**National Competitive Bidding**

**Invitation for Bids**

**Works and Operation Service**

**Design, build and operation of**

***[water treatment plant (WTP)/ wastewater treatment plant (WWTP)]***

**(Two-Envelope Bidding Process with e-Procurement)**

**October 2018**

GOVERNMENT OF..........

PROJECT..........

BID [TENDER] NO ……..

**National Competitive Bidding**

**Design, Build and Operation of**

***[water treatment plant (WTP)/ wastewater treatment plant (WWTP)]***

**(Two-Envelope Bidding Process with e-Procurement)**

CONTRACT TITLE :

PERIOD OF SALE OF : FROM

BIDDING DOCUMENT TO

TIME AND DATE OF : DATE ———— TIME ———— HOURS

PRE-BID MEETING[[1]](#footnote-1)

LAST DATE AND TIME FOR : DATE ———— TIME ———— HOURS

RECEIPT OF BIDS

**\*** TIME AND DATE OF OPENING OF BIDS : DATE ———— TIME ———— HOURS

- Technical Part

PLACE OF OPENING OF BIDS :

OFFICER INVITING BIDS :

ADDRESS FOR COMMUNICATION :

**\* *Should be the same as the deadline for submission of bids or promptly thereafter. The firms that qualify technically shall be notified subsequently for opening of the financial parts of their bids.***

*.*

**GOVERNMENT OF ……………..**

**………………….………PROJECT**

**Invitation for Bids (IFB)**

**Works and Operation Service**

**(Design, Build and Operation of *[WTP/ WWTP]***

**(Two-Envelope Bidding Process with e-Procurement)**

**E-Procurement Notice**

**NATIONAL COMPETITIVE BIDDING**

**Name of Project:***[insert name of project]*

**Contract title:** *[insert the name of the contract]*

**Loan No. /Credit No. / Grant No.:** *[insert reference number for loan/credit/grant]*

**IFB No:** *[insert IFB reference number from Procurement Plan]*

**Issued on:** *[insert date]*

1. The Government of India *[has received/has applied for/intends to apply for]* financing from the World Bank toward the cost of the *[insert name of project or grant]*, and intends to apply part of the proceeds towards payments under the contract[[2]](#footnote-2) for construction of works as detailed below.
2. Bidding will be conducted through National Competitive Bidding procedures agreed with the World Bank. Bidding is open to all eligible bidders as defined in the World Bank’s Guidelines: [Procurement of Goods, Works and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers, January 2011\_ Revised July 2014 *[modify if required, the date/month of applicable Guidelines edition as per legal agreement]*.](http://www.worldbank.org/html/opr/procure/guidelin.html)
3. Bidders from India should, however, be registered with the Government of ……………... or other State Governments/Government of India, or State/Central Government Undertakings. Bidders from India, who are not registered as above, on the date of bidding, can also participate provided they get themselves registered by the time of contract signing, if they become successful bidders. **Bidders are advised to note the clauses on eligibility (Section I Clause 4) and minimum qualification criteria (Section III – Evaluation and Qualification Criteria), to qualify for the award of the contract.** In addition, please refer to paragraphs 1.6 and 1.7 of the World Bank’s Guidelines setting forth the World Bank’s policy on conflict of interest.
4. The ………………………… (***Implementing Agency***) invites online bids for the construction of works detailed below in the table. The bidders may submit bids for any or all of the works indicated therein. Interested bidders may obtain further information and inspect the bidding document at the address given below during office hours.
5. Bidding documents are available online on ………….. *(website)* from……to…... *(dates)* for a non-refundable fee as indicated in the table, in the form of Demand Draft (DD) on any Scheduled/Nationalized bank payable at…………in favour of………………… (Demand draft is to be submitted subsequently as per the procedure described in paragraph 9 below). Bidders will be required to register on the website, which is free of cost. **The bidders would be responsible for ensuring that any addenda available on the website is also downloaded and incorporated.**
6. For submission of the bid, the bidder is required to have Digital Signature Certificate (DSC) from one of the Certifying Authorities authorised by Government of India for issuing DSC. Aspiring bidders who have not obtained the user ID and password for participating in e-procurement in this Project, may obtain the same from the website: ……………... A non-refundable fee of Rs……….. (inclusive of tax) is required to be paid (to be submitted along with other documents listed in paragraph 9 below) before the opening of the bid i.e. before <date>. The mode of payment shall be in the form of DD drawn in favour of …………………., payable at ………, from any scheduled Bank.
7. All Bids must be accompanied by a bid security of the amount specified for the work in the table below, drawn in favour of …………. Bid security will have to be in any one of the forms as specified in the bidding document and shall have to be valid for 45 days beyond the validity of the bid. Procedure for submission of bid security is described in Para 9.
8. Bids must be submitted online on ………….. *(website)* on or before ……… hours on…….. *(date)* and the ‘Technical Part’ of the bids will be publicly opened online on the same day at …… hours. The “Financial Part” shall remain unopened in the e-procurement system until the second public Bid opening for the financial part. Any bid or modifications to bid (including discount) received outside e-procurement system will not be considered. If the office happens to be closed on the date of opening of the bids as specified, the bids will be opened on the next working day at the same time and venue. The electronic bidding system would not allow any late submission of bids.
9. The bidders are required to submit (a) original demand drafts towards the cost of bid document and registration on e-procurement website (if not previously registered); (b) original bid security in approved form; and (c) original affidavit regarding correctness of information furnished with bid document with *……………………(insert name and complete address)* before the opening of the technical part of the Bid i.e. before <date>, either by registered post/speed post/courier or by hand, failing which the bids will be declared non-responsive and will not be opened.
10. A pre-bid meeting will be held on………………….. at …………. hours at the office of …………………….to clarify the issues and to answer questions on any matter that may be raised at that stage as stated in ITB Clause 7.4 of ‘Instructions to Bidders’ of the bidding document. Bidders are advised to download the bidding document prior to the pre-bid meeting in order for bidders to have a good understanding of the scope of work under this contract for discussion and clarification at the pre-bid meeting.
11. Other details can be seen in the bidding documents. The Employer shall not be held liable for any delays due to system failure beyond its control. Even though the system will attempt to notify the bidders of any bid updates, the Employer shall not be liable for any information not received by the bidder. It is the bidders’ responsibility to verify the website for the latest information related to this bid.
12. The address for communication is as under:
13. Name & Designation of Officer ……………………………….
14. Official Address ………………………………………………..
15. Email ………………………………………………………….
16. Telephone …………………………………………………….

TABLE

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Package No | Name of Work | Bid Security \*  (Rs.) | Cost of Document  (Rs.) | Period of Completion |
| 1 | 2 | 3 | 4 | 5 |
|  |  |  |  | Design Build……..  Operation…… |
|  |  |  |  | Design Build……..  Operation…… |

Seal of office

Address

***Note \* - The values should be rounded off to the nearest ten thousands of rupees.***

***The IFB should be identical to that which appeared in the press/ website.***

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PART 1 –Bidding Procedures

# Section I – Instructions to Bidders

1. General

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| --- | --- |
| 1. Scope of Bid | * 1. The Employer, as specified **in the BDS**, issues this Bidding Document for the design, build and operation of the Works as specified in Section VII, Employer’s Requirements. The name, identification, and number of lots (contracts) of this bidding are specified **in the BDS.**   2. Unless otherwise stated, throughout this Bidding document definitions and interpretations shall be as prescribed in the Section VIII, General Conditions of Contract.   3. Throughout this Bidding document:      1. the term “in writing” means communicated in written form and delivered against receipt;      2. except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and      3. “Day” means calendar day;      4. “Operation Service” means the operation and maintenance of the Works as provided under the Contract;      5. “Works” refers to Works, subject of this bidding document, to be designed and built under the Contract; and      6. “ESHS” means environmental, social (including sexual exploitation and abuse (SEA) and gender based violence (GBV), health and safety. |
| 1. Source of Funds | * 1. The Government of India or Recipient (hereinafter called “Borrower”) indicated **in the BDS** has applied for or received financing (hereinafter called “funds”) from the International Bank for Reconstruction and Development or the International Development Association (hereinafter called “the Bank”) in an amount specified **in the BDS** toward the project named **in the BDS**. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding document is issued.   2. Payments by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the Loan (or other financing) Agreement between the Borrower and the Bank (hereinafter called the Loan Agreement), and will be subject in all respects to the terms and conditions of that Loan (or other financing) Agreement. The Loan (or other financing) Agreement prohibits a withdrawal from the loan account for the purpose of any payment to persons or entities, or for any import of equipment, materials or any other goods, if such payment or import, to the knowledge of the Bank, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. No party other than the Borrower shall derive any rights from the Loan (or other financing) Agreement or have any claim to the proceeds of the Loan (or other financing). |
| 1. Fraud and Corruption | * 1. The Bank requires compliance with its policy in regard to corrupt and fraudulent practices, as set forth in Section VI.   2. In further pursuance of this policy, Bidders shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and any personnel thereof, to permit the Bank to inspect all accounts, records and other documents relating to any prequalification process, bid submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Bank. |
| 1. Eligible Bidders | * 1. A Bidder may be a firm that is a private entity, or a government-owned enterprise or institution subject to **ITB 4.6,** or any combination of such entities in the form of a joint venture (JV), unless otherwise specified **in the BDS,** under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The JV shall nominate a Representative (Lead Member) who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Bidding process and, in the event the JV is awarded the Contract, during contract execution. This authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all members. In case of a successful bid, the joint venture agreement should be registered in the place **specified in BDS** so as to be legally valid and binding on partners. Unless specified **in the BDS**, there is no limit on the number of members in a JV. If specified **in the BDS**, the JV may form an SPV to enter into the Contract and the minimum level of total paid up share capital, lock-in periods for members maintaining their shares and extent to which members can dilute their shareholding shall be as specified **in the BDS**.   2. A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this Bidding process, if the Bidder:      1. directly or indirectly controls, is controlled by or is under common control with another Bidder; or      2. receives or has received any direct or indirect subsidy from another Bidder; or      3. has the same legal representative as another Bidder; or      4. has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the Bid of another Bidder, or influence the decisions of the Employer regarding this Bidding process; or      5. any of its affiliates participates as a consultant in the preparation of the Employer’s Requirements for the Works that are the subject of the Bid; or      6. any of its affiliates has been hired (or is proposed to be hired) by the Employer or Borrower as the Employer’s Representative for the Contract implementation; or      7. would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the **BDS ITB 2.1** that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or      8. has a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the preparation of the Bidding document or specifications of the Contract, and/or the Bid evaluation process of such Contract; or (ii) would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the Procurement process and execution of the Contract.   3. A firm that is a Bidder (either individually or as a JV member) shall not participate in more than one Bid, except for permitted alternative Bids. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid.   4. A Bidder may have the nationality of any country, subject to the restrictions pursuant to **ITB 4.8.** A Bidder shall be deemed to have the nationality of a country if the Bidder is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed sub-contractors or sub-consultants for any part of the Contract including related Services.   5. A Bidder that has been sanctioned by the Bank in accordance with the above ITB 3.1, including in accordance with the Bank’s Guidelines on Preventing and Combating Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants (“Anti-Corruption Guidelines”), shall be ineligible to be prequalified for, bid for, submit bid for, or be awarded a Bank-financed contract or benefit from a Bank-financed contract, financially or otherwise, during such period of time as the Bank shall have determined. The list of debarred firms and individuals is available at the electronic address specified **in the BDS**.   6. Bidders that are Government-owned enterprises or institutions in the Employer’s Country may participate only if they can establish that they (i) are legally and financially autonomous (ii) operate under commercial law, and (iii) are not dependent agencies of the Employer. To be eligible, a government-owned enterprise or institution shall establish to the Bank’s satisfaction, through all relevant documents, including its Charter and other information the Bank may request, that it: (i) is a legal entity separate from the government (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to the government, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt; and (iv) is not bidding for a contract to be awarded by the department or agency of the government which under their applicable laws or regulations is the reporting or supervisory authority of the enterprise or has the ability to exercise influence or control over the enterprise or institution.   7. A Bidder shall not be under suspension from bidding by the Employer as the result of the operation of a Bid–Securing Declaration.   8. Firms and individuals may be ineligible if so indicated in Section V and (a) as a matter of law or official regulations, the Borrower’s country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods or the contracting of works or services required; or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower’s country prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country.   9. A Bidder shall provide such evidence of eligibility satisfactory to the Employer, as the Employer shall reasonably request. |
| 1. Eligible Materials, Equipment, and Services | * 1. The materials, equipment and services to be supplied under the Contract and financed by the Bank may have their origin in any country subject to the restrictions specified in Section V, Eligible Countries, and all expenditures under the Contract will not contravene such restrictions. At the Employer’s request, Bidders may be required to provide evidence of the origin of materials, equipment and services. |

B. Contents of Bidding document

|  |  |
| --- | --- |
| 1. Sections of Bidding document | * 1. The Bidding document consists of Parts 1, 2, and 3, which include all the sections specified below, and should be read in conjunction with any Addenda issued in accordance with **ITB 8**:   **PART 1 Bidding Procedures**  Section I - Instructions to Bidders (ITB)  Section II - Bid Data Sheet (BDS)  Section III - Evaluation and Qualification Criteria  Section IV - Bidding Forms  Section V - Eligible Countries  Section VI - Bank Policy-Corrupt and Fraudulent Practice  **PART 2 Employer’s Requirements**  Section VII - Employer’s Requirements  **PART 3 Conditions of Contract and Contract Forms**  Section VIII - General Conditions of Contract (GCC)  Section IX - Particular Conditions of Contract (PCC)  Section X - Contract Forms   * 1. The Invitation for Bids issued by the Employer, is not part of the Bidding document.   2. Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the Bidding Document, responses to requests for clarification, the minutes of the pre-Bid meeting (if any), or Addenda to the Bidding Document in accordance with **ITB 8**. In case of any contradiction, documents obtained directly from the Employer shall prevail.   3. The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document and to furnish with its Bid all information or documentation as is required by the Bidding Document. |
| 1. Clarification of Bidding document, Site Visit, Pre-Bid Meeting | * 1. The electronic bidding system **specified in the BDS** provides for online clarifications. A Bidder requiring any clarification on the Bidding document may notify the Employer online or raise its enquiries during the pre-Bid meeting if provided for in accordance with **ITB 7.4**. Clarifications requested through any other mode shall not be considered by the Employer. The Employer will respond to any request for clarification, provided that such request is received prior to the deadline for submission of Bids within a period specified **in the BDS.** Description of clarification sought and the response of the Employer shall be uploaded for information of all Bidders without identifying the source of request for clarification. Should the Employer deem it necessary to amend the Bidding document as a result of a request for clarification, it shall do so following the procedure under **ITB 8** and **ITB 22.2**   2. The Bidder is advised to visit and examine the Site of the Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Bid and entering into a contract. The costs of visiting the site shall be at the Bidder’s own expense.   3. The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.   4. If so **specified in the BDS**, the Bidder’s designated representative is invited to attend a pre-Bid meeting and/or a site visit. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.   5. The Bidder is requested to submit any questions only through the procurement portal, not later than one week before the meeting. Clarifications requested through any other mode shall not be considered by the Employer.   Minutes of the pre-Bid meeting, if applicable including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be uploaded online on e-procurement system. Any modification to the Bidding document that may become necessary as a result of the pre-Bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to **ITB 8** and not through the minutes of the pre-Bid meeting. It is the bidder’s responsibility to check on the e- procurement system, for any addendum/ amendment/ corrigendum to the bidding document.   * 1. Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder. |
| 1. Amendment of Bidding document | * 1. At any time prior to the deadline for submission of Bids, the Employer may amend the Bidding document by issuing addenda. The addendum will appear on the e-procurement system under “Latest Corrigendum” and email notification is also automatically sent to those bidders who have started working on the tender, or as **otherwise specified in BDS**.   2. Any addendum thus issued shall be part of the Bidding document and shall be deemed to have been communicated to all bidders.   3. To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer may, at its discretion, extend the deadline for the submission of Bids, pursuant to **ITB 22.2.** |

