant in excess of the requirements for the Facilities shall revert to the Contractor upon Completion of the Facilities or at such earlier time when the Employer and the Contractor agree that the Plant in question are no longer required for the Facilities.
- 31.5 Notwithstanding the transfer of ownership of the Plant, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GCC Clause 32 (Care of Facilities) hereof until Completion of the Facilities or the part thereof in which such Plant are incorporated.

32. Care of Facilities

- 32.1 The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Completion of the Facilities pursuant to GCC Clause 24 or, where the Contract provides for Completion of the Facilities in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GCC Clause 27. Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC 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 28 days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the 28 day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim,

and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

33.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Facilities not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 34, provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.

33.4 The party entitled to the benefit of an indemnity under this GCC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

34. Insurance

34.1 To the extent specified in the Appendix (Insurance Requirements) to the Contract Agreement, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.

(a) Cargo Insurance During Transport

Covering loss or damage occurring while in transit from the Contractor's or Subcontractor's works or stores until arrival at the Site, to the Plant (including spare parts therefor) and to the Contractor's Equipment.

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third parties including the Employer's personnel, and loss of or damage to property occurring in connection with the supply and installation of the Facilities.

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors, whether or not owned by them, in connection with the execution of the Contract.

(e) Workers' Compensation

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

(f) Employer's Liability

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

(g) Other Insurances

Such other insurances as may be specifically agreed upon by the parties hereto as listed in the Appendix (Insurance Requirements) to the Contract Agreement.

34.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC 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 (Insurance Requirements) to the Contract Agreement, deliver to the Employer certificates of insurance or copies of the insurance policies as evidence that the required policies are in full force and effect. The certificates shall provide that no less than 21 days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.

34.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.

34.5 The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the Appendix (Insurance Requirements) to the Contract Agreement, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor's Subcontractors shall be named as co-insureds under all such policies. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Employer shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than 21 days' notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Employer shall provide copies of the policies taken out by the Employer under this GCC 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.

35.3 If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC 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 28 days prior to the date of Bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed which shall be deemed to include any change in interpretation or application by the competent authorities, that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the SCC, pursuant to GCC 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 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 60 days or an aggregate period of more than 120 days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other, but without prejudice to either party's right to terminate the Contract under GCC 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 60 days or an aggregate period of more than 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 The Contractor may from time to time during its performance of the Contract propose to the Employer with a copy to the Project Manager, any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Facilities. The Employer may at its discretion approve or reject any Change proposed by the Contractor, provided that the Employer shall approve any Change proposed by the Contractor to ensure the safety of the Facilities.

39.1.3 Notwithstanding GCC 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 15%, the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor's objection, the Employer shall withdraw the proposed Change and shall notify the Contractor in writing thereof.

The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders

herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.

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

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

If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of 14 days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GCC 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 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 45.3.

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 39.2.1.

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, should the Employer choose not to proceed, the Contractor shall not be entitled to recover the costs

of preparing the Application for Change Proposal.

40. Extension of Time for Completion

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

- (a) any Change in the Facilities as provided in GCC Clause 39
- (b) any occurrence of Force Majeure as provided in GCC Clause 37, unforeseen conditions as provided in GCC Clause 35, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC 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, or any activity, act or omission of the Employer, or the Project Manager, or any other contractors employed by the Employer or
- (f) any other matter specifically mentioned in the Contract
- (g) any delay on the part of a sub-contractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this sub-clause

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 45.3.

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

In all cases where the Contractor has given a notice of a claim for an extension of time under GCC 40.2, the Contractor shall consult with the Project Manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall there after comply with all reasonable instructions which the Project Manager shall give in order to minimize such delay. If compliance with such instructions shall cause the Contractor to incur extra costs and the Contractor is entitled to an extension of time under

GCC 40.1, the amount of such extra costs shall be added to the Contract Price.

41. Suspension

- 41.1 The Employer may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The Contractor shall thereupon suspend performance of such obligation, except those obligations necessary for the care or preservation of the Facilities, until ordered in writing to resume such performance by the Project Manager.

If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than 90 days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within 28 days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Clause 39, excluding the performance of the suspended obligations from the Contract.

If the Employer fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GCC Clause 39 or, where it affects the whole of the Facilities, as termination of the Contract under GCC 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 (Terms and Procedures of Payment) to the Contract Agreement, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC 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 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 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 GCC Clause 6, in competing for or in executing the Contract.

42.2.2 If the Contractor

- (a) has abandoned or repudiated the Contract

- (b) has without valid reason failed to commence work on the Facilities promptly or has suspended, other than pursuant to GCC Sub-Clause 41.2, the progress of Contract performance for more than 28 days after receiving a written instruction from the Employer to proceed
- (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause
- (d) refuses or is unable to provide sufficient materials, services or labor to execute and complete the Facilities in the manner specified in the program furnished under GCC 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 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 Contractor

42.3.1 If

- (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix (Terms and Procedures of Payment) to the Contract Agreement, or commits a

substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC 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 14 days after receipt of the Contractor's notice, or

- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,

then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within 28 days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within 28 days of the said notice, the Contractor may by a further notice to the Employer referring to this GCC 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 (Terms and Procedures of Payment) to the Contract Agreement.

43. Assignment

43.1 Neither the Employer nor the Contractor shall, without the express prior written consent of the other party which consent shall not be unreasonably withheld, assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

I. Claims, Disputes and Arbitration

44. Contractor's Claims

44.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall submit a notice to the Project Manager, describing the

event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this 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 45 hereof.

45. Disputes and Arbitration

45.1 Appointment of the Dispute Board

Disputes shall be referred to a DB for decision in accordance with GCC Sub-Clause 45.3. The Parties shall appoint a DB by the date stated in the SCC.

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

If the Parties have not jointly appointed the DB 21 days before the date stated in the SCC 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 SCC, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DB.

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

The terms of the remuneration of either the sole member or each of the

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

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

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the 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 Clause 25.3.

45.2 Failure to Agree Dispute Board

If any of the following conditions apply, namely:

- (a) the Parties fail to agree upon the appointment of the sole member of the DB by the date stated in the first paragraph of GCC Sub-Clause 45.1,
- (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 SCC 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.

45.3 Obtaining Dispute Board's Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with the performance of the Contract, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Project Manager, either Party may refer the dispute in writing to the 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 to proceed 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 45.6 and 45.7, neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this 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.

45.4 Amicable Settlement

Where notice of dissatisfaction has been given under GCC Sub-Clause 45.3 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction and intention to commence arbitration was given, even if no attempt at amicable settlement has been made.

45.5 Arbitration

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

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

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

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

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

45.6 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 45.5. GCC Sub-Clauses 45.3 and 45.4 shall not apply to this reference.

45.7 Expiry of Dispute Board's Appointment

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

- (a) GCC Sub-Clauses 45.3 and 45.4 shall not apply, and
- (b) the dispute may be referred directly to arbitration under GCC Sub-Clause 45.5

APPENDIX A

General Conditions of Dispute Board Agreement

1 Definitions

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

- (a) the "Employer";
- (b) the "Contractor"; and
- (c) the "Member" who is defined in the Dispute Board Agreement as being:
 - (i) the sole member of the "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.

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

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

4 General Obligations of the Member

The Member shall:

- (a) have no interest financial or otherwise in the Employer, the Contractor or the Project Manager, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;
- (b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;
- (c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Project Manager, and any previous involvement in the overall project of which the Contract forms part;
- (d) not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);
- (e) comply with the annexed procedural rules and with GCC Sub-Clause 45.3;
- (f) not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
- (g) not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Project Manager regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;
- (h) ensure his/her availability for all site visits and hearings as are necessary;
- (i) become conversant with the Contract and with the progress of the Facilities (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
- (j) treat the details of the Contract and all the 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 45.3, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

6 Payment

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

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

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

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

- (b) a daily fee which shall be considered as payment in full for:
 - (i) each day or part of a day up to a maximum of 2 days' travel time in each direction for the journey between the Member's home and the site, or another location of a meeting with the Other Members (if any);
 - (ii) each working day on site visits, hearings or preparing decisions; and
 - (iii) each day spent reading submissions in preparation for a hearing.
- (c) all reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, 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 SCC shall determine the amount of the fees to be used.

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

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

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the 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.

Annex - 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 Works and of any actual or potential problems or claims, and, as far as reasonable, to prevent potential problems or claims from becoming disputes.
3. Site visits shall be attended by the Employer, the Contractor and the Project Manager and shall be co-ordinated by the 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 45.3, the DB shall proceed in accordance with GCC Sub-Clause 45.3 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 at the cost of the Parties to give advice on a specific matter relevant to the dispute.
9. The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with GCC Sub-Clause 45.3, 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 endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
 - (c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:
 - (i) either the Employer or the Contractor does not agree that they do so, or
 - (ii) the absent Member is the chairman and he/she instructs the other Members to not make a decision.

Section 8 - Special Conditions of Contract

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

1. Definitions (**GCC 1) (Supplementing the Clause GCC 1)****GCC 1.1**

The Employer is:
Power Grid Company of Bangladesh Ltd. (PGCB)

Registered Office:

Red Crescent Concord Tower,
17, Mohakhali Commercial Area (6th floor),
Dhaka-1212, Bangladesh

Head Office:

Institution of Engineers Bangladesh (IEB)
Bhaban (4th floor), 8/A, Ramna,
Dhaka-1000
Country: Bangladesh

Telephone: +880-2-9555475, 9550514, 9558054
Fax No.: +880-2-7171833

The Project Manager is:

The Superintending Engineer & Project Director of Project, Power Grid Company of Bangladesh Limited.

The Bank is:

Asian Development Bank, Manila (ADB)

Country of Origin: All countries and territories as indicated in the Section 5 Eligible Countries of the bidding documents.

Time for Completion

| Sl. No. | Activities | Duration in months from the effective date of contract |
|---------|---|--|
| 1. | Second Block of 1 x 500 MW HVDC Back to Back Station at Bheramara (Bangladesh) at existing Bheramara HVDC Station associated with Second SASEC Bangladesh-India Electrical Grid Interconnection Project | 24 months |

The successful Bidder shall be required to prepare detailed Network and Project implementation plans & programmes and finalize the same with the Employer as per requirement specified in Technical Specifications, which shall form a part of the

Contract.

"Time for Completion" - means the time within which Completion of the Facilities is to be obtained in accordance with the specifications, as a whole and Taking Over by the Employer is to be attained

"Completion" means that the Facilities (or a specific part thereof where specific parts are specified in the GCC 1.1) have been completed operationally and structurally and put in a tight and clean condition, and that all work in respect of Precommissioning of the Facilities or such specific part thereof has been completed; and Commissioning followed by Trial-run has been completed, as provided in GCC Clause 24 (Completion of Facilities).

Commissioning" means operation of the Facilities or any part thereof by the Contractor as specified in the Technical Specifications, which operation is to be carried out by the Contractor as provided in GCC Clause 24 hereof, for the purpose of carrying out Trial-run for specified period mentioned in GCC Clause 24.

Delete the words "Commissioning and" in the second last & last lines of the definition of the Operational Acceptance

GCC 5.1 The Contract shall be governed by and interpreted in accordance with the laws of The People's Republic of Bangladesh

GCC 5.2 Ruling language shall be English

GCC 5.3 Language of communication shall be English,,

GCC 7.1 **Replacing Sub-Clause GCC 7.1**

Unless otherwise expressly limited in the Technical Specifications, the Contractor's obligation cover the provision of all Plant and the performance of all Installation Services required for the design, the manufacture (including procurement, quality assurance, construction, installation, associated civil works, Precommissioning and delivery) of the Plant and the installation, Completion consequent upon Commissioning & Trial-run, and performance testing of the facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Technical specifications. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labour, 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 Appendix-6 (Scope of Works and Supply by the Employer) to the Contract Agreement.

Replacing Clause GCC 7.3

GCC 7.3

The supply of Mandatory Spares Parts, if any, shall be included in the Contract. Beside the aforesaid Mandatory Spares parts, the Contractor shall ensure the availability of spare parts required for the operation and maintenance of the Facilities by the Employer for a minimum period of fifteen (15) years from Taking Over/Completion of the Facilities by the Employer. However, in the event of that a equipment/component is declared to be withdrawn from production, Contractor shall ensure the availability of spare parts for the supplied items for a minimum period of 7 years from the date of withdrawal from production or 15 years from Taking Over/Completion of the Facilities by the Employer, whichever is greater, however, not exceeding overall period of 15 years from Taking Over/Completion of the Facilities by the Employer. For balance of the period, if any, up to 15 years from Taking Over/Completion of the Facilities by Employer, Contractor shall ensure that functionally equivalent hardware is available which is compatible with all software delivered with the system. If Employer chooses to purchase from the Contractor said functionally equivalent hardware, any software modifications necessary to maintain complete functional compatibility with all software delivered by Contractor shall be made at no cost to Employer. In the event, the modified software is not found compatible with functionally equivalent hardware, the contractor shall make suitable corrections to this modified software and install this corrected software at no cost to Employer.

If so desired by the Employer, the Contractor shall submit the specifications, price and the terms and conditions relating to the supply thereof for such spares identified by the Employer with validity period of 6 months within 30 days of receipt of request from Employer for its consideration and placement of order.

Add New clause 7.4

GCC 7.4

The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Plant. Other spare parts and components shall be supplied as promptly as possible, but at the most within six (6) months of placing the order and opening the letter of credit except for Converter Transformers, Shunt Reactors, Wall Bushings and Transformer Bushings. Shunt Reactors, Wall Bushings and Transformer Bushings shall be supplied as promptly as possible, but at the most within Twelve(12) months and Converter Transformers at the most within Eighteen (18) months of placing the order.

In addition, in the event of termination of the production of spare parts:

- (i) The Contractor shall send advance notification to the Employer of the pending termination, with 2 (two) years time to permit the Employer to procure needed requirements, and
- (ii) Following such termination, the Contractor shall furnish at no cost to the Employer the blueprints, drawings and specification of the spare parts, if requested. However, in case of spares parts from third party, blueprints, drawings and specification of the spare parts shall be furnished by the Contractor to the extent that such documents are available to the Contractor.

GCC 8.1

Supplementing Clause 8.1

The Contractor shall commence work on the Facilities from the Effective Date of Contract for determining Time for Completion as specified in the Contract Agreement.

GCC 8.2 Supplementing Clause 8.2

Time for Completion shall be as per Sub-Clause GCC 1.1 as supplemented through SCC.

GCC 9.6 Replacing Clause GCC 9.6

The Contractor shall permit the Bank to inspect the Contractor's accounts and records relating to the performance of the Contractor in this Project and to have them audited by auditors appointed by the Bank, if so required by the Bank.