**C. Preparation of Bids**

|  |  |
| --- | --- |
| 1. Cost of Bidding | * 1. The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding process. |
| 1. Language of Bids | * 1. The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Employer shall be written in English. Supporting documents and printed literature that are part of the Bid may be in another language**,** provided they are accompanied by an accurate translation of the relevant passages in English, in which case, for purposes of interpretation of the Bid, such translation shall govern. |

|  |  |
| --- | --- |
| 1. Documents Comprising the Bid | * 1. The bid submitted by the Bidder shall comprise two Parts, namely the Technical Part and the Financial Part. These two Parts shall be submitted simultaneously.   2. The Technical Part shall contain the following:  1. **Letter of Bid– Technical Part**: prepared in accordance with **ITB 12**; 2. **Bid Security**: in accordance with **ITB 19.1**; 3. **Alternative bid – Technical Part**: if permissible, in accordance with **ITB 13**; 4. **Authorization**: written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with **ITB 20.2,** and in accordance with **ITB 20.3** in case of a JV**;** 5. **Bidder’s Eligibility:** documentary evidence in accordance with **ITB 17** establishing the Bidder’s eligibility to Bid; 6. **Qualifications**: documentary evidence in accordance with **ITB 17** establishing the Bidder’s qualifications to perform the contract if its Bid is accepted; 7. **Conformity:** documentary evidence in accordance with **ITB 16** that the Works and Operation Service offered by the Bidder conform to the Bidding document; 8. **Contractor Registration**: contractor registration certificate (as per IFB); 9. list of subcontractors, in accordance with **ITB 16.3**; and 10. any other document required **in the BDS**.   11.3 The Financial Part shall contain the following:  (a) Letter of Bid – Financial Part: prepared in accordance with **ITB 12** and **ITB 14**;  (b) Price Schedules: completed online in accordance with **ITB 12** and **ITB 14**;  (c) Alternative Bid - Financial Part: if permissible in accordance with **ITB 13**; and  (d) any other document required in the BDS.  11.4 The Technical Part shall not include any information related to the Bid price. Where material financial information related to the Bid price is contained in the Technical Part, the Bid shall be declared non-responsive.  11.5 In addition to the requirements under ITB 11.2, Bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed Agreement indicating at least the parts of the Works and Operation Services to be executed by the respective members;  11.6 Financial Disclosure: the Bidder shall furnish in the Letter of Bid – Financial Part information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid. |
| 1. Process of Bid Submission | * 1. The Bidder shall complete the Letter of Bid – Technical Part, Letter of Bid – Financial Part and Schedules using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under **ITB 20.2**. All blank spaces shall be filled in with the information requested.   2. Entire Bid including the Letter of Bid – Technical Part, Letter of Bid – Financial Part and filled-up Price Schedules shall be submitted online on e-procurement system specified in ITB 7.1. Details and process of online submission of the tender and relevant documents are given in the website mentioned above. Scanned copies of documents listed in ITB clauses 11 and 12.3 should also be uploaded on this website.   3. **Submission of Original Documents**: The bidders are required to separately submit (i) original demand drafts towards the cost of bid document and registration on e-procurement website (if not previously registered) (as per IFB); and (ii) original bid security in approved form; and (iii) original affidavit regarding correctness of information furnished with bid document, with the office **specified in the BDS**, before the bid submission deadline, either by registered/speed post/courier or by hand, failing which the bids will be declared non-responsive and will not be opened. Hard copy of rest of the bid or any other document are not to be submitted. |
| 1. Alternative Bids | * 1. Unless otherwise specified **in the BDS**, alternative Bids shall not be considered.   2. When alternative times for completion are explicitly invited, a statement to that effect will be included **in the BDS** and the method of evaluating different alternative times for completion will be described in Section III, Evaluation and Qualification Criteria.   3. Bidders shall note that if they are permitted to propose alternatives in addition to or in lieu of the requirements specified in the Bidding documents, they shall document that the proposed alternatives are to the benefit of the Employer, that they fulfill the principal objectives of the contract, and that they meet the basic performance and technical criteria specified in the Bidding documents. |
| 1. Bid Prices and Discounts | * 1. The prices and discounts quoted by the Bidder in the Letter of Bid – Financial Part and in the Priced Activity Schedules shall conform to the requirements specified below.   2. Unless otherwise **specified in the BDS,** Bidders shall quote for the entire Works and Operation Service on a “single responsibility” basis such that the total lump sum Bid price, subject to any adjustments in accordance with the Contract, covers all the Contractor’s obligations mentioned in or to be reasonably inferred from the Bidding document in respect of the design, manufacture, including procurement and subcontracting (if any), delivery, construction and completion of the Works and operation and maintenance of the Works as set out in the Conditions. This includes all requirements under the Contractor’s responsibilities for testing, pre-commissioning and commissioning (as applicable) of the Works and, where so required by the Bidding document, the acquisition of all permits, approvals and licenses, etc.; the operation, maintenance and training services and such other items and services as may be specified in the Bidding document, all in accordance with the requirements of the General Conditions of Contract.   Bidders shall give a breakdown of the prices in the manner and detail called for in the Priced Activity Schedules included in Section IV, Bidding Forms with further breakdown prices for sub activities, as appropriate. The total of the prices of the items in the Priced Activity Schedule is the Bidder’s offer to complete the works on a “single responsibility” basis. The cost of any items that the Bidder may have omitted is deemed to be included in the price of other items in the Activity and Sub-activity Schedules and will not be paid for separately by the Employer. Corrections if any in the bid can be carried out by editing the information before electronic submission on e-procurement portal.   * 1. The prices shall be either fixed or adjustable as specified **in the BDS.**   2. In the case of **Fixed Price**, prices quoted by the Bidder shall be fixed during the Bidder’s performance of the contract and not subject to variation on any account. A Bid submitted with an adjustable price quotation will be treated as non-responsive and rejected.   3. In the case of **Adjustable Price**, prices quoted by the Bidder shall be subject to adjustment during performance of the contract to reflect changes in the cost elements such as labor, material, transport and Contractor’s equipment in accordance with the procedures specified in the corresponding Appendix to the Contract Agreement. A Bid submitted with a fixed price quotation will not be rejected, but the price adjustment will be treated as zero. Bidders are required to indicate the source of labor and material indices in the corresponding Form in Section IV, Bidding Forms.   4. If so specified in **ITB 1.1**, Bids are being invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer any price reduction (discount) for the award of more than one Contract shall specify in their Letter of Bid – Financial Part, the price reductions applicable to each package, or alternatively, to individual Contracts within the package, and the manner in which the price reductions will apply, provided the bids for all lots/contracts are submitted and opened at the same time.   5. Bidders wishing to offer any discounts shall specify in their Letter of Bid - Financial Part, the offered discounts and the manner in which price discounts will apply.   6. All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Bids, shall be included in the rates and prices and the total Bid price submitted by the Bidder.   7. Bidders may like to ascertain availability of tax/duty exemption benefits available in India to the contracts financed under World Bank loan/credits. They are solely responsible for obtaining such benefits which they have considered in their bid and in case of failure to receive such benefits for reasons whatsoever, the Employer will not compensate the bidder (contractor). The bidder shall furnish along with his bid a declaration to this effect in the Declaration Format provided in Section IV of the bidding document.   Where the bidder has quoted taking into account such benefits, it must give all information required for issue of certificates in terms of the Government of India’s relevant Notification as per form stipulated in section IV. In case the bidder has not provided the required information or has indicated to be furnished later on in the Declaration Format, the same shall be construed that the goods/construction equipment for which certificate is required is Nil.  To the extent the Employer determines the quantity indicated therein are reasonable keeping in view the quantities in the Activity Schedules, construction program and methodology, the certificates will be issued within 60 days of signing of the contract and no subsequent changes will be permitted. In case of materials pertaining to Variation items and quantities, the certificate shall be issued only on request from the contractor when in need and duly certified by the Employer’s Representative.  No certificate will be issued for items where no quantity/capacity of equipment is indicated in the statement.  If the bidder has considered the tax/duty exemption for materials/construction equipment to be bought for the work, the bidder shall confirm and certify that the Employer will not be required to undertake any responsibilities of the Government of India Scheme or the said exemptions being available during the contract execution, except issuing the required certificate. The bids which do not conform to the above provisions or any condition by the bidder which makes the bid subject to availability of tax/duty exemption for materials/construction equipment or compensation on withdrawal of any variations to the said exemptions will be treated as non-responsive and rejected.  Any delay in procurement of the construction equipment/ machinery/goods as a result of the above shall not be a cause for granting any extension of time |
| 1. Currencies of Bid and Payment | * 1. The currency of the Bid and the currency of payments shall both be Indian Rupees. |
| 1. Documents Establishing Conformity of the Works | * 1. Pursuant to **ITB 11.2 (g),** the Bidder shall furnish, as part of the Technical part of its Bid (i) a technical proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, Bidding Forms, in sufficient detail to demonstrate the adequacy of the Bidders’ proposal to meet the Works and Operation Service requirements, and the completion time; and (ii) documents establishing the conformity to the Bidding documents of the Works that the Bidder proposes to design, build, and operate under the Contract.   2. The documentary evidence of the conformity of the Works and Operation Service with the Bidding documents may be in the form of literature, drawings and data, and shall include:   (a) detailed description of the essential technical and functional/ performance characteristics of the proposed Works, in response to the Employer’s Requirements.  (b) adequate evidence demonstrating the substantial responsiveness of the Works and the Operation Service to the Employer’s Requirements. Bidders shall note that standards for workmanship, materials and equipment designated by the Employer in the Bidding document are intended to be descriptive (establishing standards of quality and performance) only and not restrictive. The Bidder may substitute alternative standards, in its technical bid, provided that it demonstrates to the Employer’s satisfaction that the substitutions are substantially equivalent or superior to the standards designated in the Performance/ Functional requirements specified by the Employer.   * 1. The Bidder shall be responsible for ensuring that any proposed subcontractor complies with the requirements of **ITB 4**, and that any Works to be provided by the subcontractor comply with the requirements of **ITB 5** and **ITB 16.1.** TheBidder shall submit its Code of Conduct that meets the requirements setout in Section VII - Employer’s Requirements. The Bidder shall also submit an undertaking from each proposed subcontractor to confirm that they have read, understand and will comply with the ESHS obligations and code of conduct. |
| 1. Documents Establishing the Eligibility and Qualification of the Bidder | * 1. To establish Bidder’s eligibility in accordance with ITB 4, Bidders shall complete the Letter of Bid – Technical Part, included in Section IV, Bidding Forms.   2. In accordance with Section III, Evaluation and Qualification Criteria, to establish its qualifications to perform the Contract, the Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Bidding Forms. |
| 1. Period of Validity of Bids | * 1. Bids shall remain valid, at a minimum, for 90 days or the period specified **in the BDS** after the Bid submission deadline date prescribed by the Employer, pursuant to **ITB 22**. A Bid valid for a shorter period shall be rejected by the Employer as non-responsive.   2. In exceptional circumstances, prior to expiry of the Bid validity period, the Employer may request Bidders to extend the period of validity of their bids. The request and the responses to the request shall be made in writing. If a bid security is requested in accordance with ITB 19, it shall also be extended for forty-five (45) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in **ITB 18.3.**   3. If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial bid validity, the Contract price shall be determined as follows:  1. In the case of fixed price contracts, the Contract price shall be the bid price adjusted by the factor **specified in the** **BDS**. 2. In the case of adjustable price contracts, no adjustment shall be made. 3. In any case, bid evaluation shall be based on the bid price without taking into consideration the applicable correction from those indicated above. |
| 1. Bid Security | * 1. The Bidder shall furnish as part of the Technical Part of its Bid, a Bid Security as specified **in the BDS**, in original form, and for the amount specified **in the BDS.**   2. If a Bid Security is specified pursuant to ITB 19.1, the Bid Security shall be a demand guarantee in any of the following forms at the Bidder’s option:  1. an unconditional bank guarantee issued by a Nationalized or Scheduled bank located in India; 2. an irrevocable letter of credit issued by a Nationalized or Scheduled bank located in India; 3. a cashier’s or certified check or demand draft issued by a Nationalized or Scheduled bank located in India; 4. another security **specified in the BDS**,   In the case of a bank guarantee, the Bid Security shall be submitted using the Bid Security Form included in Section IV, Bidding Forms. The form must include the complete name of the Bidder. The Bid Security shall be valid for forty-five (45) days beyond the original validity period of the Bid, or beyond any period of extension if requested under **ITB 18.2.**   * 1. If a Bid Security is specified pursuant to **ITB 19.1**, any Bid not accompanied by a substantially responsive Bid Security shall be rejected by the Employer as non-responsive.   2. If a Bid Security is specified pursuant to **ITB 19.1**, the Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder’s signing the Contract and furnishing the Performance Security and if required in the BDS, the Environmental, Social, Health and Safety (ESHS) Performance Security pursuant to **ITB 43**.   3. The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required Performance Security and if required in the BDS, the Environmental, Social, Health and Safety (ESHS) Performance Security pursuant to **ITB 43**.   4. The Bid Security may be forfeited:  1. if a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder on the Letter of Bid - Technical Part and repeated in Letter of Bid - Financial Part, or any extension thereto provided by the Bidder; or 2. if the Bidder does not accept the correction of its Bid Price pursuant to **ITB 36** or 3. if the successful Bidder fails to**:**     1. sign the Contract in accordance with **ITB 42**; or    2. furnish a Performance Security and if required in the BDS, the Environmental, Social, Health and Safety (ESHS) Performance Security in accordance with **ITB 43**.    3. The Bid Security of a JV shall be in the name of the JV that submits the Bid. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, the Bid Security shall be in the names of all future members as named in the letter of intent mentioned in **ITB 4.1 and ITB 11.5.** |
| 1. Format and Signing of Bid | * 1. The Bidder shall prepare the Bid as per details given in ITB 21.   2. The Bid shall be signed by a person or persons duly authorized to sign on behalf of the Bidder. The authorization must be in writing **as specified in the BDS** and shall be uploaded along with the Bid**.**   3. In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives. Documents establishing authority to sign the bid on behalf of the JV shall be uploaded along with the bid.   4. Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person or persons signing the Bid. |

D. Online Submission of Bids

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| 1. Preparation of Bids | * 1. Bids, both Technical and Financial Parts, shall be submitted online on the e-procurement system specified in BDS 7.1. Detailed guidelines for viewing bids and submission of online bids are given on the website. The Invitation for Bids under this Project is published on this website. Any citizen or prospective bidder can logon to this website and view the Invitation for Bids and can view the details of works for which bids are invited. A prospective bidder can submit its bid online; however, the bidder is required to have enrolment/registration in the website, and should have valid Digital Signature Certificate (DSC) in the form of smart card/e-token obtained from any certifying agency authorised by the Government of India (for class of DSC **specified in BDS**). The bidder should register in the website using the relevant option available. Then the Digital Signature registration has to be done with the e-token, after logging into the website. The bidder can then login the website through the secured login by entering the password of the e-token & the user id/ password chosen during registration. After getting the bid schedules, the Bidder should go through them carefully and submit the specified documents, along with the bid, otherwise the bid will be rejected.   2. The completed bid comprising of documents indicated in ITB 11 and ITB 12, should be uploaded on the e-procurement portal along with scanned copies of requisite certificates as are mentioned in different sections in the bidding document and scanned copy of the bid security.   3. All the documents are required to be signed digitally by the bidder. After electronic on line bid submission, the system generates a unique bid identification number which is time stamped as per server time. This shall be treated as acknowledgement of bid submission.   4. Physical, E-mail, Telex, Cable or Facsimile bids will be rejected as non-responsive. |
| 1. Deadline for Submission of Bids | * 1. Bids must be uploaded online no later than the date and time specified, **in the BDS**.   2. The Employer may, at its discretion, extend the deadline for submission of Bids by amending the Bidding documents in accordance with **ITB 8**, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended. |
| 1. Late Bids | * 1. The electronic bidding system would not allow any late submission of bids after due date & time as per server time. |
| 1. Withdrawal, Substitution, and Modification of Bids | * 1. Bidders may modify their bids by using the appropriate option for bid modification on e-procurement portal, before the deadline for submission of bids. For this the bidder need not make any additional payment towards the cost of bid document. For bid modification and consequential re-submission, the bidder is not required to withdraw his bid submitted earlier. The last modified bid submitted by the bidder within the bid submission time shall be considered as the bid. For this purpose, modification/withdrawal by other means will not be accepted. In online system of bid submission, the modification and consequential re-submission of bids is allowed any number of times. A bidder may withdraw his bid by using the appropriate option for bid withdrawal, before the deadline for submission of bids, however, if the bid is withdrawn, re-submission of the bid is not allowed (or allowed **if specified in BDS).**   2. Bids requested to be withdrawn in accordance with **ITB 24.1** shall not be opened.   3. No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bids and the expiration of the period of Bid validity specified by the Bidder on the Letter of Bid or any extension thereof. This will result in the forfeiture of the Bid Security pursuant to **ITB 19.6**. |

E. Public Opening of Technical Parts of Bids

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| 1. Public Opening of Technical Parts of Bids | * 1. The Employer shall conduct the Bid opening of the Technical Parts of the Bids in public, in the presence of Bidders` designated representatives and anyone who chooses to attend, and at the address, date and time specified **in the BDS,** and this could also be viewed by the bidders online. The Financial Parts of the bids shall remain unopened in the e-procurement system, until the subsequent public opening, following the evaluation of the Technical Parts of the Bids. In all cases, original documents submitted as specified in ITB 12.3 shall be first scrutinized, and Bids that do not comply with the provisions of ITB 12.3 will be declared non-responsive and will not be opened. Thereafter bidder’s names, and such other details as the Employer may consider appropriate will be notified, online by the Employer as Technical Part bid opening summary.   In the event of the specified date of bid opening being declared a holiday for the Employer, the bids will be opened at the appointed time and location on the next working day.   * 1. The electronic summary of the bid opening will be generated and uploaded online. The Employer will also prepare minutes of the Bid opening, including the information disclosed and upload the same for viewing online. Only Technical Parts of Bids that are opened at Bid opening shall be considered further for evaluation. |

F. Evaluation of Bids – General Provisions

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| 1. Confidentiality | | * 1. Information relating to the evaluation of Bids and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with the Bidding process until information on Contract award is transmitted in accordance with **ITB 41.**   2. Any effort by a Bidder to influence the Employer in the evaluation of the Bids or Contract award decisions may result in the rejection of its Bid.   3. Notwithstanding **ITB 26.2**, from the time of Bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the Bidding process, it should do so in writing. |
| 1. Clarification of Bids | | * 1. To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its bid, given a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer’s request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids, in accordance with ITB 36.   2. If a Bidder does not provide clarifications of its bid by the date and time set in the Employer’s request for clarification, its bid may be rejected. |
| 1. Deviations, Reservations, and Omissions | | * 1. During the evaluation of bids, the following definitions apply:  1. “Deviation” is a departure from the requirements specified in the Bidding Document; 2. “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and 3. “Omission” is the failure to submit part or all of the information or documentation required in the Bidding Document. |
| 1. Nonmaterial Nonconformities | | * 1. Provided that a Bid is substantially responsive, the Employer may waive any nonconformities in the Bid.   2. Provided that a Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.   3. Provided that a Bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or nonconforming item or component in the manner specified **in the BDS**. |
| **G. Evaluation of Technical Parts of Bids** | | |
| 1. Evaluation of Technical Parts | * 1. In evaluating the Technical Parts of each Bid, the Employer shall use the criteria and methodologies listed in this ITB and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. | |
| 1. Determination of Responsiveness | * 1. The Employer’s determination of a Bid’s responsiveness is to be based on the contents of the Bid itself, as defined in ITB 11 and 12.   2. A substantially responsive Bid is one that meets the requirements of the bidding document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:   (a) if accepted, would: (i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or(ii) limit in any substantial way, inconsistent with the bidding document, the Employer’s rights or the Bidder’s obligations under the proposed Contract; or (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.   * 1. The Employer shall examine the technical aspects of the Bid, submitted in accordance with **ITB 16**, in particular to confirm that all requirements of Section VII (Employer’s Requirements) have been met without any material deviation, reservations or omissions. In order to reach such a determination, the Employer will examine the information supplied by the Bidders, taking into account the following factors:      1. overall completeness and compliance with the Employer Requirements; the technical merits of any alternatives offered, conformity of the Works with specified functional/ performance requirements in the bidding document;      2. quality of the technical bid including, as appropriate, the design methodology, method statement, construction management strategy, operation management proposal, organization, resources allocation and risk assessment;      3. suitability of the proposed Works in relation to the environmental and climatic conditions prevailing at the site;      4. compliance with the time schedule called for by the Implementation Schedule and any alternative time schedules offered by Bidders, as evidenced by a milestone schedule provided in the Bid;      5. any proposed deviations in the Bid to the contractual provisions stipulated in the bidding documents;      6. suitability of the Bidder’s Code of Conduct and its implementation proposal to deliver the ESHS policy (statement) set out in the Employer’s Requirements; and      7. any other relevant technical factors that the Employer deems necessary or prudent to take into consideration as specified **in the BDS**.   2. If a Bid is not substantially responsive to the requirements of the bidding document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission | |
| 1. Qualification of the Bidder | * 1. The Employer shall determine to its satisfaction whether the eligible Bidders that have submitted substantially responsive Bids - Technical Parts meet the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.   2. The determination shall be based upon an examination of the documentary evidence of the Bidder’s qualifications submitted by the Bidder, pursuant to ITB 17. The determination shall not take into consideration the qualifications of other firms such as the Bidder’s subsidiaries, parent entities, affiliates, subcontractors (other than Specialized Subcontractors if permitted in the bidding document), or any other firm different from the Bidder.   3. If a Bidder does not meet the qualifying criteria specified in Section III, Evaluation and Qualification Criteria, its Bid shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.   4. Only Bids that are both substantially responsive to the bidding document, and meet all Qualification Criteria shall have the Financial Parts of their Bids opened at the second public opening. | |
| 1. Subcontrac­tors | * 1. Unless otherwise stated **in the BDS,** the Employer does not intend to execute any specific elements of the Works Design and Build by sub-contractors selected in advance by the Employer (so-called “Nominated Subcontractors”)**.**   2. The Bidder shall not propose to subcontract the whole of the contract. The Bidder may propose subcontractors for certain specialized parts of the contract. Bidders planning to use such specialized subcontractors shall specify, in the Letter of Bid, the parts of the contract proposed to be subcontracted along with details of the proposed subcontractors including their qualification and experience.   3. Subcontractors proposed by the Bidder shall be fully qualified for their parts of the contract. The subcontractor’s qualifications shall not be used by the Bidder to qualify for the contract unless the Bidder designates them as Specialized Subcontractors, in which case, the qualifications of the Specialized Subcontractor proposed by the Bidder may be added to the qualifications of the Bidder for the purpose of the evaluation, if specified **in BDS.**   4. Bidders may propose subcontracting up to the percentage of total value of contracts or the volume of works as **specified in the** **BDS.** Subcontractors proposed by the Bidder shall be fully qualified for their parts of the Works. | |
| **H. Public Opening of Financial Parts of Bids** | | |
| 1. Public Opening of Financial Parts | * 1. Following the completion of the evaluation of the Technical Parts of the Bids, and the Bank has issued its no objection (if applicable), the Employer shall notify in writing those Bidders whose Bids were considered non-responsive to the bidding document or failed to meet the Qualification Criteria, advising them of the following information:   (a) the grounds on which their Technical Part of Bid failed to meet the requirements of the bidding document;  (b) their Financial Part of Bid shall not be opened; and  (c) notify them of the date, time, and place for public opening of Financial Parts of the Bids.   * 1. The Employer shall, simultaneously, notify in writing those Bidders whose Technical Part have been evaluated as substantially responsive to the bidding document and met all Qualifying Criteria, advising them of the following information:   (a) their Bid has been evaluated as substantially responsive to the bidding document and met the Qualification Criteria;  (b) their Financial Part of Bid will be opened at the public opening of the Financial Parts; and  (c) notify them of the date, time, and place of the second public opening of the Financial Parts of the Bids, as specified **in the BDS**.   * 1. The opening date should allow Bidders sufficient time to make arrangements for attending the opening. The Financial Parts of the Bids shall be opened publicly in the presence of Bidders’ designated representatives and anyone who chooses to attend, and this could also be viewed by the bidders online. The bidder’s names, the Bid prices, the total amount of each bid, per lot (contract) if applicable, including any discounts, and such other details as the Employer may consider appropriate, will be notified online by the Employer at the time of bid opening.   In the event of the specified date of bid opening being declared a holiday for the Employer, the bids will be opened at the appointed time and location on the next working day.   * 1. The electronic summary of the bid opening will be generated and uploaded online. The Employer will also prepare minutes of the Bid opening, including the information disclosed and upload the same for viewing online. Only Financial Parts of Bids and discounts that are opened at Bid opening shall be considered further for evaluation. | |
| **I. Evaluation of Financial Parts of Bids** | | |
| 1. Evaluation of Financial Parts | * 1. The Employershall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.   2. To evaluate the Financial Parts of the Bids, the Employer shall consider the following:  1. the Bid price, excluding provisional Sums and the provision, if any, for contingencies in the Priced Activity Schedules, but including Daywork[[3]](#footnote-3) items, where priced competitively; 2. price adjustment for correction of arithmetic errors in accordance with ITB 36.1; 3. price adjustment due to discounts offered in accordance with ITB 14.7; 4. price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 29.3;and 5. the additional evaluation factors indicated **in the BDS** and detailed in Section III, Evaluation and Qualification Criteria.    1. If price adjustment is allowed in accordance with **ITB 14.5**, the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in Bid evaluation.    2. If this bidding document allows Bidders to quote separate prices for different lots (contracts), and to award multiple contracts to a single Bidder, the methodology to determine the lowest evaluated price of the contract combinations, including any discounts offered in the Letter of Bid – Financial Part, is specified in Section III, Evaluation and Qualification Criteria. | |
| 1. Arithmetic Correction | * 1. The Employer shall correct arithmetical errors on the following basis:  1. **Priced Sub-activity Schedule:** where there are errors between the total of the amounts given under the column for Sub-activity Price and the amount given under the total for the Sub-activity, the former shall prevail and the latter will be corrected accordingly; 2. **Priced Activity Schedule:** where there are errors between the total of the amounts given under the column for the Activity Price and the amount given under the total price of Activities, the former shall prevail and the latter will be corrected accordingly; 3. where there are errors between the total of the amounts in the Priced Sub-activity Schedule and the corresponding amount in the Priced Activity Schedule, the former shall prevail and the latter will be corrected accordingly; 4. **Grand Summary:** where there are errors between the total price of Activities in the Priced Activity Schedule and the amount given in Grand Summary, the former shall prevail and the latter will be corrected accordingly; and 5. if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) to (d) above.    1. Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 36.1, shall result in the rejection of the Bid. | |
| 1. Comparison of Financial Parts | * 1. The Employer shall compare the evaluated costs of all substantially responsive Bids established in accordance with ITB 35 to determine the Bid that has the lowest evaluated cost. | |
| 1. Unbalanced or Front Loaded Bids | * 1. If the bid, which results in the lowest evaluated cost is, in the Employer’s opinion, seriously unbalanced or, front loaded, the Employer may require the Bidder to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the Bid prices with the scope of the Works, proposed methodology, schedule and any other requirements of the Bidding document. After evaluation of the price analyses, taking into consideration the schedule of payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract. | |
| 1. Employer’s Right to Accept Any Bid, and to Reject Any or All Bids | | * 1. The Employer reserves the right to accept or reject any Bid, and to annul the Bidding process and reject all Bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all documents submitted and specifically, Bid securities shall be promptly returned to the Bidders. |

J. Award of Contract

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| 1. Award Criteria | * 1. Subject to **ITB 39***,* the Employer shall award the Contract to the Bidder whose bid has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily. |
| 1. Notification of Award | * 1. Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, via the Letter of Acceptance included in the Contract Forms, that its Bid has been accepted.   2. At the same time, the Employer shall also notify all other Bidders (that have not already been notified that they have been unsuccessful) of the results of the bidding, and shall publish the Contract Award Notice which shall contain, at a minimum, the following information:  1. name and address of the Employer; 2. name and reference number of the contract being awarded, and the selection method used; 3. names of all Bidders that submitted Bids, and their Bid prices as read out at Bid opening, and as evaluated; 4. name of Bidders whose Bids were rejected and the reasons for their rejection; and 5. the name of the successful Bidder, the final total contract price, the contract duration and a summary of its scope.    1. The Contract Award Notice shall be published on a National website (GoI website <http://tenders.gov.in>or GoI Central Public Procurement Portal <https://eprocure.gov.in/cppp/>) or on the Employer’s website with free access if available, or in the official gazette.    2. Until a formal contract is prepared and executed, the Notification of Award shall constitute a binding Contract.    3. The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 41.2, requests in writing the grounds on which its bid was not selected. |
| 1. Signing of Contract | * 1. Promptly upon notification, the Employer shall prepare the Contract Agreement, and keep it ready in the office of the Employer for the signature of the Employer and the successful Bidder, within 21 days following the date of Letter of Acceptance. The Contract Agreement shall incorporate all agreements between the Employer and the successful Bidder.   2. Within twenty-one (21) days of receipt of the Letter of Acceptance, the successful Bidder shall sign, the Agreement and furnish the performance security and if required in the BDS, the Environmental, Social, Health and Safety (ESHS) Performance Security in accordance with ITB Clause 43. If the successful bidder is a JV, it shall also furnish the JV agreement duly signed by all the members, if it had submitted only a letter of intent to execute the JV agreement along with the bid. |
| 1. Performance Security | * 1. Within twenty-one (21) days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the performance security and, if **specified in the BDS**, the ESHS Performance Security, in accordance with the General Conditions of Contract, subject to **ITB 38,** using for that purpose the Performance Security and ESHS Performance Security Forms included in Section X, Contract Forms.   2. Failure of the successful Bidder to submit the above-mentioned Performance Security and if required in the BDS, the Environmental, Social, Health and Safety (ESHS) Performance Security, or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid security. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.   3. Upon the successful Bidder’s signing the Agreement and furnishing of the Performance Security and if required in the BDS, the Environmental, Social, Health and Safety (ESHS) Performance Security, pursuant to ITB Clause 43.1, the Employer shall discharge the Bid Securities of the bidders pursuant to ITB Clause 19.4 and 19.5.   4. If permitted in the BDS and the Bidder has requested to form an SPV, the Bidder shall form the SPV and provide within twenty-one (21) days of receipt of the notification of award from the Employer a certified copy of its constituent documents and evidence of its shareholding structure including the articles of association and shareholder agreement (if any). |
| 1. Adjudicator | * 1. The Employer proposes the person **named in the BDS** to be appointed as Adjudicator under the Contract, at the daily fee **specified in the BDS**, plus reimbursable expenses (actual boarding, lodging, travel and other incidental expenses). If the Bidder disagrees with this proposal, the Bidder should so state in his Bid. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority designated in the Particular Conditions of Contract (PCC) pursuant to Clause 20.3 of the General Conditions of Contract (GCC), to appoint the Adjudicator. |

Section II –Bid Data Sheet (BDS)

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

*[Instructions for completing the Bid Data Sheet are provided, as needed, in the notes in italics mentioned for the relevant ITB]*