GCC 9.8 Addition of New Sub-Clause as GCC 9.8

The Contractor shall supply the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Pre-commissioning and Commissioning. The responsibility of Contractor for such supplies shall be upto the Trail Run.

GCC 10.5 Replacing Clause GCC 10.5

The Employer shall provide sufficient, properly qualified operating and maintenance personnel for Pre-commissioning, Commissioning and Guarantee Tests as per the details in Appendix-6. The Employer shall not supply any raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters for Pre-commissioning, Commissioning and Guarantee Tests. The Contractor shall perform Pre-commissioning, Commissioning and Guarantee Tests in accordance with the terms and conditions of the Contract, Employer's representative will witness the tests and certify accordingly.

GCC 10.6 Replacing Clause GCC 10.6

The Employer shall be responsible for the continued operation of the Facilities after Taking Over, in accordance with GCC 24.7.5.

GCC 11.2 Replacing Clause 11.2

The Contract Price shall also be adjusted on account of variation of quantity in accordance with Clause 39 of GCC read in conjunction with SCC.

GCC 13.2.1 Supplementing the Sub-Clause 13.2.1

Add at the end of the paragraph, after "currencies", "with a validity of up to ninety (90) days beyond the date of Completion of the Facilities in accordance with GCC Clause 24."

GCC 13.2.2 Replacing Clause 13.2.2

The security shall be in the form provided in the Bidding Documents or in another form acceptable to the Employer. The security shall be discharged after completion of the facilities or relevant part thereof.

- Procedure for effective reduction in the Advance Payment Security

The Advance Payment Security shall be allowed to be reduced every three (3) months (in physical form) after First Running Account Bill/Stage payment under the Contract till the total advance amount given to the Contractor by Employer is adjusted in full corresponding to cumulative value of the Facilities completed as per a certificate to be issued by the Project Manager.

As an alternative to the above, the reduction of Advance Payment Security corresponding to the adjustment of advance amount by the Employer can be allowed by the Employer with its prior approval provided the Bank provides a system / mechanism for the same.

It should be clearly understood that reduction in the value of security for advance shall not in any way dilute the Contractor's responsibility and liabilities under the Contract including in respect of the Facilities for which reduction in the value of security is allowed.

GCC 13.3.1

Replacing Sub-Clause GCC 13.3.1

The Contractor shall, within twenty-eight (28) days of the notification of award, provide a performance security for the due performance of the Contract in the amount equivalent to Ten percent (10%) of the Contract Price, with a validity upto sixty (60) days beyond the Defect Liability Period.

In addition to the above, the Contractor shall, within twenty-eight (28) days of the Notification of Award, arrange to provide additional Performance Security(ies), if applicable, as per Joint Deed of Undertaking mentioned at Sl. No.5, Section-4 (Bidding Forms).

The said security(ies) shall be required to be extended from time to time till sixty (60) days beyond the actual Defect Liability Period, as may be required under the Contract.

If the financial institution issuing the performance security is located outside Bangladesh, it shall have a correspondent financial institution located in Bangladesh for the performance security to be enforceable.

GCC 13.3.2

The performance security shall be in the Form of unconditional Bank Guarantee attached hereto in the Section-9 (Contract Forms).

GCC 13.3.3

Replacing Sub-Clause GCC 13.3.3

Reduction in the security pro rata to the Contract Price of any part of the Facilities during the Defect Liability Period is not admissible and reduction of the same after the Defect Liability Period shall be subject to GCC Sub-Clause 13.3.3.2. However, 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 warranty obligation, the performance security shall be extended for the period and up to the amount specified in the SCC clause 26.

GCC 13.3.3.1 Addition of New Sub-Clause as GCC 13.3.3.1

The Performance Security shall be reduced to ten percent (10%) of the value of the component covered by the extended warranty to cover Contractor's extended warranty in accordance with the provision in the SCC, pursuant to GCC Sub-clause 27.10.

GCC 13.3.3.2 Addition of New Sub-Clause as GCC 13.3.3.2

After the Defect Liability Period, in accordance with the provisions in the PC, pursuant to GCC Clause 27, all the performance securities shall be reduced to two percent (2%) of the Contract Price, or part thereof, to cover the Contractor's obligations under Availability and Reliability Period as per the provisions in the Technical Specification, Section – VI, Part – 2 of Bidding Document. The security shall be returned to the Contractor immediately after its expiration.

Alternatively, the Contractor may provide the performance securities (as per the requirements of the Contract) initially valid upto 90 days after the scheduled date of Defect Liability Period and shall be extended from time to time till 90 days beyond the actual date of Defect Liability period of the Facilities, as may be required under the Contract. Further, Contractor shall be required to submit the performance securities for two percent (2%) of the Contract Price, or part thereof, to cover the Contractor's obligations under Availability and Reliability Period as per the provisions in the Technical Specification, Section – VI, Part – 2 of Bidding Document. Contractor shall ensure that these performance securities of 2% of the Contract Price are submitted by them well in advance (before expiry of other performance securities of 10% of the Contract Price) and are accepted by the Employer. After only acceptance of performance securities of 2% of the Contract Price only, the other securities shall be returned to the Contractor. Further, the performance securities of 2% of the Contract Price shall be returned to the contractor immediately after its expiration.

GCC 13.3.4 Addition of New Sub-Clause as GCC 13.3.4

In case of award of the contract to a Joint Venture, the Bank Guarantee for advance payment shall be submitted in the name of all the Joint Venture.

GCC 13.4 Addition of New Sub-Clause as GCC 13.4

If the financial institution issuing the performance security and advance payment security is located outside Bangladesh, it shall have a correspondent financial institution located in Bangladesh for the performance security and advance payment security to be enforceable.

GCC 14.1 Replacing Sub-Clause GCC 14.1

- 14.1(a) Income Tax, surcharge and all taxes of similar nature and VAT levied on the Contractor which is deductible on payment of bill as Tax Deducted at Source (TDS) in Bangladesh in connection with the execution of this Contract, shall be paid by the Employer. The Contractor will deduct income tax as per law from salary or remuneration paid to expatriate and local personnel as well as payment to sub-contractors and deposit to the government ex-chequer within the stipulated time as per rule.

Bidders may acquire information regarding taxes and duties from the National Board of Revenue (NBR) of Bangladesh.

To facilitate payment of such taxes by the Employer, the Contractor shall submit to the income tax authorities through the Employer all statutory statements and returns with necessary documents and information well before the dates fixed for submission of such returns and the Contractor shall also comply with all requirements in the course of the proceedings before the tax authorities. If, for the Contractor's failure to submit such statement/returns in time, any interest, penalty or any other levy is imposed by the tax authorities, the Employer shall not be liable to pay such amount which will be the liability of the Contractor. The Employer will not be liable for payment of tax, VAT etc., if an arbitrary assessment is made for the failure of submission of proper documents by the Contractor.

- (b) The Contractor's final payment shall not be released until full compliance of this provision of the Contract by the Contractor.

GCC 14.2

Replacing Sub-Clause GCC 14.2

- (a) The Contractor shall, at his cost and expense secure, any work permits, labor permits, tax clearances, tax exemption certificate and any other authorization which may be required by the Government of Bangladesh to permit imported personnel of Contractor and its sub contractors to perform their work at site.
- (b) The Contractor shall be liable to the Employer for customs duties and taxes, paid by the Employer and for the other lawful tax which may be or may become payable, on the Contractor's equipment tools and supplies imported for the Works and subsequently sold within Bangladesh, to a party, or parties other than the Employer. For the selling of anything by the Contractor, permission of the Employer shall be obtained by the Contractor.
- (c) The Employer will be responsible for the payments of all such **Customs, Import Duties VAT and AIT** levied on the imported Plant, except materials for civil works such as reinforcement steel bars, cement etc. which are available in Bangladesh, required for the project upon submission by the Contractor of necessary documentation as detailed 14.2(d). **Consequently, all bid prices shall be exclusive of Customs and Import Duties and VAT.**

The materials for civil works such as reinforcement steel, cement, sand, bentonite slurry and retarder are normally available in Bangladesh and can be procured locally by the Contractor. In cases where these materials are required

to be imported for the work, all customs and import duties shall be borne by the Contractor

- (d) In order for the Employer to obtain the necessary import permits and satisfy the requirements of the customs authorities the following documentation is required.

Within 60 days of the signing of the contract the Contractor shall submit a detailed delivery schedule of Plant he is to provide under the contract indicating the type of equipment and the name of the manufacturer. Six copies of the schedule are to be submitted to the Employer.

On behalf of the Government of Bangladesh the Ministry of Commerce annually issue a schedule of import protected items. The Contractor shall be responsible for advising the Engineer of any plant he intends to ship under the Contract which is import protected. This advice is to be received by the Engineer at least four months before the plant reaches Bangladesh in order to permit the Employer to obtain the necessary import permissions.

On shipment of plant the following distribution of shipping documents are required as follows:

- (i) To the Company Secretary, Power Grid Company of Bangladesh Ltd, Institution of Engineers Bangladesh (IEB) Bhaban (4th floor), Ramna, Dhaka 1000.

- 1 original plus 10 copy Invoices Endorsed by the Contractor
- 1 negotiable plus 10 copies of Bill of Lading Endorsed by the Contractor
- 1 original plus 10 copy Insurance Certificate
- 10 copies of packing lists
- 10 copies of Freight Memo
- 1 original plus 10 copies of Certificate of Origin
- 10 copies of insurance invoice
- 10 copies of Application for Payment
- 10 copies of Pre shipment Inspection Certificate or Waiver thereof

- (ii) To the Project Manager

Two copies of the above documentation

- (iii) To the Representative of Project Manager

Two copies of the above documentation.

- (e) Import license and permits for the Plant shall be obtained by the Employer at no cost to the Contractor. No import and export customs duties levied on food of any sort or personal effects imported for consumption by the Contractor's imported personnel shall be paid by the Employer.

- (f) If, however, after payment of Customs and Import duties by the Employer, goods are discovered to have arrived into Bangladesh in such a badly damaged condition due to the Contractor's negligence that they have to be replaced, the Contractor will be responsible for the payment of the Customs and Import duties levied on all the replacement imported plant.
- (g) The Contractor will be responsible for payment of all costs, with the exception of those costs that are specifically to the account of the Employer as described in SCC 14.2(c), related to clearances of Plant and Contractor's Equipment at the port of entry. The Contractor shall perform all necessary Customs formalities in respect of clearance of materials from the port in consultation with PGCB.
- (h) It is the Contractor's responsibility to ensure all negotiable shipping documentation and all necessary import information is forwarded to the Employer so that it is received by him in Bangladesh at least 14 days before arrival of the ship in the Bangladesh port. Demurrage and any other charges resulting from the lack of documents or incorrect documentation received in Bangladesh shall be to the Contractor's account.

GCC 15.2 Supplementing Clause GCC 15.2

The Employer shall however be free to reproduce all drawings, documents and other material furnished to the Employer for the purpose of the Contract including, if required, for operation and maintenance.

GCC 17.1 Replacing Sub-Clause GCC 17.1

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. The Employer shall take all reasonable care to see that no such appointment is made at such a time or in such a manner as to impede the progress of work on the Facilities. 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.

GCC 17.2.2 Replacing Sub-Clause GCC 17.2.2

Contractor's Representative & Construction Manager

The Contractor's Representative shall represent and act for the Contractor at all time during the performance of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information and 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 Contactor can revoke the appointment of the Contractor's Representative provided a suitable alternative is appointed by the Contractor after taking necessary approvals of the Employer as per the procedure set out in GCC Sub-clause 17.2.1. However, for delay(s) in execution of work, if any, on account of above (i.e., for revoking the appointment of the Contractor's Representative(s) and appointing the other person(s) after approval of the Employer), the Contractor himself shall be responsible and shall not be entitled for any compensations from the Employer inter-alia including but not limited to extension of time for completion.

GCC 17.2.3.1 Addition of new sub-clause GCC 17.2.3.1

Notwithstanding anything stated in GCC Sub-Clause 17.1 and 17.2.1 above, for the purpose of execution of Contract, the Employer and the Contractor shall finalize and agree to a Contract Co-ordination Procedure and all the communication under the Contract shall be in accordance with such Contract Coordination Procedure.

GCC 17.2.4 Replacing Sub-Clause GCC 17.2.4

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 through-out 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 his or her deputy.

GCC 18.2 Replacing Sub-Clause GCC 18.2

The form of the program of performance of the Contract shall be in the form of the Critical Path Method (CPM), the PERT network, or other internationally used programs.

Within twenty-eight (28) days after the date of Notification of Award, the Contractor shall prepare and submit to the Project Manager a detailed program of performance of the Contract, made in the form specified in the SCC 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 consequent upon Commissioning, Trial-run 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 Appendix-4 (Time Schedule) to the Contract Agreement and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion given in the SCC and any extension granted in accordance with GCC Clause 40, and shall submit all such revisions to the Project Manager.

GCC 18.3 Replacing 2nd paragraph of Sub-Clause GCC 18.3 with the following:

The progress report shall be in a form acceptable to the Project Manager and shall indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken; and (c) monitoring of the obligations in Sub Clauses 18.3, 22.2, 22.2.15, 22.16 & 46.

GCC 19.3 Sub-clause 19.3 is replaced as below:

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 subject to written approval of Employer's Representative

GCC 19.6 The following Sub-clause is added:

"19.6 The Contractor shall not Subcontract the whole of the Facilities."

GCC 20.3.1 Sub-Clause GCC 20.3.1

Replace "Appendix" in line 3 of first para by "Appendix-7"

GCC 20.3.2 Sub-Clause GCC 20.3.2

Replace fourteen (14) days in line 1 of first para by twenty one (21) days.

GCC 20.3.8 Addition of new sub-clause GCC 20.3.8

Drawings are to be submitted for approval on paper prints, folded to A4 size with the project title block and drawing numbers fully visible.

GCC 20.3.9 Addition of new sub-clause GCC 20.3.9

The Contractor shall be mention Employer's drawing numbers to all drawings prior to submittal. Following award of the contract the Employer and Contractor will review the numbering system, familiarize each other with requirements, and agree on the numbering system to be applied.

Comprehensive cross references are to be included on drawings and the Contractor shall include the Employer's drawing number in the cross references. At each and every issue of a drawing the revision shall be raised, and details given in revision

boxes on the drawing. Comprehensive details of revisions are to be given and phrases such as "REVISED", "UPDATED", "MODIFIED" or similar are not acceptable. Reference to any drawing in communications shall include the Employer's drawing number.