|  |  |
| --- | --- |
| **ITB Reference** | **A. General** |
| **ITB 1.1** | The reference number of the Invitation for Bids is: ***[insert reference number of the Invitation for Bids]***  The Employer is: ***[insert name of the Employer]***  The name of the IFB is: ***[insert name of the IFB]***  The number and identification of lots (contracts) comprising this IFB is: **[*insert number and identification of lots (contracts), if applicable*]** |
| **ITB 2.1** | The Borrower is: Government of India. The sub-Borrower is ……………… The Employer is ………………. ***[insert name of the Sub-Borrower and statement of relationship with the Employer, if different from the Borrower. This insertion should correspond to the information provided in the IFB]*** |
| **ITB 2.1** | Loan or Financing Agreement amount: ***[insert US$ equivalent]***  The name of the Project is: ***[insert name of the project]*** |
| **ITB 4.1** | (*State here whether Joint Ventures are acceptable or not*) Bids from Joint ventures are/are not acceptable.  *[Where joint ventures are not permitted delete the following entries]*  Where Joint Ventures are permitted:  (a) Maximum number of members in the JV shall be: ***[insert a number, usually around 3]****\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  (b) Place where the agreement to form JV to be registered is……………  *[****Fill in the name of the city where the contract agreement is to be signed****]*  (c) A statement to the effect that all members of the joint venture shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms, shall be included in the authorization nominating a Representative or member in charge, as well as in the Bid and in the Agreement [*in case of a successful bid*].  (d) The joint venture agreement should define precisely the division of assignments to each member of JV. All members of JV should have active participation in the execution during the currency of the contract. This should not be varied/ modified subsequently without prior approval of the Employer. |
| **ITB 4.1** | The Bidder is permitted to form a Special Purpose Vehicle (SPV) ***[yes/ no]. If Yes:***  (i) SPV shall be established in India.  (ii) Maximum number of members in the SPV shall be the same as the maximum number of members in the JV.  (iii) If the Contractor is an SPV, original biddershall be bound to maintain its share capital at a minimum level of *[insert percentage]* of the total paid up share capital of the SPV and not less than …. % of the project cost. The share capital may be increased without the Employer’s prior approval but a written notice of information shall be sent to the Employer. Any reduction of the bidder’s share in SPV’s share capital shall be subject to the prior written consent of the Employer.  *[Note: may consider specifying in the above e.g. (i) 51% or above and the Contractor holding paid up share capital of not less than 20% of the project cost. Consistency to be maintained with the conditions stipulated in PCC and GCC 1.15].* |
| ITB 4.5 | A list of debarred firms and individuals is available on the Bank’s external website: <http://www.worldbank.org/debarr.> |
| **B. Contents of Bidding document** | |
| **ITB 7.1** | **Electronic –Procurement System**  The Employer shall use the following electronic-procurement system to manage this Bidding process:  ***[insert name of the e-system and url address or link]***  Requests for clarification should be received by the Employer no later than: 14 days prior to the deadline for submission of bids ***[modify the no. of days as necessary].*** |
| **ITB 7.4** | A Pre-Bid meeting \_\_\_\_\_\_***[insert “shall” or “shall not”]*** take place at the following date, time and place:  Date:  Time:  Place:  A site visit conducted by the Employer***\_\_\_\_\_\_\_\_\_\_\_ [insert “shall be” or “shall not be”]*** organized.  *[****The pre-bid meeting should be held no later than 2 weeks before the deadline for submission].*** |
| **ITB 8.1** | The addendum will appear on the e-procurement system under ……….. and email notification is also automatically sent to those bidders who have started working on this tender.  *[Note – insert/ modify the above if any change is required in the provisions of ITB 8.1, otherwise delete this BDS entry]* |
| **C. Preparation of Bids** | |
| **ITB 11.2 (j)** | The Bidder shall submit with its Bid the following additional documents:  ***[list any additional document not already listed in ITB 11.2 that must be submitted with the Bid – Technical Part. The list of additional documents should include the following:]***  (i) Contractor Registration certificate as per IFB, if applicable. |
| **ITB 11.3 (d)** | The Bidder shall submit the following additional documents in its Bid: ***[list any additional document not already listed in ITB 11.3 that must be submitted with the Bid – Financial Part]*** |
| **ITB 12** | **Note for Bidders:** Bidders have to submit the bids on the e-procurement portal along with the relevant required documents. For this purpose, the bidders shall fill up online, the forms that are available for online filling on the e-portal. The rest of the forms shall be download by the bidders and filled up. The filled up pages shall then be scanned and uploaded on the e-procurement portal along with the scanned copies of the supporting documents. |
| **ITB 12.3** | For submission of original documents, the Employer’s address is:  Attention: ………*[****insert full name of person, if applicable]***  Street Address: …………[***insert street address and number****]*  Floor/ Room number: ……. [***insert floor and room number, if applicable***  City: ………[***insert name of city or town***]  PIN/Postal Code: ………[***insert postal (PIN) code, if applicable***]  Country: INDIA |
| **ITB 13.1** | Alternative Bids ***shall not be*** permitted. |
| **ITB 13.2** | Alternative times for completion ***[insert “shall “or “shall not”]…….*** bepermitted. |
| **ITB 13.3** | Not Applicable |
| **ITB 14.2** | Bidders shall quote for the entire Works and Operation Service on a “single responsibility” basis. |
| **ITB 14.3** | The prices quoted by the Bidder ***[insert “shall “or “shall not”] \_\_\_\_\_\_\_\_\_\_\_*** be subject to adjustment during the performance of the Contract. [*Note: Price adjustment is mandatory for contracts with completion time exceeding 18 (eighteen) months*] |
| **ITB 18.1** | The Bid validity period shall be 90 days.  ***[insert a bid validity period of other than 90 days, if considered necessary****.* ***It should normally be between 90 to 120 days]*** |
| **ITB 18.3 (a)** | The Bid price shall be adjusted by the following factor: \_\_\_\_\_\_\_\_ % per annum.  *[Factor to be fixed based on average inflation in India during the past one year.]* |
| **ITB 19.1** | The Bidder shall furnish a Bid Security in the amount of …………..  ***[insert amount in Indian Rupees.*** *It should not exceed 2% of the estimated value of works****][In case of lots, please insert amount of the Bid Security for each lot]***  Note: Bid Security is required for each lot as per amounts indicated against each lot. Bidders have the option of submitting one Bid Security for all lots (for the combined total amount of all lots) for which Bids have been submitted, However if the amount of Bid Security is less than the total required amount, the Employer will determine (based on lowest cost combination of bids) for which lot or lots the Bid Security amount shall be applied. |
| **ITB 19.2 (d)** | Other types of acceptable securities are:  Fixed Deposit/Time Deposit certificate issued by a Nationalized or Scheduled Bank located in India for equivalent or higher values are acceptable provided it is pledged in favour of ……………….. (implementing agency) and such pledging has been noted and suitably endorsed by the bank issuing the certificate.  ***[Insert names of other acceptable securities as above. Insert “None” if no other forms of Bid securities besides those listed in ITB 19.2 (a) through (c) are acceptable*.]** |
| **ITB 20.2** | The written confirmation of authorization to sign on behalf of the Bidder shall consist of**:**  *[insert “(a) Legally valid Power of Attorney is required to demonstrate the authority of the signatory to sign the Bid; and*  *(b) In the case of Bids submitted by an existing or intended JV, if permitted as per ITB 4.1, the authorization shall be evidenced by a Power of Attorney signed by legally authorized signatories of all the members.”]* |
| **D. Online Submission of Bids** | |
| **ITB 21.1** | Class of DSC required is: ……… |
| **ITB 22.1** | ***[The time allowed for the preparation and submission of Bids shall be determined with due consideration to the particular circumstances of the project and the magnitude and complexity of the procurement. The period allowed shall be at least thirty (30) Days, unless otherwise agreed with the Bank]***  The deadline for uploading the Bids is:  Date:***[insert day, month, and year, e.g. 15 June, 2016]***  Time:[***insert time, and identify if a.m. or p.m., e.g. 10:30 a.m.****]*  ***[The date and time should be the same as those provided in the Invitation for Bids, unless subsequently amended pursuant to ITB 22.2*]** |
| **ITB 24.1** | Re-submission of the bid is ­­\_\_\_\_\_\_\_\_\_\_*\_\_\_\_\_\_\_\_\_\_\_* ***[Insert “allowed” or “not allowed”]***, if withdrawn. |
| **E. Public Opening of Technical Parts of Bids** | |
| **ITB 25.1** | The online Bid opening of Technical Parts of Bids shall take place at:  Street Address: ***[insert street address and number]***  Floor/Room number: ***[insert floor and room number, if applicable]***  City:***[insert name of city or town]***    Country: India    Date: ***[insert day, month, and year, e.g. 17 June, 2016]***    Time:  ***[Insert time, and identify if a.m. or p.m. e.g. 10:30 a.m.]***  ***[Date should be the same as the deadline for submission of Bids; and the Time should also be the same as the deadline for submission of Bids or promptly thereafter]*** |
| **F. Evaluation of Bids – General Provisions** | |
| **ITB 29.3** | The adjustment shall be based on the highest price of the item or component as quoted in other substantially responsive Bids, subject to a maximum of the estimated price of the item. If the price of the item or component cannot be derived from the price of other substantially responsive Bids, the Employer shall use its best estimate. |
| **G. Evaluation of Bids - Technical Parts** | |
| **ITB 31.3 (g)** | While examining the technical responsiveness of the bids, the Employer shall take into account the following additional factors:  ***[insert any additional factors not already listed in ITB 31.3 (a) to (f)]*** |
| **ITB 33.1** | At this time the Employer *[insert “intends” or “does not intend”]* to execute certain specific parts of the contract by sub-contractors selected in advance.  *[If the above states “intends” list the specific parts of the contract and the respective sub-contractors]* |
| **ITB 33.3** | The relevant qualifications of the proposed Specialized Subcontractors *[‘will be’/ ‘will not be’]* added to the qualifications of the Bidder for the purpose of evaluation as indicated in Section III - Evaluation and Qualification Criteria. [*For these specific parts of the Works that may require Specialized Subcontractors, the relevant qualifications of the proposed Specialized Subcontractors will be added to the qualifications of the Bidder for the purpose of evaluation*] |
| **ITB 33.4** | (a) Contractor’s proposed subcontracting: Maximum percentage of subcontracting permitted is: *\_\_\_\_\_\_\_% of the total contract amount or \_\_\_\_\_\_\_% of the volume of work\_\_\_\_\_\_\_\_\_\_\_\_\_.*  (b) Bidders planning to subcontract more than 10% of total volume of work shall specify, in the Letter of Bid, the activity(ies) or parts of the works to be subcontracted along with complete details of the subcontractors and their qualification and experience. The qualification and experience of the sub-contractors must meet the minimum criteria for the relevant work to be sub-contracted failing which such subcontractors will not be permitted to participate.  (c) Subcontractors’ qualification and experience will not be considered for evaluation of the Bidder. The Bidder on its own (without taking into account the qualification and experience of the sub-contractor) should meet the qualification criteria.  *[Note-: Work should not be split into small parts and sub-contracted].* |
| **H. Public Opening of Financial Parts of Bids** | |
| **ITB 34.2 (c)** | Following the completion of the evaluation of the Technical Parts of the Bids, the Employer will notify all Bidders of the location, date and time of the public opening of Financial Parts.  The online bid opening of Financial Parts of Bids shall take place on:  Place:  Date:  Time:  In addition to the above the Employer shall publish a notice of the public opening of the Financial Parts of the Bid on its website …………... *[insert address of the website]* |
| **I. Evaluation of Financial Parts of Bids** | |
| **ITB 35.2 (e)** | The adjustments shall be determined using the following criteria as detailed in Section III:   1. Deviation in Time Schedule: Alternative times for completion ***shall not be*** permitted; 2. The Operation Service Bid prices will be adjusted for Net Present Value as specified in Section III;   ***[insert any other specific criteria here and provide details in Section III, Evaluation and Qualification Criteria]*** |
| **J.** **Award of Contract** | |
| **ITB 43.1** | The successful Bidder shall also be required to submit an Environmental, Social, Health and Safety (ESHS) Performance Security.  ***[Note: throughout this bidding document the term ‘performance security’, unless the context clearly indicates otherwise, means and includes both ‘the performance security and the ESHS performance security’ to be submitted by the successful bidder in the amounts specified in GCC/ PCC 4.2. The ESHS Performance Security shall normally be required where ESHS risks are high.]*** |
| **ITB 44** | The Adjudicator proposed by the Employer is***: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[insert name and address of proposed Adjudicator]***. The daily fee for this proposed Adjudicator shall be: \_\_\_\_\_\_\_\_\_\_ ***[insert amount in Rupees – not less than Rs 10,000 per day].*** The biographical data of the proposed Adjudicator is as follows:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ***[provide relevant information, such as education, experience, age, nationality, and present position; attach additional pages as necessary][The Adjudicator proposed shall be a technical expert well versed with the type of Work and contract management expert.]***  **Note:** *Institutions such as Indian Council of Arbitration (ICA) also maintain panel of experienced and trained adjudicators and if needed, such institutions could be approached for providing a list of potential adjudicators. If this option is to be used, above clause may be modified as:*  “The Adjudicator proposed by the Employer is: ………… and has been identified from the list provided by …………. *[insert name of the Institution]*. The daily fee payable to Adjudicator is Rs……... as per the rules of the Institution.” |

Section III– Evaluation and Qualification Criteria

*This section contains all the criteria that the Employer shall use to evaluate Bids and qualify Bidders* when qualification in the evaluation of the Technical Part is applied*. No other factors, methods or criteria shall be used other than specified in this bidding document. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.*

*[The Employer shall select the criteria deemed appropriate for the procurement process, insert the appropriate wording using the samples below or other acceptable wording, and delete the text in italics]*

1. Technical Part

1.1 Evaluation of Technical Part (ITB 30) - Adequacy of Technical Proposal

Evaluation of the Bidder's Technical Proposal will include

(i) an assessment of the Bidder's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, material sourcing, and quality control/ assurance in sufficient detail and fully in accordance with the requirements stipulated in Section VII, Employer’s Requirements.

For this purpose, the Bidder should also submit:

A detailed note outlining its proposed methodology and program of construction including implementation of the Environmental Management Plan and Safety Assurance under this contract, backed with equipment planning and deployment, materials and manpower planning and deployment, duly supported with broad calculations and quality control system/assurance procedures proposed to be adopted, justifying their capability of execution and completion of the work as per technical specifications within the stipulated period of completion as per milestones.

(ii) an assessment of the details of subcontracting elements of works amounting to more than 10% of the bid price; for each element proposed to be sub contracted furnish details whether the identified Sub-contractor possesses the required qualifications and experiences to execute that element satisfactorily. [***Work should not be split into small parts and sub-contracted*].**

1.2 Subcontractors

Any Specialized Sub-contractor, if identified shall meet the applicable requirements.

Any other additional subcontractors for the following major activities/ sub-activities must meet the following minimum criteria:

|  |  |  |
| --- | --- | --- |
| ***[Activity/Sub-activity No.]*** | **Description of  *[List Activity/Sub-activity]*** | **Minimum Criteria to be met** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
| … |  |  |

Failure to comply with this requirement may result in rejection of the subcontractor.

As stated in ITB 16.3 Bidders shall submit an undertaking from each proposed subcontractor to confirm that they have read, understand and will comply with the ESHS obligations and code of conduct.

**1.3. Qualification Criteria**

| **Eligibility and Qualification Criteria** | | | **Compliance Requirements** | | | | **Documentation** |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **No.** | **Subject** | **Requirement** | **Single Entity** | **Joint Venture (existing or intended) where permitted** | | | **Submission Requirements** |
| **All members Combined** | **Each Member** | **At least one Member** |
| 1. Eligibility | | | | | | | |
| 1.1 | **Nationality** | Nationality in accordance with ITB 4.4 | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Forms ELI – 1.1 and 1.2, with attachments |
| 1.2 | **Conflict of Interest** | No conflicts of interest in accordance with ITB 4.2 | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Letter of Bid |
| 1.3 | **Bank Eligibility** | Not having been declared ineligible by the Bank, as described in ITB 4.5. | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Letter of Bid |
| 1.4 | **Government-owned enterprise or institution of the Borrower country** | Meets conditions of ITB 4.6. The entity should not be a dependent agency of the borrower or sub-borrower or Employer. | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Forms ELI – 1.1 and 1.2, with attachments |
| 1.5 | **United Nations resolution or Borrower’s country law** | Not having been excluded as a result of prohibition in the Borrower’s country laws or official regulations against commercial relations with the Bidder’s country, or by an act of compliance with UN Security Council resolution, both in accordance with ITB 4.8 and Section V. | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Forms ELI – 1.1 and 1.2, with attachments |
| 2. Historical Contract Non-Performance | | | | | | | |
| 2.1 | **History of Non-Performing Contracts** | Non-performance of a contract[[4]](#footnote-4) did not occur as a result of contractor default since 1st January [*Insert year]*. | Must meet requirement1 & 2 | Must meet requirements | Must meet requirement[[5]](#footnote-5) | N/A | Form CON-2 |
| 2.2 | **Suspension Based on Execution of Bid Securing Declaration by the Employer or withdrawal of the Bid within Bid validity period** | Not under suspension based on execution of a Bid Securing Declaration or withdrawal of the Bid. | Must meet requirement | Must meet requirement | Must meet requirement | N/A | Letter of Bid |
| 2.3 | **Pending Litigation** | Bidder’s financial position and prospective long term profitability sound according to criteria established in 3.1 below and assuming that all pending litigation will be resolved against the Bidder | Must meet requirement by itself or as member to past or existing JV | N/A | Must meet requirement by itself or as member to past or existing JV | N/A | Form CON – 2 |
| 2.4 | **Litigation History** | No consistent history of court/arbitral award decisions against the Bidder[[6]](#footnote-6) since 1st January *[insert year]* | Must meet requirement by itself or as member to past or existing JV | Must meet requirement | Must meet requirement by itself or as member to past or existing JV | N/A | Form CON – 2 |
| 2.5 | **Declaration: Environmental, Social, Health, and Safety (ESHS) past performance** | Declare any civil work contracts that have been suspended or terminated and/or performance security called by an employer for reasons related to the non-compliance of any environmental, or social (including sexual exploitation and abuse (SEA) and gender based violence (GBV), or health or safety requirements or regulations in the past five years[[7]](#footnote-7). | Must make the declaration. Where there are Specialized Sub-contractor/s, the Specialized Sub-contractor/s must also make the declaration. | N/A | Each must make the declaration. Where there are Specialized Sub-contractor/s, the Specialized Sub-contractor/s must also make the declaration. | N/A | Form CON-3 ESHS Performance Declaration |
| 3. Financial Situation and Performance | | | | | | | |
| 3.1 | **Financial Capabilities** | (i) The Bidder shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as Rs *\_\_\_\_\_\_\_\_\_ (about 3 months cash flow at peak construction period)* for the subject contract(s) net of the Bidder’s other commitments. *[In case the contracts are to be procured as individual contracts under a slice and package (multiple contracts) state the cash flow requirement to qualify for individual and multiple contracts.]* | Must meet requirement | Must meet Requirement | Must meet at least 25% of the requirement as a minimum | Must meet at least 50% of the requirement as a minimum | Form FIN – 3.1, with attachments |
|  |  | (ii) The Bidders shall also demonstrate, to the satisfaction of the Employer, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments. | Must meet requirement | Must meet requirement | N/A | N/A |  |
|  |  | (iii) The audited balance sheets or, if not required by the laws of the Bidder’s country, other financial statements acceptable to the Employer, for the last five years shall be submitted and must demonstrate the current soundness of the Bidder’s financial position and indicate its prospective long-term profitability. | Must meet requirement | N/A | Must meet requirement | N/A |  |
| ***[Note****: The construction cash flow requirement should be for a number of months determined as the total time needed to pay contractor invoice by the employer. The cash flow should not normally exceed 3 months peak contract requirements and availability should be certified by Bank (Nationalized or Scheduled Bank In India) in form 3.3]* | | | | | | | |
| 3.2 | **Average Annual Construction Turnover** | Minimum average annual construction turnover in civil engineering construction work of Rs *\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [insert amount in figures and words]*, calculated as total certified payments received for contracts in progress and/or completed within the last five years, divided by five years. [*In case the contracts are to be procured as individual contracts under a slice and package (multiple contracts) state the average annual turnover requirement to qualify for individual and multiple contracts.*] | Must meet requirement | Must meet requirement | Must meet 25%, (twenty five percent) of the requirement | Must meet 50%, (fifty percent) of the requirement | Form FIN – 3.2 |
| ***[Note:*** *The amount stated should normally not be less than twice the estimated annual turnover or cash flow in the proposed Works contract].* | | | | | | | |
| 4. Experience | | | | | | | |
| 4.1 | **Design Experience** | A minimum number of *[state the number]* contracts for the design of [*water/ wastewater*] treatment plants undertaken as lead design engineer between 1st January *[insert year]* and Bid submission deadline.  The selected design contracts shall relate to treatment plant that:   * have been satisfactorily and substantially completed, and * each have a minimum value of [ …]   *NB: The above specific experience requirements may be met by specialized subcontractors, if permitted in accordance with ITB 33.3.* | Must meet requirement |  |  | Must meet the requirement | Form EXP 4.1 |
| 4.2 | **Construction Experience[[8]](#footnote-8)** | A minimum number of *[state the number]* construction contracts for [*water/ wastewater*] treatment plants that have been satisfactorily and substantially completed as a prime contractor, joint venture member, management contractor or subcontractor between 1st January *[insert year]* and Bid submission deadline.  The value of the member’s participation in each selected construction contract shall be a minimum of [ …],  *NB: The above specific experience requirements may be met by specialized subcontractors, if permitted in accordance with ITB 33.3.* | Must meet requirement | Must meet requirement[[9]](#footnote-9) | N/A | N/A | Form EXP – 4.2 |
| 4.2A | **Specific Construction Experience[[10]](#footnote-10)** | For contracts successfully completed between 1st January ……. [*insert year] and bid sub*mission deadline, a minimum construction experience in the following key activities[[11]](#footnote-11) as prime contractor, JV member, management contractor or subcontractor:  DI Pipe laying & jointing of minimum \_\_\_\_ dia (ID) for a minimum length of \_\_\_\_\_Km. and all diameters for a minimum length of \_\_\_\_\_ Km.  HDPE Pipe laying & jointing of all diameters for a minimum length of \_\_\_\_\_ Km.  Execution and commissioning of \_\_\_\_ MLD water treatment plant under single contract  Intake well of river/ lake of minimum \_\_\_ dia and sunken minimum \_\_\_\_ below the bed of the water body  Installation of SCADA with \_\_\_\_\_\_\_\_ minimum requirement.  *NB: The above specific experience requirements may be met by specialized subcontractors, if permitted in accordance with ITB 33.3.* | Must meet requirement | Must meet requirement[[12]](#footnote-12) | Should meet the criteria in full, at least for one of key activities listed in column 3. | Must meet the requirement for the key activities listed below (list key activities for this member and corresponding minimum requirements)  …………..  …………..  …………..  ………….. | Form EXP – 4.2A |
| 4.3 | **Operations Experience** | Experience of similar operations contracts of a minimum number of [*state the number*] of similar operations contracts for [*Water/ Wastewater*] treatment plants as prime contractor, JV member, or management contractor, which are either operational at the date of Bid submission deadline, or in which the operations period ended after 1st January [*insert year*].  *NB: The above specific experience requirements may NOT be met by specialized subcontractors]* | Must meet requirement |  | N/A | Must meet the requirement | Form EXP – 4.3 |
| 4.4 | **DBO Experience** | Experience of similar DBO contracts of a minimum number of [*state the number*] of similar DBO contracts for [*Water/ Wastewater*] treatment plants as prime contractor, JV member, subcontractor or management contractor, which are either operational at the date of bid submission deadline or in which the operations period ended after 1st January [*insert year*].  The selected DBO contracts shall:   * have a minimum design capacity of [ …], * have been operating for at least two years since commissioning, and * have been operating satisfactorily since commissioning. | Must meet requirement | Must meet requirement | N/A | N/A | Form EXP – 4.4 |
|  | ***[Note:*** *The Bidder should have DBO experience of at least one contract for similar work (normally of capacity not less than say 80% or 90% or 100%) of the proposed capacity. This requirement may be diluted (or dropped) if it is likely to severely restrict the competition, with suitable modifications under 4.1 to 4.3.* | | | | | | |
| *Borrower should fill this after careful review of the requirements for the work. Where the elements of work are specialized and it is proposed to accept employment of specialist sub-contractors, this could be so specified and bidders may be requested to name the sub-contractors and furnish their qualification and experience.* | | | | | | | |
| 4.5 (a) | **Bid Capacity:**  Bidders who meet the minimum qualification criteria will be qualified only if their available bid capacity for construction work is equal to or more than the total bid value of the work excluding operations. The available bid capacity will be calculated as under:  Assessed Available bid capacity = (A\*N\*1.5-B)  Where,  A = Maximum value of civil engineering works executed in any one year during the last five years (updated to the price level of the financial year ….. at the rate of 5% per year), taking into account the completed as well as works in progress).  N = Number of years prescribed for construction of the works for which bids are invited (period up to 6 months to be taken as half-year and more than 6 months as one year).  B = Value, at the current price level, of existing commitments on on-going works to be completed during the period of construction of the works for which bids are invited.  Note: the statements in Section IV showing the value of existing commitments of on-going works as well as the stipulated period of completion remaining for each of the works listed should be countersigned by the Engineer in charge, not below the rank of an Executive Engineer or equivalent. | | | | | | |

**General notes for the Bidder:**

1. The Bidder may use a single contract to satisfy two or more criteria requirements. In such cases, the Bidder shall complete separate EXP forms for each subject contract type. (For example, if a contractor undertook both design and construction on a similar contract, it may use that experience to qualify under Design Experience and Construction Experience. It such case it would complete forms EXP-4.1 and EXP-4.2.)
2. Substantial completion shall be based on 80% or more of the contract completed.
3. For contracts under which the Bidder participated as a joint venture member or sub-contractor, only the Bidder’s role and responsibilities shall be considered as qualifying experience.

**[*Notes for the Employer***

1. *If the contracts are to be procured as individual contracts under a slice and package arrangement (multiple contracts), the Employer should state the requirements to qualify for individual and multiple contracts (e.g. number of contracts, minimum and aggregate values).*

*2. The manner JV members should meet the requirements may be modified depending on the market and specifics of the proposed contract.*]

1.4 **Qualification Criteria for Multiple Contracts (ITB 35.4):**

If a bidder submits several successful (lowest evaluated substantially responsive) bids, the evaluation will also include an assessment of the Bidder’s capacity to meet the aggregated requirements regarding:

* Experience
* Financial performance
* Current contract commitments,
* Financial Resources and Cash flow capacity,
* Contractor’s Equipment to be allocated, and
* Contractor’s Personnel to be fielded.
* Bid Capacity

**1.5 Contractor’s Representative and Key Personnel**

*[Note: Insert in Section VII – Employer’s Requirements, the minimum key specialists, including ESHS specialists, required to execute the contract, taking into account the nature, scope, complexity and risks of the contract. The Social specialist’s relevant experience should include e.g. [years] of monitoring and managing risks related to GBV/ SEA]*

The Bidder must demonstrate that it will have suitably qualified (and in adequate numbers) minimum Key Personnel, as are required to perform the Contract.

The Bidder shall provide details of the Contractor’s Representative and such other Key Personnel that the Bidder considers appropriate, together with their academic qualifications and work experience. The Bidder shall complete the relevant Forms in Section IV, Bidding Forms.

The Contractor shall require the Employer’s consent to substitute or replace the Key Personnel (reference the Particular Conditions of Contract 6.9).

The minimum qualifications and experience of the Contractor’s Representative and Key Personnel, lot wise if applicable, are as given below. [*Note: these should be consistent with the information set out in the Employer’s Requirements.]*

Key personnel during the Design Build period

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **SN** | **Designation** | **Minimum Qualification** | **Total works experience (years)** | **Similar work experience (years)** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| xx | Environment, Health and Safety Engineer | Graduate in Civil or Environmental Engineering with specialization and/or additional qualification in Occupational Health and Safety. | 7 years |  |
|  |  |  |  |  |
|  |  |  |  |  |

Key personnel during the Operations Service period

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **SN** | **Designation** | **Minimum Qualification** | **Total works experience (years)** | **Similar work experience (years)** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

The Bidder must not have in his employment:

[i] the near relations (defined as first blood relations, and their spouses, of the bidder or the bidder’s spouse) of persons of the following Government Departments ……………………………………………………………

[ii] without Government permission, any person who retired as gazetted officer within the last two years.

[Note:

*The managerial and technical competence of a contractor is largely related to the key personnel on site. The extent to which the Bidder should demonstrate having staff with extensive experience should be limited to those requiring critical operational or technical skills. The criteria should therefore refer to a limited number of such key personnel, for instance, the project or contract manager and others working under the project manager who will be responsible for major components (e.g., specialized in dredging, piling, earthworks, environmental, health and safety, or social issues, as required for each particular project). Criteria of acceptability should be based on:*

*(a) a minimum number of years of experience in a similar position; and*

*(b) a minimum number of years of experience and/or number of comparable projects carried out in a specified number of preceding years.*

*The requirement of specified education and academic qualifications is normally unnecessary for such positions, as contractors often employ competent staff who have learned their profession “on the job” rather than through academic training. It is appropriate to specify that certain positions are filled by individuals who have held posts of comparable authority for, say, three years with the Bidder, so that key staff in executive site positions have sufficient knowledge of the Bidder's management, policy, procedures, and practices to act with confidence and authority within that framework.]*

**1.6 Equipment**

The Bidder must demonstrate that it will have access to the key Contractor’s equipment listed hereafter:

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Equipment Type and Characteristics** | **Capacity** | **Minimum Number required** |
| 1 |  |  |  |
| 2 |  |  |  |
| 3 |  |  |  |
| 4 |  |  |  |
| 5 |  |  |  |
|  |  |  |  |
|  |  |  |  |

*[NOTE:*

*Based on the studies, carried out by the Employer the minimum suggested major equipment to attain the completion of works in accordance with the prescribed construction schedule and O&M requirements is shown in the above list. The bidders should, however, undertake their own studies and furnish with their bid, a detailed construction planning and methodology supported with layout and necessary drawings and calculations (detailed) to allow the employer to review their proposals. The numbers, types and capacities of each plant/equipment shall be shown in the proposals along with the cycle time for each operation for the given production capacity to match the requirements.]*

The Bidder shall provide its strategy for acquiring and maintaining the key equipment that may be needed to perform the Contract.

The Bidder shall provide further details of proposed items of equipment using the relevant Form in Section IV.

**2. Financial Part**

**2.1 Margin of Preference – Not Applicable**

#### 2.2 Award Criteria for Multiple Contracts (ITB 35.4)

*[If not applicable state ‘Not Applicable’]*

**Lots**

If Bidders have the option to Bid for any one or more lots, Bids will be evaluated lot-wise, taking into account discounts offered, if any, after considering all possible combination of lots. The contract(s) will be awarded to the Bidder or Bidders offering the lowest evaluated cost to the Employer for combined lots, subject to the selected Bidder(s) meeting the required qualification criteria for lot or combination of lots as the case may be.

**Packages**

Bidders have the option to Bid for any one or more packages and for any one or more lots within a package. Bids will be evaluated package-wise, taking into account discounts offered, if any, for combined packages and/or lots within a package. The contract(s) will be awarded to the Bidder or Bidders offering the lowest evaluated cost to the Employer for combined packages, subject to the selected Bidder(s) meeting the required qualification criteria for combination of packages and or lots as the case may be.

2.3 Evaluation of Financial Part (ITB 35.2 (e)

In addition to the criteria listed in ITB 35.2 (a) – (d) the following factors and methods shall apply: ***[use one or more of the following adjustment factors consistent with ITB 35.2 (e) of the BDS]***

#### Time Schedule

The Time for Completion of Design-Build is as specified in GCC Sub-clause 9.2. No credit will be given for earlier completion. Proposals offering a Time for Completion of Design-Build beyond the designated period shall be rejected.

**Or**

The Time for Completion of Design-Build, as defined in GCC Sub-clause 9.2, shall be between \_\_\_\_\_\_\_\_\_\_\_\_ minimum and \_\_\_\_\_\_\_\_\_\_\_\_ maximum. The adjustment rate in the event of completion beyond the minimum period shall be \_\_\_\_\_\_\_ (%) for each week of delay from that minimum period. No credit will be given for completion earlier than the minimum designated period. Proposals offering a completion date beyond the maximum designated period shall be rejected.

#### Net Present Valuation of Bidder’s Financial Part

The Design-Build Bid Price shall not be discounted.

If the BDS provides for Net Present Valuation of the Operation Service Bid Price, the annual amounts in the Operation Service price schedules, as adjusted in accordance with ITB 35.2 (a) to (e), shall be discounted using a discount factor of [ ……] %. The discount base year shall be the year preceding the first year of the Operation Service Period.

For greater certainty, net present values shall be determined by applying the following discount factors to the annual amounts in the Bid forms during the Operation Service Period.

|  |  |
| --- | --- |
| Operation Period | Discount factor to be applied |
| Year 1 |  |
| Year 2 |  |
| Year 3 |  |
| *etc.* |  |
|  |  |
|  |  |
|  |  |

#### *[Note: The choice of discount factor is important. A few percentage points difference in the factor can make a big impact on the evaluated bid price and may affect the process and equipment choices of bidders. The discount factor should strip out the effects of inflation, and should be based on the rate of inflation in India.]*

#### Alternative Bids

If invited in accordance with ITB 13 will be evaluated as follows: **Not Applicable**

#### Specific additional criteria

The relevant evaluation method, if any, shall be as follows:…………………..

Section IV –Bidding Forms

Bid Forms

Letter of Bid– Technical Part

*INSTRUCTIONS TO BIDDERS*

|  |
| --- |
| *INSTRUCTIONS TO BIDDERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE DOCUMENT*  *The Bidder must prepare the Letter of Bid on stationery with its letterhead clearly showing the Bidder’s complete name and business address.*  *Note: All italicized text is to help Bidders in preparing this form, and Bidders shall delete it from the final document.* |

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

**IFB No.:** *[insert IFB number and date]*

**Invitation for Bid No.**: *[insert identification]*

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

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

Dear Sir or Madam:

We, the undersigned, hereby submit our Bid, in two parts, namely:

1. the Technical Part, and
2. the Financial Part

In submitting our Bid, we make the following declarations:

1. **No reservations:** We have examined and have no reservations to the bidding document, including Addenda issued in accordance with **ITB 8**;
2. **Eligibility**: We hereby certify that we, including any subcontractors or manufacturers for any part of the contract, meet the eligibility requirements and have no conflict of interest in accordance with **ITB 4;**
3. **Conformity:** We undertake, if our Bid is accepted, to provide the Works and Operation Service to \_\_\_\_\_\_\_\_\_\_\_\_\_\_ in full conformity with the said Bidding documents, and achieve Completion within the respective times stated in the Bidding documents;
4. **Bid Validity Period:** Our Bid shall be valid for a period specified in BDS ITB 18.1 (or as amended if applicable) from the date fixed for the Bid submission deadline specified in BDS 22.1 (or as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
5. **Performance Security:** If our Bid is accepted, we commit to obtain a performance security and if required in the BDS, the Environmental, Social, Health and Safety (ESHS) Performance Security, in accordance with the bidding document;
6. **One Bid Per Bidder:** We are not submitting any other Bid(s) as an individual Bidder or as a subcontractor, and we are not participating in any other Bid(s) as a Joint Venture member, and meet the requirements of ITB 4.3, other than alternative Bids submitted in accordance with ITB 13;
7. **Suspension and Debarment**: We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the World Bank Group or a debarment imposed by the World Bank Group in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the World Bank and other development banks. Further, we are not ineligible under the Employer’s Country laws or official regulations or pursuant to a decision of the United Nations Security Council;
8. **Government-owned enterprise or institution:** We are not a Government-owned enterprise or institution/ We are a Government-owned enterprise or institution but meet the requirements of ITB 4.6[[13]](#footnote-13);
9. **Binding Contract**: We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
10. **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated Bid or any other Bid that you may receive; and
11. **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption; and
12. **Adjudicator**: We accept the appointment of [insert name proposed in Bid Data Sheet] as the Adjudicator.

[or]

We do not accept the appointment of [insert name proposed in Bid Data Sheet] as the Adjudicator, and propose instead that [insert name] be appointed[[14]](#footnote-14) as Adjudicator, whose daily fees and biographical data are attached.

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

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

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

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

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

\*: In the case of the Bid submitted by a Joint Venture specify the name of the Joint Venture as Bidder.

\*\*: Person signing the Bid shall have the power of attorney given by the Bidder. The power of attorney shall be attached with the Bid Schedules.