GCC 20.3.10 Addition of new sub-clause GCC 20.3.10

The Contractor shall submit four (04) copies of drawings of the plant and works for formal approval to the Employer. A Program of drawing submittal shall be agreed with the Contractor following contract award. Drawings issued in accordance with this Program shall take account of the time periods necessary for postage, and approval by the Employer, to ensure that approved drawings are available prior to manufacture. For site construction works, 4 copies of "Construction Issue" drawings are to be submitted and made available, on site, at least 21 days prior to the commencement of the works.

Where appropriate, the drawings shall be accompanied by supporting calculations. The Contractor shall ensure that drawings of a specific aspect of the Works are fully co-ordinated and submitted together in a logical sequence.

Should the Contractor revise a drawing for any reason following approval by the Employer the revised drawing is to be resubmitted for re Approval by the Employer, the original approval automatically being void.

**GCC
20.3.11 Addition of new sub-clause GCC 20.3.11**

During construction of the Works on the site, the Contractor shall ensure that all departures, modifications and corrections to the approved drawings are recorded. All such changes to the drawings are to be marked in red to show the "as-built" state and one set of "as-built" drawings are to be available on the site at all times.

On completion of construction and commissioning the Contractor shall provide four (04) copies of any drawing which has required amendment to show the "as-built" state to the Employer's Representative. These drawings shall be issued by the Contractor prior to the issue of the Completion Certificate.

Following examination of the "as-built" drawing the Employer's Representative shall return one copy to the Contractor indicating Approval of the construction modifications, or further modifications required to satisfy the requirements of the specifications.

GCC 21.1 The text "GCC Sub-clause-14.2" is replaced by "GCC Sub-clause-14." And following is added at the end of the sub-clause

The Contractor shall comply with (i) the measures and requirements set forth in the resettlement plan attached hereto to as Appendix, to the extent if concerns impacts on affected people during construction; and (ii) any corrective or preventive actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor implementation of the resettlement plan.

The Contractor shall allocate a budget for compliance with these measures, requirements and actions.

GCC 21.3.4 Replacing Sub-Clause GCC 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 is caused by the transport of the materials and the Contractor's Equipment to the Site.

**GCC 21.3.5 Addition of New Clause GCC 21.3.5
Packing**

The Contractor shall provide such packing of the Goods as it is required to prevent their damage or deterioration during transit to their final destination as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods final destination and the absence of heavy handling facilities at all points in transit.

GCC 21.3.6 Addition of New Clause GCC 21.3.6

The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract and, subject to any subsequent instruction ordered by the Employer consistent with the requirements of the Contract.

GCC 21.4 Replacing Sub-Clause GCC 21.4

The Contractor shall, at its own expense, handle all imported Plant and Contractor's Equipment at the point(s) of import and shall handle any formalities for customs clearance including liabilities for port charges if any, subject to the Employer's obligations under GCC Sub-Clause 14.4, 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 40.0.

GCC 22.2.3 Addition of (d) to Sub-Clause GCC 22.2.3

The Contractor shall not make employment decisions based upon personal characteristics unrelated to job requirements. The Contractor shall base the employment relationship upon equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment or retirement, and discipline.

GCC 22.2.5 Working Hours

Normal working hours are from 9:00am to 5:00pm from Sunday to Thursday.

GCC 22.2.7 Health and Safety

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

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

GCC 22.2.16 Replacing Sub-Clause GCC 22.2.16

The Contractor shall not employ any child to perform any work; including work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. "Child" means a child below the statutory minimum age specified under applicable national, provincial or local law.

GCC 22.2.17 Addition of New Sub Clause 22.2.17

Equal opportunity for men and women shall have to be provided by the Contractor.

GCC 22.2.18 Addition of New Sub Clause 22.2.18

Equal payment shall be made for work of equal value.

GCC 22.4.3 Addition of New Sub Clause 22.4.3 including its Sub-Clauses

Safety Precautions

GCC 22.4.3.1 The Contractor shall observe all applicable regulations regarding safety on the Site.

Unless otherwise agreed, the Contractor shall, from the commencement of work on Site until taking over, provide:

- a) fencing, lighting, guarding and watching of the Works wherever required, and
- b) temporary roadways, footways, guards and fences which may be necessary for the accommodation and protection of Employer / his representatives and occupiers of adjacent property, the public and others.

GCC 22.4.3.2 The Contractor shall ensure proper safety of all the workmen, materials, plant and equipment belonging to him or to PBCB or to others, working at the Site. The Contractor shall also be responsible for provision of all safety notices and safety equipment required both by the relevant legislations and the Engineer, as he may deem necessary.

GCC 22.4.3.3 The Contractor will notify well in advance to the Engineer of his intention to bring to the Site any container filled with liquid or gaseous fuel or explosive or petroleum substance or such chemicals which may involve hazards. The Engineer shall have the right to prescribe the conditions, under which such container is to be stored, handled and used during the performance of the works and the Contractor shall strictly adhere to and comply with such instructions. The Engineer shall have the right at his sole discretion to inspect any such container or such construction plant/equipment for which material in the container is required to be used and if in his opinion, its use is not safe, he may forbid its use. No claim due to such prohibition shall be entertained by the Owner and the Owner shall not entertain any claim of the Contractor towards additional safety provisions/conditions to be provided for/constructed as per the Engineer's instructions.

Further, any such decision of the Engineer shall not, in any way, absolve the Contractor of his responsibilities and in case, use of such a container or entry thereof into the Site area is forbidden by the Engineer, the Contractor shall use alternative methods with the approval of the Engineer without any cost implication to PBCB or extension of work schedule.

GCC 22.4.3.4 The Contractor shall provide safe working conditions to all workmen and employees at the Site including safe means of access, railings,

stairs, ladders, scaffoldings etc. The scaffoldings shall be erected under the control and supervision of an experienced and competent person. For erection, good and standard quality of material only shall be used by the Contractor.

- GCC 22.4.3.5 The Contractor shall not interfere or disturb electric fuses, wiring and other electrical equipment belonging to the Owner or other Contractors under any circumstances, whatsoever, unless expressly permitted in writing by PBCB to handle such fuses, wiring or electrical equipment
- GCC 22.4.3.6 Before the Contractor connects any electrical appliances to any plug or socket belonging to the other Contractor or Owner, he shall:
- Satisfy the Engineer that the appliance is in good working condition;
 - Inform the Engineer of the maximum current rating, voltage and phases of the appliances;
 - Obtain permission of the Engineer detailing the sockets to which the appliances may be connected.
- GCC 22.4.3.7 The Engineer will not grant permission to connect until he is satisfied that;
- The appliance is in good condition and is fitted with suitable plug;
 - The appliance is fitted with a suitable cable having two earth conductors, one of which shall be an earthed metal sheath surrounding the cores.
- GCC 22.4.3.8 No electric cable in use by the Contractor/Owner will be disturbed without prior permission. No weight of any description will be imposed on any cable and no ladder or similar equipment will rest against or attached to it.
- GCC 22.4.3.9 No repair work shall be carried out on any live equipment. The equipment must be declared safe by the Engineer and a permit to work shall be issued by the Engineer before any repair work is carried out by the Contractor. While working on electric lines/equipment, whether live or dead, suitable type and sufficient quantity of tools will have to be provided by the Contractor to electricians/workmen/officers.
- GCC 22.4.3.10 The Contractors shall employ necessary number of qualified, full time electricians/electrical supervisors to maintain his temporary electrical installation.
- GCC 22.4.3.11 The Contractor employing more than 250 workmen whether

temporary, casual, probationer, regular or permanent or on contract, shall employ at least one full time officer exclusively as safety officer to supervise safety aspects of the equipment and workmen, who will coordinate with the Project Safety Officer. In case of work being carried out through Sub-Contractors, the Sub-Contractor's workmen/employees will also be considered as the Contractor's employees/workmen for the above purpose.

The name and address of such Safety Officers of the Contractor will be promptly informed in writing to Engineer with a copy to Safety Officer-In charge before he starts work or immediately after any change of the incumbent is made during currency of the Contract.

- GCC 22.4.3.12 In case any accident occurs during the construction/ erection or other associated activities undertaken by the Contractor thereby causing any minor or major or fatal injury to his employees due to any reason, whatsoever, it shall be the responsibility of the Contractor to promptly inform the same to the Engineer in prescribed form and also to all the authorities envisaged under the applicable laws.
- GCC 22.4.3.13 The Engineer shall have the right at his sole discretion **and reasonable** to stop the work, if in his opinion the work is being carried out in such a way that it may cause accidents and endanger the safety of the persons and/or property, and/or equipment. In such cases, the Contractor shall be informed in writing about the nature of hazards and possible injury/accident and he shall comply to remove shortcomings promptly. The Contractor after stopping the specific work can, if felt necessary, appeal against the order of stoppage of work to the Engineer within 3 days of such stoppage of work and decision of the Engineer in this respect shall be conclusive and binding on the Contractor.
- GCC 22.4.3.14 The Contractor shall not be entitled for any damages/compensation for stoppage of work due to safety reasons as provided in para GCC 22.4.3.13 above and the period of such stoppage of work will not be taken as an extension of time for completion of work and will not be the ground for waiver of levy of liquidated damages.
- GCC 22.4.3.15 It is mandatory for the Contractor to observe during the execution of the works, requirements of Safety Rules which would generally include but not limited to following:

Safety Rules

- a) Each employee shall be provided with initial indoctrination regarding safety by the Contractor, so as to enable him to conduct his work in a safe manner.
- b) No employee shall be given a new assignment of work unfamiliar to him without proper introduction as to the hazards

incident thereto, both to himself and his fellow employees.

- c) Under no circumstances shall an employee hurry or take unnecessary chance when working under hazardous conditions.
- d) Employees must not leave naked fires unattended. Smoking shall not be permitted around fire prone areas and adequate fire fighting equipment shall be provided at crucial location.
- e) Employees under the influence of any intoxicating beverage, even to the slightest degree shall not be permitted to remain at work.
- f) There shall be a suitable arrangement at every work site for rendering prompt and sufficient first aid to the injured.
- g) The staircases and passageways shall be adequately lighted.
- h) The employees when working around moving machinery, must not be permitted to wear loose garments. Safety shoes are recommended when working in shops or places where materials or tools are likely to fall. Only experienced workers shall be permitted to go behind guard rails or to clean around energized or moving equipment.
- i) The employees must use the standard protection equipment intended for each job. Each piece of equipment shall be inspected before and after it is used.
- j) Requirements of ventilation in underwater working to licensed and experienced divers, use of gum boots for working in slushy or in inundated conditions are essential requirements to be fulfilled.
- k) In case of rock excavation, blasting shall invariably be done through licensed blasters and other precautions during blasting and storage/transport of charge material shall be observed strictly.

GCC 22.4.3.16 The Contractor shall follow and comply with all PBCB Safety Rules, relevant provisions of applicable laws pertaining to the safety of workmen, employees, plant and equipment as may be prescribed from time to time without any demur, protest or contest or reservations. In case of any discrepancy between statutory requirement and PBCB Safety Rules referred above, the latter shall be binding on the Contractor unless the statutory provisions are more stringent.

GCC 22.4.3.17 If the Contractor fails in providing safe working environment as per PBCB Safety Rules or continues the work even after being instructed

to stop work by the Engineer as provided in para GCC 22.4.3.13 above, the Contractor shall promptly pay to POWERGRID, on demand by the Owner, compensation at the rate of Taka 7,500/- per day of part thereof till the instructions are complied with and so certified by the Engineer. However, in case of accident taking place causing injury to any individual, the provisions contained in para GCC 22.4.3.18 shall also apply in addition to compensation mentioned in this para.

GCC 22.4.3.18 If the Contractor does not take adequate safety precautions and/or fails to comply with the Safety Rules as prescribed by PBCB or under the applicable law for the safety of the equipment and plant or for the safety of personnel or the Contractor does not prevent hazardous conditions which cause injury to his own employees or employees of other Contractors or PBCB employees or any other person who are at Site or adjacent thereto, then the Contractor shall be responsible for payment of a sum as indicated below to be deposited with PBCB, which will be passed on by PBCB to such person or next to kith and kin of the deceased:

| | | |
|----|--|----------------------------|
| a. | Fatal injury or accident causing death | BDT 1,500,000/- per person |
| b. | Major injuries or accident causing 25% or more permanent disablement | BDT 150,000/- per person |

In case the Contractor does not deposit the above mentioned amount with PBCB, such amount shall be recovered by PBCB from any monies due or becoming due to the Contractor under the contract or any other on-going contract.

GCC 22.6 Emergency Work (GCC Clause 22.6)

Replace the words “Otherwise” with “In case such work is not in the scope of the Contractor”, in the second last line of second paragraph of GCC clause 22.6.

GCC 23.3 Supplementing sub-clause GCC 23.3

For notification of testing, four weeks shall be deemed as reasonable advance notice.

GCC 24.2 Completion of the Facilities (GCC Clause 24.2)

Delete the second para of the sub-clause starting from “Pursuant to the Appendix” to “part thereof”

GCC 24.3 Replacing Sub-Clause GCC 24.3

As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Employer in accordance with GCC Sub-Clause 24.2, the Contractor shall commence Precommissioning of the Facilities or the relevant part thereof in preparation for Commissioning, subject to GCC Sub-Clause 25.5.

GCC 24.5 Replacing Sub-Clause GCC 24.5

The Project Manager shall, within fourteen (14) days after receipt of the Contractor's notice under GCC Sub-Clause 24.4, 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 24.3. If the Project Manager is satisfied that the Facilities or that part thereof have passed Precommissioning, the Project Manager shall, within fourteen (14) days after receipt of the Contractor's notice/ seven (7) days after receipt of the Contractor's repeated notice, advise the Contractor to proceed with the Commissioning of the Facilities or that part thereof. 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

GCC 24.6 Replacing Sub-Clause GCC 24.6

If the Project Manager fails to advise the Contractor to proceed with the Commissioning of the Facilities or the relevant part thereof or 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, then the Facilities or that part thereof shall be deemed to have passed Precommissioning, as of the date of the Contractor's notice or repeated notice, as the case may be.

GCC 24.7 Replacing Sub-Clause GCC 24.7

As soon as possible after Precommissioning, 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.

GCC 24.8 Delete this Sub-Clause

GCC 24.9 Addition of New Sub Clause 24.9

Upon the completion of construction, the Contractor shall fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition as recorded by the Contractor in consonance with its obligations in GCC Sub Clause 21.1

GCC 25.1.1 Commissioning of the Facilities (or specific part thereof where specific parts are specified in the GCC 1.1) shall be commenced by the Contractor immediately after

being advised by the Project manager, pursuant to GCC sub-clause 24.5 or immediately after the Precommissioning is considered to be completed under GCC Sub-Clause 24.6.

GCC 25.1.2 Replacing Sub-Clause GCC 25.1.2

The Employer shall, to the extent specified in Appendix-6 (scope of works and supply by the Employer), deploy the operating and maintenance personnel required for Commissioning.

GCC 25.1.3 Replacing Sub-Clause GCC 25.1.2

Commissioning of the Facilities (or specific part thereof where specific parts are specified in the GCC 1.1) shall be completed by the Contractor as per the procedures detailed in Technical Specifications. The Employer /Project manager advisory personnel shall attend the commissioning, including the guarantee test.

GCC 25.1.4 Add new Sub-Clause GCC 25.1.4

If for reasons not attributable to the Contractor, the Pre-commissioning/ Commissioning of the Facilities or the relevant part thereof cannot be successfully attained within the Time for Completion specified in the SCC or any other period agreed upon by the Employer, provisions of Clause GCC 25.6 and its sub-clauses shall apply.

Existing clause GCC 25.2 stands amended and renumbered as GCC 25.3 and following Clauses/Sub-Clauses stand added as new Clause GCC 25.2 and its Sub-Clauses GCC 25.2.1, GCC 25.2.2 , GCC 25.2.3, GCC 25.2.4, GCC 25.2.5 and GCC 25.2.6

GCC 25.2 Trial -Operation

GCC 25.2.1 Immediately after the Commissioning, the Contractor shall commence Trial-run of the Facilities or any part thereof for a continuous period as specified in Technical specifications, in presence of Employer's representative. As soon as, the Trial-run is completed, the Contractor shall so notify the Project Manager in writing

GCC 25.2.2 The Project Manager shall, within fourteen (14) days after receipt of the Contractor's notice under GCC Sub-Clause 25.2.1, either issue a Completion (Taking Over) Certificate in the form specified in the Sample Forms and Procedures section in the Bidding Documents or in another form acceptable to the Employer, stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's notice under GCC Sub-Clause 25.2.1, 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 25.2.1. 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 (Taking Over) 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.

- GCC 25.2.3** If the Project Manager fails to issue the Completion (Taking Over) 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 25.2.1 or within seven (7) days after receipt of the Contractor's repeated notice under GCC Sub-Clause 25.2.2, 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.
- GCC 25.2.4** If for reasons not attributable to the Contractor, Trial-run of the Facilities or any part thereof for a continuous period as specified in Technical specifications cannot be successfully attained within the Time for Completion specified in the SCC or any other period agreed upon by the Employer, provisions of Clause GCC 25.6 and its sub-clauses shall apply.
- GCC 25.2.5** As soon as possible after Completion, the Contractor shall complete all outstanding minor items, as per the Schedule mutually agreed between the Employer and the Contractor, so that the Facilities or the relevant part thereof, 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.
- GCC 25.2.6** 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.
- GCC 25.3** **Renumbering Sub-Clause GCC 25.2.1 and GCC 25.2.2 as GCC 25.3.1 and GCC 25.3.2 respectively**
- GCC 25.3.1** **Replacing Sub-Clause GCC 25.3.1**
- Subject to clause GCC 25.5, the Guarantee Test and repeats thereof, if specified in the SCC and/or the Technical Specification, shall be conducted by the Contractor after Trial – Operation 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 Contract Documents or if otherwise required as per the Technical Specifications. The Contractor's and Project Manager's advisory personnel may witness the Guarantee Test. The Contractor shall promptly provide the Employer with such information as the Employer may reasonably require in relation to the conduct and results of the Guarantee Test and any repeats thereof.
- GCC 25.3.2** **Replacing Sub-Clause GCC 25.3.2**
- If for reasons not attributable to the Contractor, the Guarantee Tests of the Facilities or the relevant part thereof, cannot be successfully completed within the period from the date of Completion specified in the SCC or any other period agreed upon by the Employer and the Contractor, provisions of Clause GCC 25.6 and its sub-clauses shall

apply.

GCC 25.4 Existing clause GCC 25.3 stands amended and renumbered as GCC 25.4 and its sub clauses 25.3.1, 25.3.2, 25.3.3 & 25.3.4 stands amended and renumbered as 25.4.1, 25.4.2, 25.4.3 & 25.4.4

GCC 25.4.1 Replacing Sub-Clause GCC 25.4.1

Operational Acceptance shall occur in respect of the Facilities or any part thereof as mentioned below:

- (i) In case no Functional Guarantees are applicable, Operational Acceptance shall occur when the Facilities or the relevant part thereof have been successfully commissioned and Trial – Operation for the specified period have been successfully completed and Taking over certificate has been issued by the Employer.
- (ii) In case Functional Guarantees are applicable, Operational Acceptance shall occur when Functional Guarantees are met or the Contractor has paid liquidated damages specified in GCC sub clause 28.3 hereof; and
- (iii) any minor items mentioned in GCC Sub-Clause 24.7 hereof relevant to the Facilities or that part thereof have been completed.

GCC 25.4.3 Replacing Sub-Clause GCC 25.4.3

The Project Manager shall, after consultation with the Employer, and within twenty one (21) days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.

The Operational Acceptance Certificate shall not be unreasonably withheld nor shall the Employer delay the issuance thereof, on account of minor omissions or defects which do not affect the Operation and/or cause any serious risk to the Facilities or personnel, provided that a programme has been mutually agreed between the Employer and the Contractor covering the remedial action for the outstanding minor omissions/defects.

Such certificate shall not relieve the Contractor of any of its obligations which otherwise survive, by the terms and conditions of the Contract after issuance of such certificate.

GCC 25.4.4 Replacing Sub-Clause GCC 25.4.4

If within twenty one (21) 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 at the date of the Contractor's said notice

GCC 25.5 Existing clause GCC 25.4 stands amended and renumbered as GCC 25.5 and its sub clauses 25.4.1 and 25.4.2 stands amended and renumbered as 25.5.1 & 25.5.3

GCC 25.6 Existing clause GCC 25.5 stands amended and renumbered as GCC 25.6 and its sub clauses 25.5.1, 25.5.2, 25.5.3 and 25.5.4 stands amended and renumbered as 25.6.1, 25.6.2, 25.6.3 and 25.6.4

GCC 25.6.1 Replacing Sub-Clause GCC 25.6.1

In the event that the Contractor is unable to proceed with the Precommissioning, Commissioning, Trial-run of the Facilities, Guarantee Test pursuant to Sub-Clause GCC 24 and GCC 25, for reasons attributable to the Employer either on account of non-availability of other facilities under the responsibilities of other contractor(s), or for reasons beyond the Employer's control, the provisions leading to "deemed" completion of activities such as Completion of the Facilities, pursuant to GCC Sub-Clause 25.2.3, Operational Acceptance, pursuant to GCC Sub-Clause 25.4.4, Contractor's obligations regarding Defect Liability Period, pursuant to GCC Sub Clause 27.2, Functional Guarantee, pursuant to GCC Clause 28, Care of Facilities, pursuant to GCC Clause 32, and Suspension, pursuant to GCC Sub-Clause 41.1, shall not apply. In this case, the following provisions shall apply.

GCC 26.2 Replacing Sub-Clause GCC 26.2

If the Contractor fails to comply with the Time for Completion in accordance with Clause GCC 26 for the whole of the facilities, (or a part for which a separate time for completion is agreed) then the Contractor shall pay to the Employer a sum equivalent to half percent (0.5%) of the Contract Price of the whole of the Facilities (or a part for which a separate time for completion is agreed) as liquidated damages for such default and not as a penalty, without prejudice to the Employer's other remedies under the Contract, for each week or part thereof which shall elapse between the relevant Time for Completion and the date stated in Completion (Taking Over) Certificate of the whole of the Works (or a part for which a separate time for completion is agreed) subject to the limit of ten percent (10%) of Contract Price. The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract.

For the application of liquidated damages, the schedule date for Completion (Taking Over) of the entire system shall be the basis, and not intermediate schedule milestone.

GCC 26.3 Replacing Sub-Clause GCC 26.3

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

GCC 27.2 Replacing 1st para of Sub-Clause 27.2

The Defect Liability Period shall be eighteen (18) months from the date of Taking Over/Completion of Facilities for all equipments/materials.

GCC 27.6 Replacing Sub-Clause GCC 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 in character for repaired equipment / facilities, shall be in accordance with the provisions of the Technical Specifications / Employer's Requirements. However, for replaced equipment / facilities, the tests in character shall in any case be not less than what has already been agreed by the Employer and the Contractor for the original equipment/part of the Facilities.

GCC 27.8

Replacing Sub-Clause GCC 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.

Upon correction of the defects in the Facilities or any part thereof by repair/replacement, such repair/replacement shall have the Defect Liability Period extended by a period mentioned in GCC Sub-Clause 27.2 from the time such replacement/repair of the facilities or any part thereof".

GCC 27.8.1

Addition of New Sub-Clause GCC 27.8.1

At the end of the Defect Liability Period, the Contractor's Liability ceases except for latent defects. The Contractor's liability for latent defects warranty shall be limited to period of five (05) years from the end of Defect Liability Period. Latent defects are such defects for which it is established by the Employer that the defect was discovered/noticed after the date of expiration of the Defect Liability Period, but was existing before the expiration of Defect Liability Period and the defects were lying within the material or arising out of design deficiency. Contractor's liability shall be limited to repair and replacement of defective parts and shall cease upon end of five years from the date of completion of Defect Liability Period or end of availability & reliability period whichever is later.

The provisions contained in the clause will not be applicable:

- (a) If the Employer has not operated the equipment according to generally approved industrial practices and in accordance with the conditions of operation specified in the Contract by the Contractor and in accordance with operating manuals, if any.
- (b) In case of normal wear and tear normally applicable to equipment of the type supplied as determined by the Employer. Further, it will not apply to consumables and wearing parts.

GCC 27.9 Supplementing Sub-Clause GCC 27.9

Replace the “completion of facilities” with “operational acceptance” in line 5.

GCC 27.11 Addition of new Sub-Clause GCC 27.11**Guaranteed Availability and Reliability Period**

The bidder shall guarantee that the system offered shall meet the availability and reliability requirement as specified in the Section – 11 of Technical Specification commencing 6 months from the date of Taking Over/Completion of Facilities by the Employer and shall be 36 months. The bidder shall also furnish a declaration in the manner prescribed and included in the relevant schedule of Bid Form (Section – IV, Part - 1 of Bidding Documents). In case the actual availability falls short of the above said guaranteed availability and reliability under the conditions specified in Section – 11 of Technical Specifications, Employer shall have rights and remedies specified in the said clause.

GCC 28.2 Replacing Sub-Clause GC 28.2

If, for reasons attributable to the Contractor, the guarantee level (or the minimum level to the extent such minimum level is specified in Technical Specifications) of anyone of the Functional Guarantees specified in Appendix-8 (Functional Guarantees) to the Contract Agreement except the availability guarantee, which is governed by SCC GCC 27.11 is 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 pay any liquidated damages or make other compensation as specified in the Technical Specifications for failure to meet the relevant Functional Guarantee.

GCC 28.3 (a) Replacing Sub-Clause GCC 28.3 (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 within a mutually agreed time and shall request the Employer to repeat the Guarantee Test, or

GCC 28.3 (b) pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees in accordance with the provisions of section-11, Part – 3 of Technical specifications, Part – II of the Bidding Documents and as per rates given here under:

| Sl. No. | Parameter to be taken for levy of liquidated damages on failure of the guarantees | Rate of Liquidated Damages |
|---------|--|---|
| 01. | Station Losses a) <u>No load losses (KW)</u> b) Equivalent load losses (KW) | a) <u>No load losses @</u> BDT 0.6 million per KW b)equivalent load losses @ BDT 0.3 million per KW |

| | | |
|-----|--|---|
| 02. | Station Availability a) Energy Availability (EA) requirement | BDT 13.5 million for each 0.1% or part thereof for average availability below 97% |
| 03. | Station Reliability a) Equivalent Outage Frequency (EOF) b) Transient Disturbances (TD) | a) BDT 1.5 million for each Equivalent Outage Frequency (EOF) or part thereof above the guarantee value (i.e., EOF more than 4 per year) b) BDT 0.75 million for each transient disturbance (TD) or part thereof above the guarantee value (i.e., TD more than 10 per Block per year) |
| 04. | Station Power Rating Guarantee | BDT 0.03 million for each KW or part thereof in Shortfall in the total power transfer capability. |

The Contractors aggregate liability to pay liquidated damages for failure to attain the functional guarantees shall not exceed BDT **900** million or **fifteen (15%)** of the Contract Price, whichever is higher.

The liquidated damages for shortfall in guaranteed parameters and for delay in completion are independent of each other and shall be levied separately and concurrently.

In addition to the above, the Contractor shall guarantee the performance of the following parameters.

| Sl. No. | Parameter | Guaranteed Values |
|---------|---|--|
| 01. | Annual rate of failure of thyristors | ≤0.2% of 12 pulse valve group except first unit failure |
| 02. | Annual rate of failure of capacitors | ≤0.15% except first unit failure |
| 03. | Guaranteed Failure rate of Relay Module/C&P Module/ Component | ≤ 0.5% except first unit failure |

In the event of any shortfall in performance of the guaranteed values as above, the Contractor shall supply additional spares pursuant to Section-11, Part – 3 Technical Specifications, Part – II of the Bidding Documents.

GCC 28.4

Replacing Sub-Clause GCC 28.4

In case the Employer **accepts** the equipment after levy of liquidated damages pursuant to GCC Sub-Clause 28.3(b), the payment of liquidated damages under GCC Sub-Clause 28.3, upto the limitation of liability specified in the Appendix-8 (Functional Guarantees) to the Contract Agreement, 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.

GCC 31.1 Replacing Sub-Clause GCC 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 and upon endorsement of the dispatch documents in favour of the Employer.

GCC 31.2 Replacing Sub-Clause GCC 31.2

Ownership of the Plant and Equipment (including spare parts) procured in 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 carry the Plant and Equipment from the works to the site and upon endorsement of the despatch documents in favour of the Employer.

GCC 32.1 The text “Completion” is replaced by “Operational Acceptance” at all the three places of this Sub-Clause.

The text “GC Sub-Clause 24” is replaced “GC Sub-Clause 25”.

GCC 34.2 Replacing Sub-Clause GCC 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, Automobile Liability Insurance 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 Third Party Liability, Workers’ Compensation, Automobile Liability Insurance 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.

GCC 34.7 Replacing Sub-Clause GCC 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 the monies payable by any insurers under all the insurance except Third Party Liability Insurance, Workers' Compensation, and Employer's Liability, shall be paid to the joint account of the Employer and the Contractor as mutually agreed and such amounts paid shall be apportioned between the Employer and the Contractor in accordance with the respective responsibilities under the Contract. 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.