**Appendix to Bid Technical Part**

**Technical Bid Forms**

Appendix to Bid Technical Part

Design Methodology

## 

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

1. organizational arrangements for the design including: team structure, roles and responsibilities, interface arrangements, design review and approval procedures and quality assurance arrangements;
2. Proposed design deliverables [*Employer to specify mandatory requirements appropriate to good international industry practice*]*;*
3. design statement setting out how the Employers Requirements will be achieved;
4. Any added value the bidder will bring including examples of innovative aspects of the design;
5. comments on the Employer's Requirements, including:
6. status of the information available and relevant design issues for the Works;
7. comments on any errors, defects or ambiguities noted in the Employer’s Requirements; and
8. *[details of any exceptions in the conceptual design taken to the Employer's Requirements]*;
9. Sustainable Procurement: sustainability aspects (e.g. energy efficiency, reduction of wastages, material reduction, sources of materials etc.) demonstrating the Bidder’s approach and commitment to sustainable design and construction practices;
10. strategy for gathering baseline ESHS information in time to inform design development;
11. details of how the ESHS requirements and any proposal to enhance ESHS outcomes will be incorporated into all design stages and how the implications for the construction phase has been considered;
12. details of the approach to managing risks, stakeholder engagement, consultation and environmental permits/consents; and
13. *[insert any other relevant information, as appropriate.]*

*[The employer may consider limiting the design methodology submission e.g. “The design methodology submission shall comprise no more than 20 sides of A4 text”]*

Appendix to Bid Technical Part

Construction Management Strategy

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

* + - * 1. organizational arrangements for the construction management including: team structure, roles and responsibilities, interface arrangements, approval procedures and quality assurance arrangements;
        2. subcontractor selection and management;
        3. bids for training all personnel attending site;
        4. stakeholder engagement;
        5. obtaining and managing consents, permits and approvals;
        6. site setup bids including access, accommodation, welfare facilities, arrangement for plant and material storage;
        7. construction phasing bids including sequence of work and management of conflicting activities;
        8. ensuring that geotechnical investigations or other advance works meet the ESHS requirements;
        9. risk management approach for geotechnical and subsurface aspects of the Works;
        10. quality management system including a draft of the quality management plan;
        11. sustainability aspects demonstrating the Bidder’s approach and commitment to sustainable construction practices (e.g. energy efficiency, reduction of wastages, material reduction and sources of materials etc.
        12. preparation, approval and implementation for the Contractor’s environmental and social management plan;
        13. preparation, approval and implementation for the Contractor’s occupational and community health and safety management plan;
        14. grievance redress mechanisms;
        15. reporting arrangements, including topics (that include ESHS) and timescales in accordance with the Particular Conditions of Contract Sub-Clause 4.20;
        16. arrangements for testing upon completion of the works;
        17. arrangements for site handover, including completion of as-built drawings, preparation of operation and maintenance manuals, and any other relevant aspects; and
        18. *[insert any other relevant information, as may be appropriate.]*

A detailed note should be submitted outlining bidders proposed methodology and program for completion of Works, backed with equipment, materials and manpower planning and deployment, and quality control procedures proposed to be adopted, justifying Bidder’s capability for execution and timely completion of the work as per technical specifications. These should be linked to GCC 9 *(Design-Build)*, and GCC 10 *(Operation Service)*.

Appendix to Bid Technical Part

Design Build.  
Method Statements for key construction activities

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

*[The Employer shall identify the key construction activities relevant to the contract, for example.]*

*1. Construction and commissioning of Intake well, pumping station*

*2. Laying, jointing and testing of DI and HDPE pipe lines*

*3. Construction and commissioning of WTP*

*4. Implementation and operation of SCADA*

*5….*

*[The Employer may consider limiting the length of the method statement for each activity e.g. 4 sides A4]*

Appendix to Bid Technical Part

Code of Conduct.  
Environmental, Social, Health and Safety (ESHS)

The Bidder shall submit the Code of Conduct that will apply to the Contractor’s Personnel (as defined in Sub-clause 1.1.21 of the GC), to ensure compliance with its Environmental, Social, Health and Safety (ESHS) obligations under the contract, including those as may be more fully described in the Employer’s Requirement in Section VII.

In addition, the Bidder shall detail how this Code of Conduct will be implemented. This will include: how it will be introduced into conditions of employment/engagement, what training will be provided, how it will be monitored and how the Contractor proposes to deal with any breaches.

Appendix to Bid Technical Part

Design Build Work Program

The Bidder shall set out a work program for design and construction of the Works to be undertaken, including identification of major milestones and critical path. The proposed work program shall be developed based on the Employer’s Requirements and shall describe the:

1. design of the Works, including the submission of the design deliverables, review and approval of the design by the Employer’s Representative
2. processes and deliverables needed to commence the Works including for example mobilisation schedule of personnel, equipment and labour during (i) construction and (ii) operation & maintenance phase;
3. execution of the Works within the Time for Completion, highlighting activities imposing constraints on the construction sequence;
4. testing, commissioning and handing over of the completed Works; and
5. *[insert any other relevant information, as may be appropriate.]*

Appendix to Bid Technical Part

Design Build Personnel Organization Chart

The Bidder shall provide an organization chart illustrating the proposed management structure and reporting lines for delivery of the Design Build. The organization chart shall include the names of all Key Personnel.

Appendix to Bid Technical Part

Operation Service Bids

The Bidder shall set out a detailed plan for the Operation Service which shall address the following:

1. Organisation and key personnel
2. Operations bids
3. Preventative and reactive maintenance
4. Monitoring water/wastewater quality and flows
5. Monitoring of losses/ unaccounted flow of water in the system at each stage
6. The operational systems to be developed, including details of any standards to be adopted or followed for example with respect to managing environmental, social and health and safety risks during operation
7. Training of Contractor’s Personnel
8. Preparation of required documents and manuals
9. Quality assurance
10. Hand-back arrangements
11. Emergency Preparedness and Response Plan
12. Reporting arrangements, including the appropriate topics (that include ESHS) and timescales in accordance with the Particular Conditions of Contract Sub-Clause 4.20 and Appendix C to the General Conditions of Contract.
13. *[insert any other relevant information, as may be appropriate.]*

Appendix to Bid Technical Part

Form EQU.  
Contractor’s Equipment

The Bidder shall set out its strategy for obtaining or accessing the key equipment necessary to execute the Works in accordance with the Design Build Works Program. In the strategy, the Bidder shall specify the manufacturer, capacity, model, power rating, age and maintenance condition, and how it will ensure that the equipment is maintained in accordance with manufacturer’s specifications for the duration of the Contract. The Bidder shall specify whether it will own, lease, rent or specially manufacture the key equipment.

A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.

|  |  |  |
| --- | --- | --- |
| Item of equipment | | |
| Equipment information | Name of manufacturer | Model and power rating |
|  | Capacity | Year of manufacture |
| Current status | Current location | |
|  | Details of current commitments | |
|  |  | |
| Source | Indicate source of the equipment  o Owned o Rented o Leased o Specially manufactured | |

Omit the following information for equipment owned by the Bidder.

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

Appendix to Bid Technical Part

Form PER -1.  
Contractor’s Representative and Key Proposed Personnel\*

Bidders should provide the names and details of suitably qualified Contractor’s Representative and Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate. Bidders should submit a fully detailed Key Personnel resource schedule for the whole contract implementation period. The resource schedule must include:

* the name and role for each Key Personnel position
* The duration of each Key Personnel appointment
* The level of effort (time) allocated to each Key Personnel position and its distribution throughout the contract implementation period.

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Title of position** | **Name of candidate** | **Qualification and Experience** |
| *1.* | *[Contractor’s Representative]* |  |  |
| ***Key Personnel for Design*** | | | |
| *2.* | *[Design Manager]* |  |  |
| *3.* | [Environmental Impact Assessment Specialist] |  |  |
| *4.* | *[Social Impact Assessment Specialist]* |  |  |
| *5.* | [Health and Safety Specialist] |  |  |
| *6.* | *[Biodiversity, Air quality, Noise etc. Specialists]* |  |  |
| *7.* | *[Modify/add others as appropriate]* |  |  |
| ***Key Personnel for Construction*** | | | |
| *8.* | *[Construction Manager]* |  |  |
| *9.* | *[Environmental Specialist]* |  |  |
| *10.* | *[Health and Safety Specialist]* |  |  |
| *11.* | *[Social Specialist]* |  |  |
| *12.* | *Survey Manager* |  |  |
| *13.* | *[Modify/add others as appropriate]* |  |  |
| ***Key Personnel for Operation Service*** | | | |
| *14.* | *Plant Manager* |  |  |
| *15.* | *EHS Manager* |  |  |
| *16.* | *Community Relations Manager* |  |  |
| *17.* | *[Modify/add others as appropriate]* |  |  |

*(\* Modify this as appropriate to suit the works for which bids are invited).*

Appendix to Bid Technical Part

Form PER-2.  
Resume and Declaration of Contractor’s Representative and Key Personnel

|  |  |  |
| --- | --- | --- |
| Name of Bidder | | |
| Position *(title of position from Forms PER-1)* | | |
| Personnel information | Name | Date of birth |
|  | Address | Email |
|  | Professional qualifications | |
|  | Academic qualifications | |
|  | Language proficiency *[language and levels of speaking, reading and writing skills]* | |
| Present employment | Name of employer | |
|  | Address of employer | |
|  | Telephone | Contact (manager / personnel officer) |
|  | Fax | E-mail |
|  | Job title | Years with present employer |

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

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

**Declaration**

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

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Bid:

|  |  |
| --- | --- |
| **Commitment** | **Details** |
| **Commitment to duration of contract:** | *[insert period (start and end dates) for which this Key Personnel is available to work on this contract]* |
| **Time commitment:** | *[insert the number of days/week/months/ that this Key Personnel will be engaged]* |

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

1. be taken into consideration during Bid evaluation;
2. my disqualification from participating in the Bid;
3. my dismissal from the contract.

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

Signature:

Date: (day month year):

**Countersignature of authorized representative of the Bidder:**

Signature:

**Date: (day month year):**

Appendix to Bid Technical Part

Risk Assessment

The Bidder should submit a risk register identifying the hazards anticipated during the implementation of the contract.

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

Appendix to Bid Technical Part

Proposed Subcontractors for Major Activities/Sub-Activities

The following Subcontractors and/or manufacturers are proposed for carrying out the activity/sub-activity indicated. For any additional subcontractor (that is not the Specialized Subcontractor approved by the Employer in accordance with ITB 33), Bidders are free to propose more than one for each activity/sub-activity.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Item** | **Activity/Sub-Activity** | **Proposed Subcontractors** | **Nationality** | **Qualification and experience of sub-contractor on similar works of the elements executed** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

The capability of the sub-contractor will also be assessed (on the same lines as for the main Contractor) before according approval to him. *[Note: Work should not be split into small parts and sub-contracted].*

Bidders shall submit an undertaking from each proposed subcontractor to confirm that they have read, understand and will comply with the ESHS obligations and code of conduct.

Form of Sub-Contractor ESHS undertaking

(to be filled in by each proposed subcontractor)

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

IFB No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Alternative No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Contract title:** *[insert the name of the contract]*

To: *[insert the name of the Employer’s agency]*

We, the undersigned, confirm that we have read, understand and will comply with the ESHS obligations and code of conduct for the above mentioned contract.

Name of the Proposed subcontractor:

Name and title of the person signing this undertaking on behalf of the subcontractor:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of the person named above

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date signed

Name of the person duly authorized to sign the Proposal on behalf of the Bidder \_\_\_\_\_\_\_

Title of the person signing the Bid \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of the person named above \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_

Appendix to Bid Technical Part

Others

Appendix to Bid Technical Part

Qualification Forms

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

Appendix to Bid Technical Part

Form ELI 1.1.  
Bidder Information Sheet

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

IFB No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Page \_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_ pages

|  |
| --- |
| 1. Bidder’s Legal Name |
| 2. In case of JV, legal name of each party: |
| 3. If permitted under ITB 4.1, do JV members wish to form an SPV: |
| 4. Bidder’s actual or intended Country of Registration: |
| 5. Bidder’s Year of Registration: |
| 6. Bidder’s Legal Address in Country of Registration: |
| 7. Bidder’s Authorized Representative *[Lead Member]* Information  Name:  Address:  Telephone/Fax numbers:  Email Address: |
| 8. Attached are copies of original documents of:  Articles of Incorporation or Registration of firm named in 1, above, in accordance with **ITB 4.1** and **ITB 4.4.** In case of JV, letter of intent to form JV including a draft agreement, or JV agreement, in accordance with **ITB 4.1** and **ITB 11.5**.  In case of Government-owned enterprise or institution from the Employer’s country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, and is not under the supervision of the Employer, which term includes Secretary of the department or Head of the organization entering into contract, in accordance with **ITB 4.6**.  Organizational chart, a list of Board of Directors, and the beneficial ownership. |

Please note that a written authorization needs to be attached to this sheet as required by **ITB 20.2**

Appendix to Bid Technical Part

Form ELI 1.2.   
Party to JV Information Sheet

(Where permitted as per BDS ITB 4.1)

(to be completed for each member of Joint Venture, and any Specialized Subcontractor)

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

IFB No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Page \_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_ pages

|  |
| --- |
| **JV/Specialist Subcontractor Information** |
| 1.Bidder’s Joint Venture or Subcontractor’s Legal Name: |
| 2.JV member’s or Subcontractor’s legal name: |
| 3.JV member’s or Subcontractor’s Country of Registration: |
| 4.JV member’s or Subcontractor’s Year of Registration: |
| 5.JV member’s or Subcontractor’s Legal Address in Country of Registration: |
| 6.JV member’s or Subcontractor’s Authorized Representative Information  Name:  Address:  Telephone/Fax numbers:  Email Address: |
| 7. Attached are copies of original documents of:  Articles of Incorporation or Registration of firm named in 1, above, in accordance with **ITB 4.1** and **ITB 4.4**. Authorization to represent the firm or JV named in above, in accordance with **ITB 20.2.**  In case of Government-owned enterprise or institution from the Employer’s country, documents establishing legal and financial autonomy and compliance with the principles of commercial law and is not under the supervision of the Employer, which term includes Secretary of the department or Head of the organization entering into contract, in accordance with **ITB 4.6.**  Organizational chart, a list of Board of Directors, and the beneficial ownership. |
| 1. Does the JV wish to form an SPV ***[yes/ no] only relevant where BDS permits formation of SPV]*** |

Appendix to Bid Technical Part

**DETAILS OF PARTICIPATION IN THE JOINT VENTURE**

|  |  |  |  |
| --- | --- | --- | --- |
| **PARTICIPATION DETAILS** | **FIRM ‘A’**  **(Lead Member)** | **FIRM ‘B’** | **FIRM ‘C’** |
| Financial |  |  |  |
| Name of the Banker(s) |  |  |  |
| Planning |  |  |  |
| Construction Equipment |  |  |  |
| Key Personnel |  |  |  |
| Execution of Works and Operational Services (Give details on proposed contribution of each) |  |  |  |

The Joint Venture should indicate the details of participation as above.