GCC 34.8 Addition of New Sub-Clause GCC 34.8

The existing Import Act including Insurance Act and related Acts of the Government of Bangladesh shall be followed by the Contractor.

As per insurance corporation (Amendment) Act. 1990 all insurance coverage (100%) required for this contract shall be done with Sadharan Bima Corporation, Bangladesh, who are the sole public sector general insurance organization in the country.

GCC 34.9 Addition of New Sub-Clause GCC 34.9

It will be the responsibility of the Contractor to lodge, pursue and settle all claims with the insurance company in case of any damage, loss, theft, pilferage or fire during execution of Contract and Employer shall be kept informed about it. The Contractor shall replace the lost/damaged materials promptly irrespective of the settlement of the claims by the underwriters and ensure that the work progress is as per agreed schedules. The losses, if any, in such replacement will have to be borne by the Contractor.

GCC 35.1 Replacing First four lines of Sub-Clause GCC 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 (including hazardous materials and contaminated soil) that could not have been reasonably foreseen prior to the date of the Contract Agreement...

GCC 36.1 Replacing Sub-Clause GCC 36.1

If, after the date twenty-eight (28) days prior to the date of **Second Stage 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. However, these adjustments would be restricted to direct transactions between the Employer and the Contractor and not on procurement of raw materials, intermediary components etc. by the Contractor. Further, no adjustment of the Contract Price shall be made on account of variation in deemed export benefits. 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 Appendix-2 to the Contract Agreement.

GCC 37.6 Replacing sub-clause 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, to proceed with the execution of contract, or terminate the contract with mutual agreement.

GCC 38.6 Replacing Sub-Clause GC 38.6

In the event of termination pursuant to GCC Sub-Clauses 38.3, the rights and obligations of the Employer and the Contractor shall be specified in GCC Sub-Clauses 42.1.2 and 42.1.3, except that the Contractor shall have no entitlement to profit under paragraph (e) of GCC Sub-Clause 42.1.3 in respect of any unexecuted Facilities as of the date of termination.

GCC 39.2.5 Replacing Sub-Clause GCC 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 and Terms of Payment) of the Contract Agreement by more than fifteen (15%) percent, 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 and the Contractor shall agree on specific rates for valuation of the Change. However, in case the Employer rejects the Contractor's objection and there is no agreement between the parties, then the matter may be referred to the Dispute Board in accordance with GCC 45.

The Contractor's failure to so object shall neither affect its right to object to any subsequent objection, the percentage increase or decrease in the Contract Price that any change not objected to by the Contractor represents.

GCC 39.2.6 Replacing Sub-Clause GCC 39.2.6

If rates and prices of any change are not available in the Contract, the parties thereto shall agree on specific rates for the valuation of the change. 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.

GCC 39.4 Addition of new sub-clause GCC 39.4

The following provisions shall supplement the provisions of GCC 39.1, 39.2 & 39.3:

The Contract Price for (i) the items for which quantities have been indicated as lumpsum or lot or set and/or (ii) where the quantities are to be estimated by the Contractor shall remain constant unless there is change made in the Scope of Work by Employer. The quantities and unit prices (i) subsequently arrived while approving the Bill of Quantities (BOQ)/Billing breakup of lumpsum quantities/lot/Set and/or (ii) estimated by the Contractor shall be for on account payment purpose only. In case additional quantities, over and above the quantities in BOQ/billing breakup and /or estimated by the Contractor, are required for successful completion of the scope of work as per Technical Specification, the Contractor shall execute additional quantities of these items for which no additional payment shall be made over and above the lumpsum Contract Price. In case quantities of these items supplied at site are in excess of that required for successful completion of scope of work, such additional quantities shall be the property of the Employer. Further, in case actual requirement of quantities for successful completion of scope of work is less than the quantities identified in the approved BOQ /billing breakup and/or estimated by the Contractor, the lumpsum contract price shall remain unchanged and no deduction shall be made from the lumpsum price due to such reduction of quantities.

It shall be the responsibility of the Contractor to pay all statutory taxes, duties and levies to the concerned authorities for such surplus material which would otherwise have been, lawfully payable in case of non-deemed export contracts. The Contractor shall submit an indemnity bond to keep Employer harmless from any liability, before release of such material to the Contractor by Employer.

Set/Lot/Lumpsum shall be governed as per the requirement of the corresponding item description read in conjunction with relevant provisions of Technical Specifications.

GCC 42.2.2 Replacing Sub-Clause GCC 42.2.2

If the Contractor

- (a) has abandoned or repudiated the Contract
- (b)
- (c)
- (d)

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 Sixty (60) 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.

GCC 42.3.1(b) Replacing Sub-Clause GCC 42.3.1(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, which the Employer is required to obtain as per provision of the Contract as per

relevant applicable laws of the country.

GCC 43.2 Addition New Clause GCC 43.2 titled Contract Agreement

The Contract will be signed in two originals and the Contractor shall be provided with one signed original and the rest will be retained by the Employer.

GCC 43.2.1 Addition New Sub-Clause GCC 43.2.1

The Contractor shall provide free of cost to the Employer all the engineering data, drawing and descriptive materials submitted with the bid, in at least two (2) copies to form a part of the Contract immediately after Notification of Award.

GCC 43.2.2 Addition New Clause GCC 43.2.2

Subsequent to signing of the Contract, the Contractor at his own cost shall provide the Employer with at least fifteen (15) true copies of Contract Agreement within thirty (30) days after signing of the Contract.

GCC 45.1 Supplement the Clause GCC 45.1

The DB shall be appointed within 28 days after the Effective Date.

The Dispute Board (DB) shall comprise three members.

List of potential DB members is:

- i. **The President of Institution of Engineers, Bangladesh (IEB).**
- ii. **The President of Institute of Chartered Accountants of Bangladesh (ICAB).**
- iii. **The President of Institute of Project Management Bangladesh (IPMB).**

GCC 45.2 Appointment (if not agreed) to be made by: Head, Department of Electrical & Electronics Engineering, Bangladesh University of Engineering & Technology, Bangladesh

GCC 45.5 (a) Rules of procedure for arbitration proceedings:

- a) Contracts with foreign contractors: International Chamber of Commerce
- b) **Contracts with contractors being nationals of the Employer's country:**
The Arbitration Act, 2001 (Act. No. 1 of 2001).

The language of the arbitration proceedings and that of the documents and communications between the parties shall be English. The venue of arbitration shall be Dhaka, Bangladesh.

GCC 46 SCC 46 Adding New Clause SCC 46

Spares

- SCC 46.1 The Contractor agrees that the spare parts recommended by him for 3 years operation and quoted in Schedule No. 10 shall be supplied by him at the same terms and conditions as are otherwise applicable to this Contract. Further, the Contractor also agrees to supply spare parts required for the operation and maintenance of the Facilities or any part thereof as per provision of subsequent paragraphs of this Clause.
- SCC 46.2 All the spares for the equipment under the Contract will strictly conform to the Specification and other relevant documents and will be identical to the corresponding main equipment/components supplied under the Contract and shall be fully interchangeable.
- SCC 46.3 All the mandatory spares covered under the Contract shall be produced along with the main equipment as a continuous operation and the delivery of the spares will be effected along with the main equipment in a phased manner and the delivery should be completed by the respective dates for the various categories of the equipment as per the agreed network. In case of recommended spares the above will be applicable provided the order for the recommended spares have been placed with the Contractor prior to commencement of manufacture of the main equipment.
- SCC 46.4 The quality plan and the inspection requirement finalised for the main equipment will also be applicable to the corresponding spares.
- SCC 46.5 The Contractor shall provide the Employer with outline drawings and catalogues and any other document required by the Employer so as to enable the Employer to identify the recommended spares. Such details will be furnished to the Employer as soon as they are prepared but in any case not later than six months prior to the commencement of manufacture of the corresponding main equipment.
- SCC 46.6 The Contractor will provide the Employer with all the addresses and particulars of his sub-suppliers while placing the order on vendors for items/components/equipments covered under the Contract and Contractor will not object that the Employer, if so desires, will have the right to place order for spares directly on them on mutually agreed terms based on offers of such vendors.
- SCC 46.7 Defect Liability for Spares (except Spare Converter Transformers)
- The Contractor shall warrant that all spares supplied will be new and in accordance with the Contract Documents and will be free from defects in design, material and workmanship and shall further guarantee as under:
- SCC 46.7.1 For 3 years operational spares (both mandatory and recommended):
- (a) For any item of spares ordered or to be ordered by the Employer for 3 years operational requirement of the plant which are manufactured as a continuous operation together with the corresponding main equipment/component, the defects liability

period will be 12 months from the date of Taking over /Completion of the Facilities or any part thereof. In case of any failure in the original component/equipments due to faulty designs, materials and workmanship, the corresponding spare parts, if any, supplied will be replaced without any extra cost to the Employer unless a joint examination and analysis by the Employer and the Contractor of such spare parts prove that the defect found in the original part that failed, can safely be assumed not to be present in spare parts. Such replaced spare parts will have the same defect liability as applicable to the replacement made for the defective original part/component provided that such replacement for the original equipment and the spare replaced are again manufactured together. The discarded spare parts will become the property of the Contractor as soon as they have been replaced by the Contractor.

- (b) For the item of spares ordered or to be ordered by the Employer for 3 years operation requirement of the plant, which with the written approval of the Employer, are not manufactured as a continuous operation to the manufacture of the corresponding main equipment/component, will be warranted for 6000 hrs of trouble free operation if used within a period of 18 months (reckoned from the date of delivery at Site). However, if such spare parts are put to use after 18 months of the delivery at Site then the guarantee of such spares will stand valid till the expiry of 36 months from the scheduled date of the completion of Commissioning of equipment/ plant or 6000 hrs of trouble free operation after such spares are put in service, whichever is earlier.

- (c) For long term requirement

For item of spares that may be ordered by the Employer to cover requirements beyond 3 years of initial operation of the plant, the warranty will be 12 months from the date it is put to use (within 18 months from the date of delivery at site) or 18 months from the date of delivery at site whichever is later.

SCC 46.7.2 The Defect Liability of spares that are not used within 18 months from the respective dates of the delivery at Site covered in para SCC 46.7.1 (b) and (c) above will, however, be subject to condition that all such spares being stored/maintained/preserved in accordance with Contractor's standard recommended practice, if any, and the same has been furnished to the Employer.

SCC 46.8 To enable the Employer to finalize the requirement of recommended spares which are ordered subsequent to placement of order for main equipment/plant, in addition to necessary technical details, catalogue and such other information brought-out hereinabove, the Contractor will also provide a justification in support of reasonableness of the quoted prices of spares which will, inter-alia, include documentary evidence, to the extent feasible(for third party supplies), that the prices quoted by

the Contractor to the Employer are not higher than those charged by him from other customers in the same period.

SCC 46.9 In addition to the spares recommended by the Contractor, if the Employer further identifies certain particular items of spares, the Contractor will submit the prices and delivery quotation for such spares within 30 days of receipt of such request with a validity period of 6 months for consideration by the Employer and placement of order for additional spares if the Employer so desires.

SCC 46.10 The Contractor shall ensure the availability of spare parts for the supplied items for a minimum period of 15 years from Taking over /Completion of the Facilities or any part thereof by the Employer. However, in the event of that a equipment/ component is declared to be withdrawn from production, Contractor shall ensure the availability of spare parts for the supplied items for a minimum period of 7 years from the date of withdrawal from production or 7 years from Taking over /Completion of the Facilities or any part thereof by the Employer, whichever is greater, however, not exceeding overall period of 15 years. For balance of the period, if any, up to 15 years from Taking over /Completion of the Facilities or any part thereof by Employer, Contractor shall ensure that functionally equivalent hardware is available which is compatible with all software delivered with the system. If the Employer chooses to purchase said functionally equivalent hardware, any software modifications necessary to maintain complete functional compatibility with all software delivered by Contractor shall be made at no cost to Employer. In the event, the modified software is not found compatible with functionally equivalent hardware, the contractor shall make suitable corrections to this modified software and install this corrected software at no cost to Employer.

Further, the Contractor shall provide advance notification to Employer of the pending termination of production of spare parts in sufficient time (not less than one year prior to such termination) to permit Employer to procure needed requirements. The blue prints, drawings and specifications of the spare parts should be furnished to Employers at no cost, to the extent that such documentation is available to the Contractor.

SCC 46.11 The Employer shall have the right to procure spares for its future requirement, referred to as long term spares, from the Contractor. The prices of all the requirements of item of spares, in future, beyond 3 years operational requirement will be the corresponding CIF Bangladesh Port of Entry /Ex-works price and Freight & Insurance for such spares as per the Contract, as a part of mandatory spares or recommended spares or as a part of main equipment (for such items not included in mandatory/recommended spares), subject to the price adjustment formula as per the Contract and governed by the delivery schedule as may be agreed between the Employer and the Contractor. But in no case the agreed delivery schedule shall be more than the Contractual delivery schedule for the supply of such spares as per the Contract.

The Installation charges, if applicable, will be mutually agreed between Contractor and Employer. The above option for procuring future spares on the CIF Bangladesh Port of Entry /Ex-works price by the Employer shall remain valid for a period of 8 years from the date of Taking Over/Completion of the Facilities. For this purpose, the Employer shall award separate Contract(s) on the Contractor on same terms and conditions, as applicable for such spares under this Contract subject to other specific agreement, if any, between the Contract and the Employer for procurement of future spares.

SCC 46.12 The Contractor will indicate in advance the delivery period of the item of spares, which the Employer may procure in accordance with above Sub-Clause. In case of emergency requirements of spares, the Contractor would make every effort to expedite the manufacture and delivery of such spares on the basis of mutually agreed time schedule.

SCC 46.13 In case the Contractor fails to supply the mandatory, recommended or long term spares in the terms stipulated above, the Employer shall be entitled to purchase the same from the alternate sources at the risk and the cost of the Contractor and recover from the Contractor, the excess amount paid by the Employer over the rates worked on the above basis. In the event of such risk purchase by the Employer, the purchases will be as per the Work and Procurement Policy of the Employer prevalent at the time of such purchases and the Employer at his option may include a representative from the Contractor in finalizing the purchases.

SCC 46.14 It is expressly understood that the final settlement between the parties in terms of relevant clauses of the Contract Documents shall not relieve the Contractor of any of his obligations under the provision of long term availability of spares and such provisions shall continue to be enforced till the expiry of 8 years period reckoned from the Taking Over/Completion of the Facilities unless otherwise discharged expressly in writing by the Employer. Further, the provisions pertaining to long term availability of spares shall be extended beyond 8 years applicability period mentioned hereinabove if so desired by the Employer and at mutually agreed terms, conditions and prices.

SCC 47

Adding New Clause SCC 47

Equipment Performance Guarantees and Liquidated Damages for Non-Performance of the Equipment.

SCC 47.1

The guaranteed loss at rated voltage for each equipment shall be corrected in accordance with IEC-76 for the purpose of comparison of guaranteed losses with measured losses for levy of liquidated damages. However, the equipment under no circumstances shall be accepted if the measured losses are more than +15 percent of the guaranteed losses at rated voltage, specified in **Appendix – 8** (Guarantees, Liquidated Damages for Non – Performance) to the Contract Agreement.

Differential Price Factors for Liquidated Damages

The factors and the respective Indian Rupees value per unit of differential loss (applicable for each unit/unit of the Facilities) for purpose of calculation of liquidated damages shall be as stipulated below:

| Sl. No. | Equipment | Parameter to be taken for applying differential price factor (F) | Value of F in Bangladesh Taka (applicable for each unit/unit of the Facilities) per unit of parameter differential per KW |
|---------|------------------------------|--|---|
| 1. | 230/33kV Station Transformer | No load loss(KW) | BDT 600,000/- (Bangladesh Taka Six Hundred Thousand only) |
| | | Load loss (KW) | BDT 300,000/- (Bangladesh Taka Three Hundred Thousand only) |

The amount of liquidated damages so recoverable shall be as per the aforesaid ceiling and shall not prejudice the contractor's other liabilities under the Contract in any manner. The liquidated damages for shortfall in guaranteed parameters and for delay in completion are independent of each other and shall be levied separately and concurrently.

SCC 48**Add a new SCC Clause 48**

The Contractor shall comply with all applicable national, provincial, and local environmental laws and regulations.

Section IX. Contract Forms

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

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Notification of Award - 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 the Performance Security within 28 days in accordance with
the Conditions of Contract, using for that purpose one of the Performance Security Forms
included in Section IX, - 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) Power Grid Company of Bangladesh Ltd., a corporation incorporated under the laws of Bangladesh and having its principal place of business at Institution of Engineers Bangladesh (IEB) Bhaban (4th Floor), Ramna, Dhaka-1000 (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 GC 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 after arithmetic correction(s) (if any) and applying discount (if any)
- (c) Particular Conditions alongwith all Addenda & Clarifications (if any)
- (d) General Conditions
- (e) Specification alongwith all Addenda & Clarifications (if any)
- (f) Drawings alongwith all Addenda & Clarifications (if any)
- (g) Other completed Bidding Forms submitted with the Bid
- (h) Power of Attorney for signatory of the Contract.
- (i) Performance Security

- (j) Vetting from Legal Adviser, Ministry of Commerce & NBR
- (k) Minutes of Contract Negotiation Meeting(s)
- (l) Letter of written and Unconditional Acceptance of the Notification of Award
- (m) Notification of Award
- (n) Replies against PGCB's Clarification
- (o) Clarification sought by PGCB
- (p) Bid proposals of Bidder (Contractor).
- (q) Any other documents part of the Employer's Requirements

1.2 Order of Precedence (Reference GC Clause 2)

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

1.3 Definitions (Reference GC Clause 1)

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

Article 2. Contract Price and Terms of Payment

2.1 Contract Price (Reference GC Clause 11)

The 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 GC Clause 12)

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

The Employer may instruct its bank to issue an irrevocable confirmed documentary credit made available to the Contractor in a bank in the country of the Contractor. The credit shall be for an amount of _____; and shall be subject to the Uniform Customs and Practice for Documentary Credits 1993 Revision, ICC Publication No. 600.

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

Article 3.
Effective Date

3.1 Effective Date (Reference GC Clause 1)

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

- (a) This Contract Agreement has been duly executed for and on behalf of the 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

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

- 3.2 If the conditions listed under 3.1 are not fulfilled within two (2) months from the date of this Contract notification because of reasons not attributable to the Contractor, the Parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Completion and/or other relevant conditions of the Contract.

Article 4.
Communications

- 4.1 The address of the Employer for notice purposes, pursuant to GC 4.1 is: _____.

- 4.2 The address of the Contractor for notice purposes, pursuant to GC 4.1 is: _____.

Article 5.
Appendices

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

IN WITNESS WHEREOF the 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 GC 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

Plant and Equipment Supplied from abroad/ within the Employer's Country

For Plant and Equipment Supplied from Abroad:

The Employer shall pay to Contractor under the terms and condition of the letter of credit (except for Advance Payment, the advance payment shall be made against receipt of invoice, and an irrevocable advance payment security as per GCC 13.2 for the equivalent amount made out in favor of the Employer and shall be paid directly without any letter of credit) as follows:

Ten percent (10%) of the CIP amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the plant and equipment shipped FOB or delivered to the site, as evidenced by shipping and delivery documents.

Eighty percent (80%) of the total or pro rata CIP or amount upon Incoterm "CIP," upon delivery to Site, *as evidenced by Post Landing Inspection (PLI) Report* and within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata CIP or amount upon issue of the Completion Certificate (TOC), within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata CIP or amount upon issue of the Completion Certificate (TOC), within forty-five (45) days after receipt of invoice and an irrevocable payment security for the equivalent amount made out in favour of the Employer and initially valid upto the end of 90 days after the scheduled date for Operational Acceptance and shall be extended from time to time till 90 days beyond the actual date of Operational Acceptance of the Facilities, as may be required under the Contract.

For Installation and other Services (Excluding Design Services):

In respect of installation services for both the foreign and local currency portions, the following payments shall be made:

Ten percent (10%) of the total installation and other services amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of work performed by the Contractor as evidenced by the invoices for installation services.

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 (TOC)**, 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 (TOC)**, within forty-five (45) days after receipt of invoice and an irrevocable payment security for the equivalent amount made out in favour of the Employer and initially valid upto the end of 90 days after the scheduled date for Operational Acceptance and shall be extended from time to time till 90 days beyond the actual date of Operational Acceptance of the Facilities, as may be required under the Contract.

For 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, Local Transport & handling cost and Local Insurance amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of the plant and equipment delivered to the site, as evidenced by shipping and delivery documents.

Eighty percent (80%) of EXW, Local Transport & handling cost and Local Insurance amount upon Incoterm "Ex-Works," within forty five (45) days of the presentation of

Interim Payment Certificates against monthly Invoices calculated from Progress record sheets certified by the Engineer/ Employer during the work period.

Five percent (5%) of EXW, Local Transport & handling cost and Local Insurance amount within forty five (45) days of the presentation of Interim Payment Certificate and Completion Certificate (TOC).

Five percent (5%) of EXW, Local Transport & handling cost and Local Insurance amount amount upon issue of the Completion Certificate (TOC), within forty-five (45) days after receipt of invoice and an irrevocable payment security for the equivalent amount made out in favour of the Employer and initially valid upto the end of 90 days after the scheduled date for Operational Acceptance and shall be extended from time to time till 90 days beyond the actual date of Operational Acceptance of the Facilities, as may be required under the Contract.

For Installation and other Services (Excluding Design Services) :

In respect of installation services for both the foreign and local currency portions, the following payments shall be made:

Ten percent (10%) of the total installation and other services amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favor of the Employer. The advance payment security may be reduced in proportion to the value of work performed by the Contractor as evidenced by the invoices for installation services.

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 (TOC)**, 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 (TOC)**, within forty-five (45) days after receipt of invoice and an irrevocable payment security for the equivalent amount made out in favour of the Employer and initially valid upto the end of 90 days after the scheduled date for Operational Acceptance and shall be extended from time to time till 90 days beyond the actual date of Operational Acceptance of the Facilities, as may be required under the Contract.

Payment of charges for design services.

- A. Sixty percent (60%) of the total charges towards design services shall be paid to the contractor within 45 days after receipt of invoice and fulfillment of the following conditions:
- (i) submission of following documents / HVDC studies:

Main circuit calculation; Power Circuit Arrangement studies; Studies of Reactive Power Consumption and Balance; Temporary over voltage and ferro resonance overvoltage studies; PLC /RI Design Study; Insulation Co-ordination Study
 - (ii) Approval of aforesaid documents/ HVDC Studies by the Engineer / Employer.
- B. Thirty percent (30%) of the total charges towards Design Services shall be paid to the Contractor within forty-five days after receipt of invoice and fulfillment of following conditions:
- (i) **Submission of following documents / HVDC studies:**

Dynamic Performance Study; Sub-synchronous resonance / oscillation screening Study; Hierarchical Structure of the Control and Protection Systems; Redundancy of the Control and Protection Systems; DC Power and Current Control Modes and Features; Switching Sequences and interlocking; AC & DC System Protections; Reactive Power Control; Station Control and Monitoring System; System Study for interaction of HVDC Systems in Indian grid & Bangladesh grid; Load Flow and Stability Study and AC filter design, performance and ratings.
 - (ii) Approval of aforesaid documents/ HVDC Studies by the Engineer / Employer.
- C. Last ten percent (10%) of the total charges towards Design Services shall be paid to the Contractor within forty-five (45) days after receipt of invoice and fulfillment of following conditions:
- (i) Submission of Functional Performance Studies (as listed below) and approval of the same by the Engineer / Employer.

Reliability and Availability predictions & Loss Study.

Payment of Bangladesh Agents Commission (BAC)

The payment towards Bangladesh Agents Commission will be made in Bangladesh Taka as follows:

- (a) Ninety percent (90%) of BAC shall be paid upon delivery of Plant and Equipment to Site.
- (b) Balance Ten percent (10%) shall be paid on issuance of the Taking Over Certificate.

PAYMENT PROCEDURES

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

For Plant and Equipment Supplied from Abroad:

Payment for supply and delivery of the Works and erection (Foreign Exchange Portion) in the Employer's country shall be made through an irrevocable commercial letter of credit to be opened by the Employer in favour of the Contractor under the ADB commitment procedure. All costs in connection with Letter of Credit within Bangladesh shall be borne by the Employer and outside Bangladesh shall be borne by the Contractor.

For Plant and Equipment Supplied from Within Employer's Country:

The Employer will pay the Contractor against Interim Payment Certificate issued by the Engineer/Employer for the costs of all local Works value of the Contract for EXW, local handling, storage, transportation to site, insurance and erection including local construction materials. The Taka payments will be as per the Power Grid Company Financial and Accounts Rules or any other Accounts Rules in force and adopted by the Employer.

Payment of Price Adjustment

The payment implication due to the Price Adjustment will be settled at the end of the Contract.

Annexure-I to Appendix 1**Shipping Documents****1.0 For Plant and Equipment including mandatory Spares to be supplied from abroad**

Upon shipment, the Contractor shall notify the Employer and the Insurance Company by cable or telex of the full details of the shipment including Contract number, description of goods, quantity, the vessel, the bill of lading/Airway Bill number and date, port of loading, date of shipment, port of discharge, etc. The Contractor shall mail the following documents to the Employer, with a copy to the Insurance Company.

On shipment of plant the following distribution of shipping documents are required as follows:

- (i) To the Company Secretary, Power Grid Company of Bangladesh Ltd, Institution of Engineers Bangladesh (IEB) Bhaban (4th floor), Ramna, Dhaka 1000.

1 original plus 10 copy Invoices Endorsed by the Contractor

1 negotiable plus 10 copies of Bill of Lading Endorsed by the Contractor

1 original plus 10 copy Insurance Certificate

10 copies of packing lists

10 copies of Freight Memo

1 original plus 10 copies of Certificate of Origin

10 copies of insurance invoice

10 copies of Application for Payment

10 copies of Pre shipment Inspection Certificate or Waiver thereof or Material Inspection & Clearance Certificate (MICC)/ Despatch Clearance Certificate (DCC)

- (ii) To the Project Manager

Two copies of the above documentation

- (iii) To the Representative of Project Manager

Two copies of the above documentation.

The above documents shall be air mailed/faxed by the Contractor to reach the Employer within one week from date of shipment to enable the Employer to make progressive payment to the Contractor and also make necessary arrangement for payment of custom duties etc. The Contractor will be responsible for any consequent expenses due to delay in furnishing the above documentation.

- 2.0 Whenever a waiver for the presence of PGCB engineer to witness the testing is accorded, the Supplier, after carrying out inspection and testing as per approved Plan / Specification should forward test results for approval of PGCB. The Material Inspection and Clearance Certificate (MICC) will be issued within fifteen (15) days from the date of receipt of test results, if test results furnished establish conformance to specified requirements.

APPENDIX 2**PRICE ADJUSTMENT**

- 1.1 The base price indicated in the contract price schedules will be subject to price adjustment on account of variations in the cost elements during the period of the Contract. The intent of the price adjustment provisions in the Bid Documents is to provide reasonable protection to the parties to the Contract, but within the prescribed limits, against fluctuations of the cost of materials, labour etc. during execution of the Contract and resulting in variation in the Contract Price.
- 1.2 Following components of the Bid price will be subject to price adjustment:
- a) CIP Entry Border Point/CIF Bangladesh Port of Entry/ Ex-Works price component of the equipment (excluding Civil works component, equipment and consumable materials required for erection and recommended spares) subject to a ceiling of **fifteen percent (15%)** of the Contract Price for CIP Entry Border Point/CIF Bangladesh Port of Entry/ Ex-Works of the respective item(s).
 - b) Structural Steel subject to a ceiling of twenty percent (20%) of the Contract Price for Structural Steel Component.

The above payment implication due to the price adjustment will be settled at the end of the Contract.

- 1.3 The price adjustment formulae for the components of the Bid Price, as broken down in Clause 1.2 above shall be as stipulated hereinafter.
- 1.3.1 CIP Entry Border Point/CIF Bangladesh Port of Entry/ Ex-Works Price component of the Equipment
- i) For the equipment component of the Bid price, Price Adjustment provisions will be applicable only on the ex-works price for the equipment/materials of Bangladesh origin and CIP Entry Border Point/CIF Bangladesh Port of Entry for equipment materials of Non-Bangladesh origin.
 - ii) The price adjustment shall be worked out on the components of the CIP Entry Border Point/CIF Bangladesh Port of Entry/ Ex-Works in various currencies as indicated in the price schedules and price adjustment amount so computed shall be payable in the respective bid currencies subject to provision of GC 11.

- iii) To enable computation of price adjustment amount for the respective components of the bid prices expressed in the currencies in which the Bidder clearly proposes to incur such expenditures, the Bidder shall in his proposal furnish the detailed list of equipment and materials envisaged to be procured in each such currency, the country of origin of goods and the description and values of respective indices from that country applicable on the base date for various material and labour components of the bid price as called for in the price adjustment provisions detailed hereinafter.
- iv) It is understood that the bid price for any shipment comprises of a fixed portion and variable portion linked with the indices for various materials and labour (description and co-efficient as specified in the subsequent clauses).