Appendix to Bid Technical Part

Form CON – 2: Historical Contract Non-Performance, Pending Litigation and Litigation History

(to be completed for the Bidder and each member of Joint Venture)

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Joint Venture Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_IFB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |  |  |  |
| --- | --- | --- | --- |
| Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria | | | |
| 🞎 Contract non-performance did not occur since 1st January *[insert year]*specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.  🞎 Contract(s) not performed since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, requirement 2.1 | | | |
| **Year** | **Non- performed portion of contract** | **Contract Identification** | **Total Contract Amount (Rs)** |
| *[insert year]* | *[insert amount and percentage]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Reason(s) for nonperformance: *[indicate main reason(s)]* | *[insert amount]* |
| Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria | | | |
| 🞎 No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3. | | | |
| 🞎 Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below. | | | |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Year of dispute** | | **Amount in dispute (Rs)** | | **Contract Identification** | **Total Contract Amount (Rs)** |
|  | |  | | Contract Identification: \_\_\_\_\_\_\_\_\_  Name of Employer: \_\_\_\_\_\_\_\_\_\_\_\_  Address of Employer: \_\_\_\_\_\_\_\_\_\_  Matter in dispute: \_\_\_\_\_\_\_\_\_\_\_\_\_\_  Party who initiated the dispute: \_\_\_\_ *[indicate “Employer” or “Contractor”]*  Status of dispute: *\_\_\_\_\_\_\_\_\_\_\_ [Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]* |  |
|  | |  | | Contract Identification:  Name of Employer:  Address of Employer:  Matter in dispute:  *[indicate “Employer” or “Contractor”]*  Party who initiated the dispute:  Status of dispute:  *[Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]* |  |
| Litigation History in accordance with Section III, Evaluation and Qualification Criteria | | | | | |
| 🞎 No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.  🞎 Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below. | | | | | |
| **Year of award** | **Outcome as percentage of Net Worth** | | **Contract Identification** | | **Total Contract Amount (Rs)** |
| *[insert year]* | *[insert percentage]* | | Contract Identification: [indicate complete contract name, number, and any other identification]  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Matter in dispute: *[indicate main issues in dispute]*  Party who initiated the dispute: *[indicate “Employer” or “Contractor”]*  Reason(s) for Litigation and award decision *[indicate main reason(s)]* | | *[insert amount]* |

Appendix to Bid Technical Part

Form CON – 3: Environmental, Social, Health, and Safety

Performance Declaration

*[to be completed for the Bidder, each member of a Joint Venture and each Specialized Subcontractor]*

Bidder’s Name: \_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_Joint Venture Member’s or Specialized Subcontractor’s Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_IFB No. and title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Page \_\_\_\_\_\_\_\_of \_\_\_\_\_\_\_\_pages

|  |  |  |  |
| --- | --- | --- | --- |
| Environmental, Social, Health, and Safety Performance Declaration  in accordance with Section III, Qualification Criteria, and Requirements | | | |
| 🞎 **No suspension or termination of contract**: An employer has not suspended or terminated a contract and/or called the performance security for a contract for reasons related to Environmental, Social, Health, or Safety (ESHS) performance since the date specified in Section III, Qualification Criteria, and Requirements, Sub-Factor 2.5.  🞎 **Declaration of suspension or termination of contract**: The following contract(s) has/have been suspended or terminated and/or Performance Security called by an employer(s) for reasons related to Environmental, Social, Health, or Safety (ESHS) performance since the date specified in Section III, Qualification Criteria, and Requirements, Sub-Factor 2.5. Details are described below: | | | |
| **Year** | **Suspended or terminated portion of contract** | **Contract Identification** | **Total Contract Amount (Rs)** |
| *[insert year]* | *[insert amount and percentage]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Reason(s) for suspension or termination: *[indicate main reason(s)]* | *[insert amount]* |
| *[insert year]* | *[insert amount and percentage]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Reason(s) for suspension or termination: *[indicate main reason(s)]* | *[insert amount]* |
| *…* | *…* | *[list all applicable contracts]* | *…* |
| **Performance Security called by an employer(s) for reasons related to ESHS performance** | | | |
| Year | Contract Identification | | **Total Contract Amount (Rs)** |
| *[insert year]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*  Name of Employer: *[insert full name]*  Address of Employer: *[insert street/city/country]*  Reason(s) for calling of performance security: *[indicate main reason(s)]* | | *[insert amount]* |
|  |  | |  |

Appendix to Bid Technical Part

Form CCC  
Current Contract Commitments / Works in Progress

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

(A) Existing commitments and on-going works:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Description of Work | Place & State | Contract No & Date | Name & Address of Employer | Value of Contract (Rs) | Stipulated Period of Completion | Value of Works Remaining to be Completed (Rs) | Anticipated date of Completion | Average monthly invoicing over last six months  (Rs/month) |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |

(B) Works for which bids already submitted and likely to be awarded – expected additional commitment.

\_

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Description of Work | Place & State | Name & Address of Employer | Estimated Value of Works (Rs) | Stipulated Period of Completion | Stipulated period of Completion | Date when decision is expected | Remarks (if any) |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |

Appendix to Bid Technical Part

**Form FIN – 3.1: Financial Situation and Performance**

*(to be completed for the Bidder and each member of Joint Venture)*

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Joint Venture Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_IFB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

**1. Financial data**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Type of Financial information in**  **(Rs)** | **Historic information for previous** *\_\_\_\_\_\_\_\_\_years,*  *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  **(amount in Rs)** | | | | |
|  | Year 1 | Year 2 | Year 3 | Year4 | Year 5 |
| Statement of Financial Position (Information from Balance Sheet) | | | | | |
| Total Assets (TA) |  |  |  |  |  |
| Total Turnover |  |  |  |  |  |
| Total Liabilities (TL) |  |  |  |  |  |
| Total Equity/Net Worth (NW) |  |  |  |  |  |
| Current Assets (CA) |  |  |  |  |  |
| Current Assets + Loans & Advances |  |  |  |  |  |
| Current Liabilities (CL) |  |  |  |  |  |
| Current Liabilities & provision |  |  |  |  |  |
| Working Capital (WC) |  |  |  |  |  |
| Information from Income Statement | | | | | |
| Total Revenue (TR) |  |  |  |  |  |
| Profits Before Taxes (PBT) |  |  |  |  |  |
| Profits after Tax |  |  |  |  |  |
| Cash Flow Information | | | | | |
| Cash Flow from Operating Activities |  |  |  |  |  |
| Net cash accruals= Profit after Tax + depreciation |  |  |  |  |  |
| This information should be extracted from the Annual Financial Statements/ Balance sheets, which should be enclosed. Year 1 will be the latest year for which audited financial statements are available. Year 2 shall be the year immediately preceding year 1 and year 3 shall be the year immediately preceding Year 2. | | | | | |

**2. Sources of Finance**

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

|  |  |  |
| --- | --- | --- |
| **No.** | **Source of finance** | **Amount (Rs)** |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
|  |  |  |

**3. Financial documents**

The Bidder and its parties shall provide copies of financial statements for *\_\_\_\_\_\_\_\_\_*years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.2. The financial statements shall:

(a) reflect the financial situation of the Bidder or in case of JV member, and not an affiliated entity (such as parent company or group member).

(b) be independently audited or certified by a Chartered Accountant.

(c) be complete, including all notes to the financial statements.

(d) correspond to accounting periods already completed and audited.

🞎 Attached are copies of financial statements[[15]](#footnote-15) for the *\_\_\_\_\_\_\_\_\_\_\_\_*years required above; and complying with the requirements

Appendix to Bid Technical Part

**Form FIN - 3.2:** **Average Annual Construction Turnover**

*(to be completed for the Bidder and each member of Joint Venture)*

Bidder’s Name: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Date: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Joint Venture Member’s Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_IFB No. and title: *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*Page *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_*pages

|  |  |
| --- | --- |
| **Annual turnover data (construction only)** | |
| **Year** | **Amount in Rs** |
| *[indicate year]* | *[insert amount]* |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
| Average Annual Construction Turnover \* |  |

\* See Section III, Evaluation and Qualification Criteria, Sub-Factor 3.2. Annual construction turnover calculated as total certified payments received for work in progress or completed, for 5 years. This should be certified by a Chartered Accountant.

Appendix to Bid Technical Part

**JOINT VENTURE**

|  |
| --- |
| **Names of all members of a joint venture** |
| **1. Member in charge** |
| **2. Member** |
| **3. Member** |

**Total value of annual construction turnover, in terms of work billed to clients, in Rupees**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Annual Turnover Data (construction only; in Rs \*)** | | | | | | | |
| **Member** | **Form 2 page no.** | **Year 1** | **Year 2** | **Year 3** | **Year 4** | **Year 5** | **Average** |
| **1. Member in charge** |  |  |  |  |  |  |  |
| **2. Member** |  |  |  |  |  |  |  |
| **3. Member** |  |  |  |  |  |  |  |
| **TOTALS** |  |  |  |  |  |  |  |

**\* To be certified by a chartered accountant**

**Name and address of Bankers to the Joint Venture**

Appendix to Bid Technical Part

Form FIN 3.3.  
Financial Resources

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

|  |  |
| --- | --- |
| **Source of financing** | **Amount (Rs)** |
| 1. |  |
| 2. |  |
| 3. |  |
| 4. |  |

**FORMAT FOR EVIDENCE OF ACCESS TO OR AVAILABILITY OF CASH FLOW**

*[To be given from a Nationalized or Scheduled Bank in India-No substitute other than this will be acceptable)]*

**Clause 3.1(ii) of Section III – Qualification Criteria**

**(1) AVAILABILITY OF CASH FLOW (WORKING CAPITAL)**

This is to certify that M/s. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is a reputed company with a good financial standing.

If the contract for the works, namely \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [funded by the World Bank] is awarded to the above firm, we shall be able to provide overdraft/credit facilities to the extent of Rs. equivalent \_\_\_\_\_\_\_ to meet their capital requirements for executing the above contract.

-- Sd. --

Name of Bank Manager

Senior Bank Manager

Address of the Bank

|  |
| --- |
| **\* Change the text as follows for Joint venture:**  *This is to certify that M/s. ………………………………. who has formed a JV with M/s. ………………………….. and M/s. …………………………….. for participating in this bid, is a reputed company with a good financial standing.*  *If the contract for the work, namely …………………………………………………………. [funded by the World Bank] is awarded to the above Joint Venture, we shall be able to provide overdraft/credit facilities to the extent of Rs. …………… to meet the working capital requirements for executing the above contract.*  *[This should be given by the JV members in proportion to their financial participation.]* |

Appendix to Bid Technical Part

**Form EXP - 4.1**

**Specific Design Experience**

*[to be completed for the Bidder, each member of Joint Venture, and Specialized Sub-contractors]*

Bidder’s Name: *[insert full name]*Date: *[insert day, month, year]*Joint Venture Member Name: *[insert full name]*IFB No. and title: *[insert IFB number and title]*Page *[insert page number]* of *[insert total number]* pages

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Similar Contract No.**  *[insert number]* of *[insert number of similar contracts required]* | **Information**  *[on separate pages, using the format of Form 4.5, the Bidder is requested to list contracts of a similar nature, complexity, and requiring similar methodologies to the contract(s) for which bids have been invited]* | | | | |
| Contract Identification | *[insert contract name and number, if applicable]* | | | | |
| Award date | *[insert day, month, year, i.e., 15 June, 2015]* | | | | |
| Completion date | *[insert day, month, year, i.e., 03 October, 2017]* | | | | |
| Role in Contract  *[check the appropriate boxes]* | Lead design  🞎 | | Process  design  🞎 | Detailed  design  🞎 | Other  🞎 |
| Total Contract Amount in Rs | *[insert total contract value on completion in Rs]* | | | | |
| If member in a JV or sub-contractor, specify share in value in total Contract amount and roles and responsibilities | *[insert a percentage amount]* | *[insert total contract amount in Rs]* | | | |
| ***[insert roles and responsibilities]*** | | | | |
| Description of the similarity in accordance with Clause 4.1Section III Qualification Criteria |  | | | | |
| Physical size of required contracts items | *[insert physical size of items]* | | | | |
| Complexity | *[insert description of complexity]* | | | | |
| Methods/Technology | *[insert specific aspects of the methods/technology involved in the contract]* | | | | |
| Other Characteristics | *[insert other characteristics as described in Section VII, Scope of Employer’s Requirements]* | | | | |
| Employer's Name: | *[insert full name]* | | | | |
| Address:  Telephone/fax number  E-mail: | *[indicate street / number / town or city / country]*  *[insert telephone/fax numbers, including country and*  *city area codes]*  *[insert e-mail address, if available]* | | | | |

Appendix to Bid Technical Part

**Form EXP - 4.2**

**Construction Experience**

*[to be completed for the Bidder, each member of Joint Venture, and Specialized Sub-contractors]*

Bidder’s Name: *[insert full name]*Date: *[insert day, month, year]*Joint Venture Member Name: *[insert full name]*IFB No. and title: *[insert IFB number and title]*Page *[insert page number]* of *[insert total number]* pages

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Similar Contract No.**  *[insert number]* of *[insert number of similar contracts required]* | **Information**  *[on separate pages, using the format of Form 4.5, the Bidder is requested to list contracts of a similar nature, complexity, and requiring similar methodologies to the contract(s) for which bids have been invited]* | | | | |
| Contract Identification | *[insert contract name and number, if applicable]* | | | | |
| Award date | *[insert day, month, year, i.e., 15 June, 2015]* | | | | |
| Stipulated date of Completion | *[insert day, month, year, i.e., 15 Jan, 2017]* | | | | |
| Completion date and reason for Delay, if any | *[insert day, month, year, i.e., 03 October, 2017]* | | | | |
| Role in Contract  *[check the appropriate box]* | Prime Contractor 🞎 | | Member in  JV  🞎 | Management Contractor  🞎 | Sub-contractor 🞎 |
| Total Contract Amount in Rs | *[insert total contract value on completion in Rs]* | | | | |
| If member in a JV or sub-contractor, specify share in value in total Contract amount and roles and responsibilities | *[insert a percentage amount]* | *[insert total contract amount in Rs]* | | | |
| ***[insert roles and responsibilities]*** | | | | |
| Description of the similarity in accordance with Clause 4.2Section III Qualification Criteria |  | | | | |
| Physical size of required contracts items | *[insert physical size of items]* | | | | |
| Complexity | *[insert description of complexity]* | | | | |
| Methods/Technology | *[insert specific aspects of the methods/technology involved in the contract]* | | | | |
| Other Characteristics | *[insert other characteristics as described in Section VII, Scope of Employer’s Requirements]* | | | | |
| Employer's Name: | *[insert full name]* | | | | |
| Address:  Telephone/fax number  E-mail: | *[indicate street / number / town or city / country]*  *[insert telephone/fax numbers, including country and*  *city area codes]*  *[insert e-mail address, if available]* | | | | |

Appendix to Bid Technical Part

**Form EXP - 4.2A[[16]](#footnote-16)**

**Specific Construction Experience**

*[to be completed for the Bidder, Lead member of Joint Venture]*

Bidder’s Name: *[insert full name]*Date: *[insert day, month, year]*Joint Venture Member Name: *[insert full name]*IFB No. and title: *[insert IFB number and title]*Page *[insert page number]* of *[insert total number]* pages

*[fill one form per contract/ key activity]*

Key activity *[insert brief description of the key activity in accordance with Clause 4.2A Section III Qualification Criteria]*

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Similar Contract No.**  *[insert number]* of *[insert number of similar contracts required]* | **Information**  *[on separate pages, using the format of Form 4.5, the Bidder is requested to list contracts of a similar nature, complexity, and requiring similar methodologies to the contract(s) for which bids have been invited]* | | | | | |
| Contract Identification | *[insert contract name and number, if applicable]* | | | | | |
| Award date | *[insert day, month, year, i.e., 15 June, 2015]* | | | | | |
| Stipulated Completion date | *[insert day, month, year, i.e., 15 Jan, 2017]* | | | | | |
| Completion date and reasons for Delay, if any | *[insert day, month, year, i.e., 03 October, 2017]* | | | | | |
| Role in Contract  *[check the appropriate box]* | Prime Contractor 🞎 | Member in  JV  🞎 | | Management Contractor  🞎 | | Sub-contractor 🞎 |
| Total Contract Amount in Rs | *[insert total contract value on completion in Rs]* | | | | | |
| Quantity performed under the contract per year – **key activity 1**  *[insert extent of participation indicating actual quantity of key activity successfully completed in the role performed][Repeat the rows for each Key Activity]* | Total Quantity | | Percentage participation | | Actual quantity performed | |
| Year 1 |  | |  | |  | |
| Year 2 |  | |  | |  | |
| Year 3 |  | |  | |  | |
| Year 4 |  | |  | |  | |
| Year 5 |  | |  | |  | |
| Quantity performed under the contract per year – **key activity 2** | Total Quantity | | Percentage participation | | Actual quantity performed | |
| Year 1 |  | |  | |  | |
| Year 2 |  | |  | |  | |
| Year 3 |  | |  | |  | |
| Year 4 |  | |  | |  | |
| Year 5 |  | |  | |  | |
| So on for other key activities  …………..  …………… |  | |  | |  | |
| Employer's Name: | *[insert full name]* | | | | | |
| Address:  Telephone/fax number  E-mail: | *[indicate street / number / town or city / country]*  *[insert telephone/fax numbers, including country and*  *city area codes]*  *[insert e-mail address, if available]* | | | | | |

Appendix to Bid Technical Part

**Form EXP - 4.3**

**Specific Operations Experience**

*[to be completed for the Bidder, each member of Joint Venture, and Specialized Sub-contractors]*

Bidder’s Name: *[insert full name]*Date: *[insert day, month, year]*Joint Venture Member Name: *[insert full name]*IFB No. and title: *[insert IFB number and title]*Page *[insert page number]* of *[insert total number]* pages

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Similar Contract No.**  *[insert number]* of *[insert number of similar contracts required]* | **Information**  *[on separate pages, using the format of Form 4.5, the Bidder is requested to list contracts of a similar nature, complexity, and requiring similar methodologies to the contract(s) for which bids have been invited]* | | | | |
| Contract Identification | *[insert contract name and number, if applicable]* | | | | |
| Award date | *[insert day, month, year, i.e., 15 June, 2015]* | | | | |
| Contract Completion date (actual/expected) | *[insert day, month, year, i.e., 03 October, 2017]* | | | | |
| Role in Contract  *[check the appropriate box]* | Prime Contractor 🞎 | | Member in  JV  🞎 | Management Contractor  🞎 | Sub-contractor 🞎 |
| Total Contract Amount in Rs | *[insert total contract value on completion in Rs]* | | | | |
| If member in a JV or sub-contractor, specify share in value in total Contract amount and roles and responsibilities | *[insert a percentage amount]* | *[insert total contract amount in Rs]* | | | |
| ***[insert roles and responsibilities]*** | | | | |
| Description of the similarity in accordance with Clause 4.3Section III Qualification Criteria |  | | | | |
| Physical size of required contracts items | *[insert physical size of items]* | | | | |
| Complexity | *[insert description of complexity]* | | | | |
| Methods/Technology | *[insert specific aspects of the methods/technology involved in the contract]* | | | | |
| Other Characteristics | *[insert other characteristics as described in Section VII, Scope of Employer’s Requirements]* | | | | |
| Employer's Name: | *[insert full name]* | | | | |
| Address:  Telephone/fax number  E-mail: | *[indicate street / number / town or city / country]*  *[insert telephone/fax numbers, including country and*  *city area codes]*  *[insert e-mail address, if available]* | | | | |