The amount of price adjustment towards variable portion payable on each shipment shall be computed as under:

$$dEC = EC_0 \times \{ 0.15 + a \times (A_1 / A_0) \times F1 + b \times (B_1 / B_0) \times F2 + c \times (C_1 / C_0) \times F3 + d \times (D_1 / D_0) \times F4 + \dots + l \times (L_1 / L_0) \times FL \} - EC_0$$

dEC= Price Adjustment Amount expressed in the currency of the bid, payable to/recoverable from Contractor, for each shipment.

EC₀= CIP Entry Border Point/CIF Bangladesh Port of Entry/ Ex-Works price of the equipment in the currency of the bid, shipment wise.

A,B,C = Corresponding published price indices of various materials
D, E etc.

L= Labour Index

F= Fixed portion for the CIP Entry Border Point/CIF Bangladesh Port of Entry/ Ex-Works bid price which shall be fifteen percent (15%) i.e 0.15

a,b,c = Co-efficients (expressed as component of bid Price) of major materials involved in the CIP Entry Border Point/CIF Bangladesh Port of Entry/ Ex-Works price of the equipment. The sum of such co-efficients shall be in between 0.50 and 0.60, (the attachment in bid form for stage-I and Stage-II shall designate the material and value of each co-efficient).

l = Co-efficient of labour component in the CIP Entry Border Point/CIF Bangladesh Port of Entry/ Ex-Works price of the equipment. The value of l shall be indicated in the attachment to bid form and shall

be in between 0.25 and 0.35. (The attachment in bid form for stage-I and Stage-II shall indicate the value of I).

F1, F2, F3,= Exchange rate correction factors for respective materials
F4, F1 etc. and **F1** is the exchange rate correction factor for labour with reference to the currency of the country of index and the bid currency such that

$$F = \frac{Z_0}{Z_1}$$

Where Z is the number of unit of the currency of the country of origin of the index, which is equivalent to one unit of the bid currency.

Subscript '0' refers to indices as on 30 days prior to date set for opening of second stage bid for materials & labour.

Subscript '1' refers to indices as of:

- i) Three months prior to the date of shipment, for labour, and
- ii) At the expiry of two third (2/3) period from the date of base index to the date of shipment, for materials

For the purpose of this clause, the date of shipment shall mean contract date of shipment or actual date of shipment, whichever is earlier.

The value of a,b,c,d and 1 will be such that

$$F+a+b+c+d.....+1 = 1.$$

- v) The formula for price adjustment computation as given in (iv) above, shall be applicable only in the event of adjustment based on indices of a currency other than a bid currency. In other cases, the formula shall be applied without the exchange rate corrective element represented by the factor 'F'.
- vi) The 15% ceiling on the adjustment amount towards CIP Entry Border Point/CIF Bangladesh Port of Entry/ Ex-Works price of the equipment as per 1.2 above, shall be applicable for each of the bid currencies separately.
- vii) For the purpose of this clause the date of shipment shall mean schedule date of shipment or actual date of shipment, whichever is earlier. The scheduled date of shipment will be FOB date of dispatch in case of supply of equipment and materials from abroad and ex-works date of dispatch in case of supplies

from Bangladesh, governed by the accepted PERT network / Bar Chart for supplies wherein monthly supply schedule for super structures and stubs will be indicated. However, in case the actual shipment is earlier than the scheduled shipment, the price adjustment payable shall be the lower of the amount considering the scheduled or actual date of shipment except when the Employer's specific approval for advancement of shipment has been obtained in which case the said advanced date shall be treated as the schedule date of shipment for the purpose of working out the price adjustment payable.

- viii) No price increase shall be allowed beyond the original delivery dates unless specifically stated in the Time Extension letter, if any, issued by the Employer. The Employer will, however, be entitled to any decrease in the Contract Price which may be caused due to lower price adjustment amount in case of delays beyond the original delivery dates. Therefore, in case of delays beyond the original delivery dates, the liability of the Employer shall be limited to the lower of the price adjustment amount which may work out either on schedule date or actual date of despatch.

1.3.2 **Structural Steel**

- 1.3.2.1 The price adjustment amount will be computed as per the formula given below:

$$dST = ST_0 \times \{0.15 + a \times (A1/A_0) \times F1 + b \times (B1/B_0) \times F2 + c \times (C1/C_0) \times F3\} - ST_0$$

Where

dST= Price adjustment amount payable to Contractor in the currency of the bid for Structural Steel for each shipment.

ST₀= value of Structural Steel (CIP Entry Border Point/CIF Bangladesh Port of Entry/ Ex-Works price for each shipment, in currency of the bid.

a,b,c = Coefficients (expressed as components of bid price) of major materials and labour involved in the CIP Entry Border Point/CIF Bangladesh Port of Entry/ Ex-Works price of the structural steel (values to be indicated by the bidder). Sum of a, b & c should be 0.85. The attachment to bid form must indicate the material and value of each coefficient.

A,B,C = Corresponding published price indices of various materials and labour.

F1,F2, F3 = Exchange rate correction factor for materials and labour index as defined in Clause 1.3.1 (iv) above

Subscript '0' refers to the values of the above mentioned labour / material indices as on 30 days prior to date of opening of **Second Stage** bids. Subscript '1' refers to the values of corresponding labour / material indices as on 60 days prior to dispatch of structural steel.

1.3.2.2 The 15% ceiling on the adjustment amount towards CIP Entry Border Point/CIF Bangladesh Port of Entry/ Ex-Works price of the structural steel as per 1.2 above, shall be applicable for each of the bid currencies separately. In case the validity of bids is required to be extended and finalization of award is not within the first validity, the 20% ceiling limit on the adjustment amount shall be revised on pro-rata basis based on the increase in total duration between base date and date of trial operation due to extension of validity by the bidder.

1.3.2.3 For the purpose of this clause the date of shipment shall mean schedule date of shipment or actual date of shipment, whichever is earlier. The scheduled date of shipment will be FOB date of dispatch in case of supply of equipment and materials from abroad and ex-works date of dispatch in case of supplies from Bangladesh, governed by the accepted PERT network / Bar Chart for supplies wherein monthly supply schedule for super structures and stubs will be indicated. However, in case the actual shipment is earlier than the schedule shipment, the price adjustment payable shall be the lower of the amount considering the scheduled or actual date of shipment except when the Employer's specific approval for advancement of shipment has been obtained in which case the said advanced date shall be treated as the schedule date of shipment for the purpose of working out the price adjustment payable.

1.3.2.4 No price increase shall be allowed beyond the original delivery dates unless specifically stated in the Time Extension letter, if any, issued by the Employer. The Employer will, however, be entitled to any decrease in the Contract Price which may be caused due to lower price adjustment amount in case of delays beyond the original delivery dates. Therefore, in case of delays beyond the original delivery dates, the liability of the Employer shall be limited to the lower of the price adjustment amount which may work out either on schedule date or actual date of despatch.

1.4 Adjusted Contract Price

The adjusted contract price shall be:

$EC_0 + dEC + ST_0 + dST + \text{other elements of contract price if any.}$

- 1.5 The indices shall be clearly named in the Bidder's proposal for each of the Bid currencies in which the CIP Entry Border Point/CIF Bangladesh Port of Entry/ Ex-Works price of the equipment and Installation prices of the equipment and price of civil works has been expressed in the bid. The indices shall be well established and nationally recognized in the country of manufacture. Preferably only Govt. indices shall be used. The Bidder shall enclose with his proposal authenticated copies of the relevant published indices which reflect the price as of thirty (30) days prior to the date set for opening of price bids (i.e. Second Stage bid).
- 1.6 However, the successful Bidder may be permitted to suggest modifications in the values of co-efficients or group of co-efficients indicated in the Bid in line with the requirements indicated in the above formulae, provided such successful bidder is able to satisfy the Employer with proper justification for such modifications.
- 1.7 Bids specifying price adjustment provisions other than those specified in these specifications and documents run the risk of rejection.
- 1.8 Coefficients and name of components of Price Adjustment may be changed in 2nd stage provided that total sum of the co-efficient, as specified in the bid documents, remaining the same.
- 1.9 In case of non-publication of applicable indices on a particular date, which happens to be the applicable date for Price Adjustment purposes, the published indices prevailing immediately prior to the particular date shall be applicable.

CONDITIONS APPLICABLE TO PRICE ADJUSTMENT

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 only 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, an exchange rate correction factor will be applied to avoid incorrect adjustments of the Contract price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.
- (c) No price adjustment shall be payable on the portion of the Contract price paid to the Contractor as an advance payment.
- (d) If there is no data entered in the above table, the price adjustment does not apply to such item of which no data is entered.

APPENDIX 3**INSURANCE REQUIREMENTS****Insurances to be taken out by the Contractor**

In accordance with the provisions of GC Clause 34, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld. The inability of the insurers to provide insurance cover in the sums and with the deductibles and other conditions as set forth below, shall not absolve the Contractor of his risks and liabilities under the provisions of GC Clause 34. However, in such a case the Contractor shall be required to furnish to the Employer documentary evidence from the insurer in support of the insurer's inability as aforesaid. Further, in cases where the Contractor intends to provide the requisite insurance coverage under policy(ies) which are in the nature of or similar to 'Open Insurance Policy' and/or such other policies which serve the purpose set forth for insurance required, taken and maintained in effect by the Contractor in the course of its operations as going concern, the same shall be acceptable provided it meets the requirements specified herein to the satisfaction of the Employer.

(a) Cargo Insurance

covering loss or damage occurring, whilst in transit from the Contractor's or manufacturer's works or stores until arrival at the Site, to the Facilities (including spare parts therefor) and to the Construction Equipment to be provided by the Contractor or its Subcontractors.

| Amount | Deductible limits | Parties Insured | From | To |
|--|--------------------------|------------------------|--|---|
| 100% of the (Ex-works value/ CIF Bangladesh Port of Entry value/ CIP Entry Border Point value) | NIL | Contractor & Employer | supplier's or manufacturer's works or stores | Contractor's store in Bangladesh +60 Days |

(b) Installation All Risks Insurance

covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with an extended maintenance coverage for the

Contractor's liability in respect of any loss or damage occurring during the Defect Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period.

| Amount | Deductible limits | Parties Insured | From | To |
|---------------------------------|-------------------|---|--------------------|------------------------------------|
| 100% of the (Contract Price) | NIL | Contractor/ Sub-contractor & Employer | Receipt at site | Upto Defect Liability period |

(c) **Third Party Liability Insurance**

covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property (including the Employer's property and any parts of the Facilities which have been accepted by the Employer) occurring in connection with the supply and installation of the Facilities.

| Amount | Deductible limits | Parties Insured | From | To |
|---|-------------------|-------------------------------|-------------------------|------------------------------------|
| BDT 2 million per person per occasion | NIL | Contractor/ Sub-contractor | Commencement of work | Upto Defect Liability period |

(d) **Automobile Liability Insurance**

covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the Facilities. Comprehensive insurance in accordance with statutory requirements. For the purpose of this insurance cover Comprehensive insurance of each individual vehicles separately as per the insurance par lance shall be acceptable.

(e) **Worker's Compensation**

In accordance with the statutory requirements applicable in Bangladesh.

(f) **Employer's Liability**

In accordance with the statutory requirements applicable in Bangladesh.

(g) **Other Insurances**

The Contractor is also required to take out and maintain at its own cost the following insurances:

| Amount | Deductible limits | Parties Insured | From | To |
|-----------------------------------|--------------------------|---|--------------------|------------------------------------|
| To be indicated by the Contractor | NIL | Contractor/ Sub-contractor & Employer | Receipt at site | Upto Defect Liability period |

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 34.1 except for the Third Party Liability, Worker's Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 34.1 except for the Cargo, Worker's Compensation and Employer's Liability Insurances, and all insurer's rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.

Besides the above insurances, the contractor shall take out and maintain in effect, insurance for all equipment and materials being supplied by Employer for erection (as per Technical Specifications) in line with clause GC 34.8. Premium for this insurance shall be reimbursed by employer in line with the said clause.

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.

Details:.....

| | | | | |
|---------------|--------------------------|------------------------|-------------|-----------|
| Amount | Deductible limits | Parties Insured | From | To |
| | _____ NIL _____ | | | |

APPENDIX 4

TIME SCHEDULE

1. The Completion Schedule shall be as follows:

| Sl. No. | Completion (Taking Over) of: | Duration in months from the effective date of Contract |
|---------|---|--|
| 1.0 | Second Block of 1 x 500 MW HVDC Back to Back Station at Bheramara (Bangladesh) at existing Bheramara HVDC Station associated with Bangladesh-India Power Exchange Program | 24 months |

- 1.1 The activity(ies) under the Contractor's programme for Project Completion shall be in the form of a master network (MNW) and shall identify the various activities like design, engineering, manufacturing, supply, installation, factory testing, transportation to site, site testing and commissioning, trial operation and Taking Over etc. of the Facilities or specific part thereof (where specific parts are specified in PC). The network shall conform to the above Project Completion Schedule.

This master network will be discussed and agreed before Award in line with above, engineering drawing and data submission schedule shall also be discussed and finalised before Award. Liquidated damages for delay in successful completion of the Facilities or specific part thereof (where specific parts are specified in PC) and Operational Acceptance at rates specified in PC GC Clause 26 shall be applicable beyond the date specified above.

- 1.2 The Employer reserves the right to request minor changes in the work schedule at the time of Award of Contract to the successful Bidder.
- 1.3 The successful Bidder shall be required to prepare detailed Network(s) and project implementation plans & programmes and finalise the same with the Employer as per the requirement specified in Technical Specifications, which shall form a part of the Contract.

APPENDIX 5**LIST OF APPROVED SUBCONTRACTORS**

Prior to award of Contract, the following details shall be completed indicating those subcontractors proposed by the Bidder by Attachment to its bid that are approved by the Employer for engagement by the Contractor during the performance of the contract.

The following Subcontractors are approved for carrying out the item of the facilities indicated. Where more than one Subcontractor is listed, the Contractor is free to choose between them, but it must notify the Employer of its choice in good time prior to appointing any selected Subcontractor. In accordance with GC Sub-Clause 19.1, the Contractor is free to submit proposals for Subcontractors for additional items from time to time. No Subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the Employer and their names have been added to this list of Approved Subcontractors.

| Item of Facilities | Approved Subcontractors | Nationality |
|--------------------|-------------------------|-------------|
| | | |
| | | |
| | | |
| | | |

APPENDIX 6**SCOPE OF WORKS AND SUPPLY BY THE EMPLOYER**

The following personnel, facilities, works and supplies will be provided/supplied by the Employer, and the provisions of GC 10, 20, 21 and 24 as well as Employer responsibilities stated in technical specifications 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 GC Sub-Clause 18.2.

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

Personnel**Charge to Contractor - None**

Employer personnel will support the project management, document review and approval, training site coordination during installation; and testing, testing support and conducting System Tests (SATs) as per the Contract specifications. The operational and maintenance personnel shall be deployed by the Employer within seven days of receipt of the notice from the Contractor for commencement of Precommissioning.

Facilities**Charge to Contractor - None except as noted**

1. Permission will be arranged by the Employer for full site and facilities access as required for site surveys and for the installation, connection and testing of communication equipment and systems. Such permission shall be requested by the Contractor one month prior to the Scheduled need for such access, consistent with the Contractors "Project Implementation Plan", Subsequent to approval of such "Plan" by Employer.
2. The facilities, works and supplies to be provided by Employer are detailed in Technical Specification of Contract Document.

Works**Charge to Contractor - None**

-----NIL-----

Supplies**Charge to Contractor - None except as noted**

APPENDIX 7**LIST OF DOCUMENTS FOR APPROVAL OR REVIEW**

Pursuant to GC Sub-Clause 20.3.1, the Contractor shall prepare, or cause its Subcontractor to prepare, and present to the Project Manager in accordance with the requirements of GC Sub-Clause 18.2 (Program of Performance), the following documents for:

A. Approval

- 1.
- 2.
- 3.

B. Review

- 1.
- 2.
- 3.

Note:

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

APPENDIX 8

FUNCTIONAL GUARANTEES

In line with Technical Specification, the guaranteed parameters and respective guaranteed values indicated by _____ in its offer are listed here under:

| Sl. No. | Parameter | Guaranteed Values |
|---------|--|--|
| 1 | Efficiency | In |
| a) | No Load Losses with Converter Transformer set at principal tap* for HVDC Block-2 | (KW) |
| b) | Equivalent Load Losses (In kW) | |
| 2 | Rated Station capacity | 500 MW |
| 3 | Station Availability | |
| a) | Minimum Energy availability requirement | $\geq 97\%$ |
| 4 | Station Reliability | |
| a) | No. of forced outages per year | a) ≤ 4 |
| b) | Transient Disturbances | b) ≤ 10 per Block per year |
| 5 | Annual rate of failure of thyristors | 0.2% of 12 pulse valve group except first unit failure |
| 6 | Annual rate of failure of capacitors | 0.15% except first unit failure |
| 7a | Guaranteed Failure rate of Relay Module/C&P Module/Component | 0.5% except first unit failure |

In the event of any shortfall in performance of the guaranteed performance of the system / equipments, as mentioned above, the relevant provisions of SCC / GCC in conjunction with the Technical Specification, shall govern.

Note:

* Principal tap is the Tap Position of converter transformer when HVDC Block 2 converter shall be delivering 1 PU power (500MW) at nominal DC voltage at rectifier keeping ac system voltage 400 KV (India Side) and 230KV(Bangladesh side) , 50 Hz at 40°C ambient temperature.

APPENDIX 8(a)**PERFORMANCE GUARANTEES****GUARANTEES, LIQUIDATED DAMAGES FOR NON PERFORMANCE**

- 1.0 The equipment offered shall meet the rating and performance requirements stipulated in Technical Specification for various equipments or indicated in Data requirement.
- 2.0 The ratings and performance figures of the below mentioned equipment are guaranteed by you.

| Sl. No. | Description | Guaranteed Loss (kW) | Rate of Liquidated Damages in Bangladesh Taka (applicable for each item/unit of the facilities) per kW of differential loss |
|----------------|-------------------------------------|-----------------------------|--|
| A. | 230/33kV Station Transformer | | |
| 1. | No Load loss (kW) | | BDT 600,000/- (Bangladesh Taka Six Hundred Thousand only). |
| 2. | Load loss (kW) | | BDT 300,000/- (Bangladesh Taka Three Hundred Thousand only). |

- 3.0 If the aforementioned guarantees are not established at factory tests, then the Employer at his discretion may reject or accept the equipment after assessing the liquidated damages as per table above against the Contract and such amounts shall be deducted from the Contract Price or otherwise recovered from the Contractor. However, the equipment under no circumstances shall be accepted if the measured losses are more than +15 percent of the guaranteed losses at rated voltage indicated by you in your Bid.
- 4.0 The liquidated damages for shortfall in guaranteed parameters and for delay in completion are independent of each other and shall be levied separately and concurrently.

3. PERFORMANCE SECURITY FORM

Bank Guarantee - Unconditional

Date.....

Loan/Credit No.....

Contract No.....

[Name of Contract]

To: [Name and address of the Employer]

Dear Ladies and/or Gentlemen,

We refer to the Contract ("the Contract") vide Notification of Award Ref. No.....(insert reference no.)..... dated(insert date)..... between you and M/s (Name of Contractor), having its Principal place of business at(Address of Contractor) and Registered Office at(Registered address of Contractor) ("the Contractor") concerning (Indicate brief scope of work) for the complete execution of the (insert name of Package alongwith name of the Project)..... [Applicable for Bank Guarantees issued by Contractor/Associate for those Contracts awarded to them]

By this letter we, the undersigned,(insert name & address of the issuing bank), a Bank (which expression shall include its successors, administrators, executors and assigns) organized under the laws of and having its Registered/Head Office at(insert address of registered office of the bank)..... do hereby irrevocably guarantee payment to you up to i.e., ten percent (10%) of the Contract Price until sixty (60) days beyond the Defect Liability Period i.e., upto and inclusive of (dd/mm/yy).

We undertake to make payment under this Letter of Guarantee upon receipt by us of your first written demand signed by your duly authorized officer declaring the Contractor to be in default under the Contract and without cavil or argument any sum or sums within the above named limits, without your need to prove or show grounds or reasons for your demand and without the right of the Contractor to dispute or question such demand.

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 the Letter of Guarantee, without being entitled to inquire whether or not this payment is lawfully demanded.

This letter of Guarantee shall remain in full force and shall be valid from the date of issue until sixty (60) days beyond the Defect Liability Period of the Facilities i.e. upto and

inclusive of (dd/mm/yy) and shall be extended from time to time for such period (not exceeding one year), as may be desired by M/s. on whose behalf this Letter of Guarantee has been given.

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, the validity of this letter of Guarantee shall be extended with respect to ten percent (10%) of the Contract Price of that part until expiry of 60 days beyond 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 under shall be given by registered (airmail) posts and Foax 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 notices 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.

This Guarantee is subject to Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that sub-paragraph (ii) of Sub-article 20(a) is hereby excluded.

Yours truly,

Name of the Bank

.....

Authorized Signature

Signature of Witness.....

Name.....

Address.....

Note :

1. The non-judicial stamp papers of appropriate value, if required as per laws of the country of the bidder, shall be purchased in the name of Bank who issues the 'Bank Guarantee' and the date of purchase should not be earlier than six months of issuance of the Bank Guarantee by the Bank.
2. The Bank Guarantee shall be signed on all the pages by the Bank Authorities indicating their POA nos. and should invariably be witnessed.
3. Performance Security is to be provided by the successful bidder in the form of a bank guarantee which should be issued either:
 - (a) by a reputed bank located in the country of Employer and acceptable to the Employer, or
 - (b) by a foreign bank confirmed by either its correspondent bank located in the country of Employer which should be reputed and acceptable to the Employer

4. BANK GUARANTEE FORM FOR ADVANCE PAYMENT

Date.....

Loan/Credit No.....

Contract No.....

[Name of Contract]

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

Dear Ladies and/or Gentlemen,

We refer to the Contract ("the Contract") vide Notification of Award Ref. No.....(*insert reference no.*)..... dated(*insert date*)..... between you and M/s (*Name of Contractor*), having its Principal place of business at(*Address of Contractor*) and Registered Office at(*Registered address of Contractor*) ("the Contractor") concerning (*Indicate brief scope of work*) for the complete execution of the (*insert name of Package alongwith name of the Project*).....

Whereas, in accordance with the terms of the said Contract, the Employer has agreed to pay or cause to be paid to the Contractor an Advance Payment in the amount of (*Amount of foreign currency in words*) (*Amount in figures*) and (*Amount of local currency in words*) (*Amount in figures*).

By this letter we, the undersigned,(*insert name & address of the issuing bank*), a Bank (which expression shall include its successors, administrators, executors and assigns) organized under the laws of and having its Registered/Head Office at(*insert address of registered office of the bank*)..... do hereby irrevocably guarantee repayment of the said amounts upon the first demand of the Employer without cavil or argument in the event that the Contractor fails to commence or fulfill its obligations under the terms of the said Contract, and in the event of such failure, refuses to repay all or part (as the case may be) of the said advance payment to the Employer.

Provided always that the Bank's obligation shall be limited to an amount equal to the outstanding balance of the advance payment, taking into account such amounts, which

have been repaid by the Contractor from time to time in accordance with the terms of payment of the said Contract as evidenced by appropriate payment certificates.

This Guarantee shall remain in full force from the date upon which the said advance payment is received by the Contractor upto ninety (90) days beyond the date on which the entire advance so advanced alongwith the interest (if any) due thereon has been fully adjusted in terms of the Contract i.e., upto of ninety (90) days beyond the date of Completion of the Facilities under the Contract. This Guarantee may be extended from time to time, as may be desired by M/s. on whose behalf this Guarantee has been issued.

Any claims to be made under this Guarantee must be received by the Bank during its period of validity, i.e. upto ninety (90) days beyond the date of Completion of the Facilities by the Employer i.e. upto and inclusive of (dd/mm/yy).

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

Yours truly,
Name of the Bank

.....
Authorized Signature

Signature of Witness.....

Name.....

Address.....

Note :

1. The non-judicial stamp papers of appropriate value, if required as per laws of the country of the bidder, shall be purchased in the name of Bank who issues the 'Bank Guarantee' and the date of purchase should not be earlier than six months of issuance of the Bank Guarantee by the Bank.
2. The Bank Guarantee shall be signed on all the pages by the Bank Authorities indicating their POA nos. and should invariably be witnessed.
3. Advance Bank Guarantee is to be provided by the successful bidder in the form of a bank guarantee which should be issued either:

- (a) by a reputed bank located in the country of Employer and acceptable to the Employer, or
- (b) by a foreign bank confirmed by either its correspondent bank located in the country of Employer which should be reputed and acceptable to the Employer,

5. FORM OF TAKING OVER CERTIFICATE

Date.....

Name of Contract.....

Contract No.....

To :

(Name and address of the Contractor)

Dear Ladies and/or Gentlemen,

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

1. Description of the Facilities or part thereof
.....
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 Defects Liability Period.

Very truly yours,

Title

6. FORM OF AUTHORISATION LETTER

Ref. No:

Date :

To

M/s.....

.....

.....

REF.: Contract No. dated for
awarded by(insert name of the Employer).....

Dear Sir,

Kindly refer to Contract No. dated for You are hereby authorised on behalf of (*Name of Employer*)..... a company incorporated under the laws of Companies Act 1992 and having its Registered Office at(*registered address of the Employer*) and its Project at to take physical delivery of materials/equipments covered under Despatch Document/Consignment Note No.*..... datedand as detailed in the enclosed schedule for the sole purpose of successful performance of the aforesaid contract and for no other purpose, whatsoever.

(Signature of Project Authority)**

Designation.....

Date.....

Encl: As Above.

** To be signed not below the rank of Manager.

* Mention LR/RR No.

Schedule of Material/Equipment covered under Despatch Title Document (RR No./LR No.)

| Sl. No. | Contract Name | NOA No./ CA No. | Description of Materials/ Equipments | Spec. No. | Qty. | Value | Remarks |
|---------|---------------|-----------------|--------------------------------------|-----------|------|-------|---------|
| | | | | | | | |

(Signature of the Project Authority)

(Designation)

(Date)

7. FORM OF EXTENSION OF BANK GUARANTEE BY THE BANK

Ref. No.....

Dated:.....

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

Dear Sirs,

Sub.: Extension of Bank Guarantee No. dated for,
issued to you on behalf of M/s.(*insert name of the Contractor*) in
respect of Contract No. dated for (*insert name of the*
Package alongwith the Project name) (hereinafter called original Bank
Guarantee).

At the request of M/s..... (*insert name of the Contractor*), We(*insert*
name & address of the issuing bank), a Bank organized under the laws of
..... and having its Registered/Head Office at(*insert address of*
registered office of the bank)..... do hereby extend our liability under the above-
mentioned Guarantee No. Dated for a further period of
..... Years/Months from to expire on Except as provided above,
all other terms and conditions of the original Bank Guarantee No. dated
..... shall remain unaltered and binding.

Please treat this as an integral part of the original Guarantee to which it would be attached.

Yours Faithfully,

For
Manager/ Agent/ Accountant

Power of Attorney No.....

Dated.....

SEAL OF BANK

Note :

1. The non-judicial stamp papers of appropriate value, if required as per laws of the country of the bidder, shall be purchased in the name of Bank who issues the 'Bank Guarantee' and the date of purchase should not be earlier than six months of issuance of the Bank Guarantee by the Bank.
2. The Bank Guarantee shall be signed on all the pages by the Bank Authorities indicating their POA nos. and should invariably be witnessed.

8. FORM OF OPERATIONAL ACCEPTANCE CERTIFICATE

Date.....

Name of Contract.....

Contract No.....

To :

(Name and address of the Contractor)

Dear Ladies and/or Gentlemen,

Pursuant to GC 25.3 (Operational Acceptance) of the General Conditions of the Contract entered into between yourselves and the Employer dated relating to the *(insert brief description of the Facilities)*..... we hereby notify you that the conditions for Operational Acceptance in respect of the Facilities or the following part(s) of the Facilities as mentioned below have been fulfilled by you in accordance with PC GC Sub-clause 25.3.1 of the Contract :

- a)*[specify description of Facilities or part(s) of the Facilities]*..... have been commissioned and Taking-over Certificate has been issued by us on*[specify date]*.....;
- b) Functional Guarantees are met*/liquidated damages have been paid by you as per Appendix - 8 of the Contract Agreement* *(in case Functional Guarantees are applicable)*; and

[* delete whichever is not applicable]
- c) any minor items pursuant to PC GC Sub-Clause 24.9 of Contract relevant to*[specify description of Facilities or part(s) of the Facilities]*..... have been completed by you on*[specify date]*.....as per agreed schedule.

Accordingly, the date of Operational Acceptance of*[specify description of Facilities or part(s) of the Facilities]*.....is:.....*[specify date]*.....

This Operational Acceptance Certificate does not relieve you of your obligation during the Defects Liability Period and Latent Defect warranty.

Very truly yours,

Title

(Project Manager)