Appendix to Bid Technical Part

**Form EXP - 4.4**

**Specific DBO Experience**

*[to be completed for the Bidder, each member of Joint Venture, and Specialized Sub-contractors]*

Bidder’s Name: *[insert full name]*Date: *[insert day, month, year]*Joint Venture Member Name: *[insert full name]*IFB No. and title: *[insert IFB number and title]*Page *[insert page number]* of *[insert total number]* pages

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Similar Contract No.**  *[insert number]* of *[insert number of similar contracts required]* | **Information**  *[on separate pages, using the format of Form 4.5, the Bidder is requested to list contracts of a similar nature, complexity, and requiring similar methodologies to the contract(s) for which bids have been invited]* | | | | |
| Contract Identification | *[insert contract name and number, if applicable]* | | | | |
| Award date | *[insert day, month, year, e.g., 15 June, 2014]* | | | | |
| Design-Build Commissioning Date | *[insert day, month, year, e.g., 15 June, 2015]* | | | | |
| Operations period completion date (actual or expected) | *[insert day, month, year, e.g., 03 October, 2030]* | | | | |
| Role in Contract  *[check the appropriate box]* | Prime Contractor 🞎 | Member in  JV  🞎 | | Management Contractor  🞎 | Sub-contractor 🞎 |
| Total Contract Amount in Rs | *[insert total contract value on completion in Rs]* | | | | |
| If member in a JV or sub-contractor, specify share in value in total Contract amount and roles and responsibilities | *[insert a percentage amount]* | | *[insert total contract amount in Rs]* | | |
| ***[insert roles and responsibilities]*** | | | | |
| Description of the similarity in accordance with Clause 4.4 Section III Qualification Criteria |  | | | | |
| Physical size of required contracts items | *[insert physical size of items]* | | | | |
| Complexity | *[insert description of complexity]* | | | | |
| Methods/Technology | *[insert specific aspects of the methods/technology involved in the contract]* | | | | |
| Other Characteristics | *[insert other characteristics as described in Section VII, Scope of Employer’s Requirements]* | | | | |
| Employer's Name: | *[insert full name]* | | | | |
| Address:  Telephone/fax number  E-mail: | *[indicate street / number / town or city / country]*  *[insert telephone/fax numbers, including country and*  *city area codes]*  *[insert e-mail address, if available]* | | | | |

Appendix to Bid Technical Part

Form 4.5

Details of Contracts of Similar Nature and Complexity

|  |
| --- |
| Name of Bidder or partner of a Joint Venture |

Use a separate sheet for each contract.

|  |  |  |
| --- | --- | --- |
| 1. | Number of contract |  |
|  | Name of contract | |
|  | Country | |
| 2. | Name of Purchaser | |
| 3. | Purchaser address | |
| 4. | Nature of Work and special features relevant to the contract for which bids have been invited | |
| 5. | Contract role (check one)  Prime Supplier Management Contractor Subcontractor Partner in a Joint Venture | |
| 6. | Amount of the total contract/subcontract/partner share at completion, or on the date of award for current contracts. | |
| 7. | Total contract: Rs \_\_\_\_\_\_\_; Subcontract: Rs \_\_\_\_\_\_\_; Partner share: Rs \_\_\_\_\_\_\_; | |
| 8. | Date of award/completion | |
| 9. | Contract was completed \_\_\_\_\_ months ahead/behind original schedule (if behind, provide explanation). | |
| 10. | Contract was completed Rs \_\_\_\_\_\_\_\_\_ equivalent under/over original contract amount (if over, provide explanation). | |
| 11. | Special contractual/technical requirements. | |
| 12. | Indicate the approximate percent of total contract value (and Rs amount) of Information System undertaken by subcontract, if any, and the nature of such Information System. | |

Appendix to Bid Technical Part

Form…..

*(Name of the Project)*

**(*Declaration regarding tax/duty exemption for materials/construction equipment bought for the work)***

(*Bidder’s Name and Address*)

To: …………………..

(*Name of the Employer & address*)

Dear Sir:

Re: [*Name of Work*]…………………….

Certificate for Import/Procurement of Goods/Construction Equipment

Government Order/Circular Number under which tax/duty Exemption is being sought: …………..

1. We confirm that we are solely responsible for obtaining tax/duty waivers which we have considered in our bid and in case of failure to receive such waivers for reasons whatsoever, the employer will not compensate us.

2. We are furnishing below the information required by the Employer for issue of the necessary certificates in terms of the Government of India’s relevant Notifications.

3. The goods/construction equipment for which certificates are required are as under:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Items  *(modify the list suitably for each specific work)\** | Make/Brand Name | Capacity [*where applicable*] | Quantity | Value | State whether it will be procured locally or imported [*if so from which country*] | Remarks regarding justification for the quantity and their usage in works. |
| **Goods[[17]](#footnote-17)** | | | | | | |
| [a] Bitumen |  |  |  |  |  |  |
| [b] Cement |  |  |  |  |  |  |
| [c] Steel |  |  |  |  |  |  |
|  |  |  |  |  |  |  |
| **Construction Equipment** | | | | | | |
|  |  |  |  |  |  |  |
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|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |

4. We agree that no modification to the above list is permitted after bids are opened.

5. We agree that the certificate will be issued only to the extent considered reasonable by the Employer for the work, based on the Activity Schedules and the construction program and methodology as furnished by us along with the bid.

6. We confirm that the above goods and construction equipment will be exclusively used for the construction of the above work and the construction equipment will not be sold or otherwise disposed of in any manner for a period of five years from the date of acquisition.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*Signature*) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Place: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*Printed Name*) \_\_\_\_\_\_\_\_\_\_\_\_

(*Designation*)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(*Common Seal*) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[***This certificate will be issued within 60 days of signing of contract and no subsequent changes will be permitted.*]**

**\* *Modify the above to suit the requirements given in Government of India’s Notification as current of date of bidding.***

Appendix to Bid Technical Part

**Form of Bid Security - Bank Guarantee**

*[Guarantor letterhead or SWIFT identifier code]*

Bank Guarantee No……………………. *[insert guarantee reference number]*

Date…………………………. *[insert date of issue of the guarantee]*

WHEREAS, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of Bidder][[18]](#footnote-18)* (hereinafter called "the Applicant") has submitted his Bid dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[date]* or will submit his Bid for the execution of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of Contract]* (hereinafter called "the Bid") under Invitation for Bids No………………………. *[insert number]* (hereinafter called “the IFB”)

KNOW ALL PEOPLE by these presents that We \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of bank]* of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of country]* having our registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called "the Bank") are bound unto \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[name of Employer]* (hereinafter called "the Employer") in the sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[[19]](#footnote-19) for which payment well and truly to be made to the said Employer the Bank binds itself, his successors and assigns by these presents.

SEALED with the Common Seal of the said Bank this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_ 20\_\_\_\_.

THE CONDITIONS of this obligation are:

(1) If after Bid opening the Applicant (a) withdraws his bid during the period of Bid validity specified in the Letter of Bid, (“the Bid Validity Period”); or (b) does not accept the correction of the Bid Price pursuant to ITB 36;

or

(2) If the Applicant having been notified of the acceptance of his bid by the Employer during the period of Bid validity:

(a) fails or refuses to execute the Contract Agreement in accordance with the Instructions to Bidders, if required; or

(b) fails or refuses to furnish the Performance Security and, if required, an Environmental, Social, Health and Safety (ESHS) Performance Security, in accordance with the Instruction to Bidders.

we undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him owing to the occurrence of one or any of the four conditions, specifying the occurred condition or conditions.

This Guarantee will remain in force up to and including the date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[[20]](#footnote-20) days after the deadline for submission of Bids as such deadline is stated in the Instructions to Bidders or as it may be extended by the Employer, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this guarantee should reach the Bank not later than the above date.

DATE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SIGNATURE OF THE BANK \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WITNESS \_\_\_\_\_\_\_\_\_\_\_\_ SEAL \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[signature, name, and address]

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

Letter of Bid – Financial Part

*INSTRUCTIONS TO BIDDERS*

|  |
| --- |
| *INSTRUCTIONS TO BIDDERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE DOCUMENT*  *The Bidder must prepare the Letter of Bid on stationery with its letterhead clearly showing the Bidder’s complete name and business address.*  *Note: All italicized text is to help Bidders in preparing this form, and Bidders shall delete it from the final document.* |

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

**IFB No.:** *[insert IFB number and date]*

**Invitation for Bid No.**: *[insert identification]*

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

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

Dear Sir or Madam:

We, the undersigned, hereby submit the second part of our Bid, the Bid Price and Priced Activity Schedules. This accompanies the Letter of Technical Part.

In submitting our Bid, we make the following additional declarations:

1. **Bid Validity Period:** Our Bid shall be valid for a period specified in BDS ITB 18.1 (or as amended if applicable) from the date fixed for the Bid submission deadline specified in BDS 22.1 (or as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
2. **Bid Price**: The total price of our Bid, excluding any discounts offered in item (c) below is: *[Insert one of the options below as appropriate]*

*[Option 1, in case of one lot:]* Total price is: [*insert the total price of the Bid in Rs in words and figures*];

Or

*[Option 2, in case of multiple lots:]* (a) Total price of each lot [*insert the total price of each lot in Rs in words and figures*]; and (b) Total price of all lots (sum of all lots) [*insert the total price in Rs of all lots in words and figures*];

1. **Discounts:** The discounts offered and the methodology for their application are:

(i) The discounts offered are: [*Specify in detail each discount offered.*]

(ii) The exact method of calculations to determine the net price after application of discounts is shown below: [*Specify in detail the method that shall be used to apply the discounts*];

1. If our Bid is accepted, we undertake to provide an advance payment security and a Performance Security *[and an Environmental, Social, Health and Safety (ESHS) Performance Security.* ***Delete if not applicable****]* in the form, in the amounts, and within the times specified in the Bidding Documents.
2. **Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Bidding process or execution of the Contract: [*insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount of each such commission or gratuity*]

|  |  |  |  |
| --- | --- | --- | --- |
| Name of Recipient | Address | Reason | Amount |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

*(If none has been paid or is to be paid, indicate “none.”)*

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

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

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

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

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

\*: In the case of the Bid submitted by a Joint Venture specify the name of the Joint Venture as Bidder.

\*\*: Person signing the Bid shall have the power of attorney given by the Bidder. The power of attorney shall be attached with the Bid Schedules.

Appendix to Bid Financial Part

Schedule of Adjustment Data

***[Design Build of the Works]***

*[In Table A below, the Bidder shall indicate its proposed weightings within the range specified by the Employer, such that the total weighting = 1.00. If Bidder does not propose its weighting, it will be assumed that the Bidder is accepting Employer’s suggested weightings]*

Table A. Design-Build

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Index code\*** | **Index description\*** | **Source of index\*** | **Base Value and Date\*** | **Bidder’s**  **proposed**  **weighting \*** | **Employer’s suggested weighting\*** |
| A | Nonadjustable | **-** |  | 0.15 | 0.15 |
| B | Labour - Consumer price index for industrial workers for ........ centre | Labour Bureau, Ministry of Labour & Employment, Government of India |  | **\* 0.04-0.08\*** | **0.06** |
| C | Cement - All India Wholesale Price Index for grey cement | Office of the Economic Advisor to the Govt. of India, Ministry of Commerce and Industry |  | **\* 0.08-0.12 \*** | **0.10** |
| D | Steel - All India Wholesale Price Index for steel long | Office of the Economic Advisor to the Govt. of India, Ministry of Commerce and Industry |  | **\* 0.18-0.22 \*** | **0.20** |
| E | Steel Pipes and Tubes | Office of the Economic Advisor to the Govt. of India, Ministry of Commerce and Industry |  | **\* 0.20-0.30 \*** | **0.25** |
| F | POL - average official retail price of High Speed Diesel | Retail outlet of IOC at …..  *[insert city]* |  | **\* 0.04-0.08 \*** | **0.06** |
| G | Plant & Machinery Spares - All India Wholesale Price Index for Construction machinery | Office of the Economic Advisor to the Govt. of India, Ministry of Commerce and Industry |  | **\* 0.08-0.12 \*** | **0.10** |
| H | Other materials - All India Wholesale Price Index for all commodities | Office of the Economic Advisor to the Govt. of India, Ministry of Commerce and Industry |  | **\* 0.04-0.08\*** | **0.06** |
| I | Others (Please specify) | *[insert as appropriate]* | *[insert as appropriate]* | *[insert as appropriate]* | *[insert as appropriate]* |
| **Total** | | |  | **1.00** | **1.00** |

*[\* To be entered by the Employer. Whereas “A” should a fixed percentage, B, C, D, E etc. should specify a range of values.* ***The figures given in the above table are only for illustration, and the Employer shall modify them (both the indices and the proposed weightings) based on engineers’ estimate for the proposed Works****]*

Appendix to Bid Financial Part

Table D  
Schedule of Adjustment Data for the Operation Service

*[In Tables D1, D2 etc., below, the Bidder shall indicate its proposed weightings within the range specified by the Employer, such that the total weighting = 1.00. If Bidder does not propose its weighting, it will be assumed that the Bidder is accepting Employer’s suggested weightings]*

**Table D1. Operation Service- Fee Component 1**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Index code\*** | **Index description\*** | **Source of index\*** | **Base Value and Date\*** | **Bidder’s**  **proposed**  **weighting \*** | **Employer’s**  **proposed**  **weighting \*** |
| A | Nonadjustable | **-** |  | \*0.00-0.15\* | 0.05 |
| B | Labour - Consumer price index for industrial workers for ........ centre | Labour Bureau, Ministry of Labour & Employment, Government of India |  | **\* 0.20-0.30\*** | **0.25** |
| C | Chemicals - ……… | Office of the Economic Advisor to the Govt. of India, Ministry of Commerce and Industry |  | **\* 0.08-0.12 \*** | **0.10** |
| D | Electricity | …….. [insert relevant] Electricity Utility Company | …*[unit rate and date]* | \* 0.40-0.50 \* | **0.45** |
| E | POL - average official retail price of High Speed Diesel | Retail outlet of IOC at …..  *[insert city]* |  | **\* 0.10-0.20 \*** | **0.15** |
| F | Others (Please specify) | *[insert as appropriate]* | *[insert as appropriate]* | *[insert as appropriate]* | *[insert as appropriate]* |
| **Total** | | |  | **1.00** | **1.00** |

*[Notes for the Employer:*

*1) \* To be entered by the Employer. Whereas “A” should a fixed percentage, B, C, D, E etc. should specify a range of values.* ***The figures given in the above table are only for illustration, and the Employer shall modify them (both the indices and the proposed weightings) based on engineers’ estimate for the proposed Works. It is normally not necessary to have a non-adjustable component during the Operation Service Period, and if so “A” may be deleted.***

*2) Additional tables (D2, D3 etc.) should be added for each component of the Operation Service Fee. For example, if the contractor is paid a fixed fee and a variable fee, two tables may be required; one table covering the fixed fee and the other covering the variable fee.*

*3) It is normally not necessary to have a non-adjustable component during the Operation Service Period.]*

Appendix to Bid Financial Part

Bid Price Forms.

Priced Activity and Sub-activity Schedules

The total of the prices of the activities in the Activity Schedule is the Bidder’s offer to complete the works on a “single responsibility” basis.

The cost of any activity or sub-activity that the Bidder may have omitted is deemed to be included in the price of other activities or sub-activities in the Priced Activity and Sub-activity Schedules and will not be paid for separately by the Employer.

The priced activity and sub activity schedules provided by the Bidder will be used for bid evaluation. These schedules together with the work program serve as a basis for estimating the instalments in the Schedule of Payments.

[***Note****: the Employer should delete the bid price forms that are not applicable for the specific works and services proposed to be contracted. Forms related to (a) schedule of daywork rates; and (b) provisional sums; be specifically seen for modification/ applicability*].

Appendix to Bid Financial Part

Part [1] Bid Price Forms - Design-Build.

Sample Priced Activity Schedule Table

*[To be completed by the Bidder (more tables to be used by the Bidder as appropriate)]*

|  |  |  |
| --- | --- | --- |
| **Activity No.** | **Description of Activity** | **Activity Price**  **(Rs)** |
| 1. | Design Services |  |
|  |  |  |
| 2. | Mobilization |  |
|  |  |  |
| 3. | Construction |  |
|  |  |  |
| 4. |  |  |
|  |  |  |
| 5. | Etc. |  |
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|  |  |  |
|  |  |  |
|  | Total price of Activities carried forward to Grand Summary, Page \_\_\_\_ |  |

Appendix to Bid Financial Part

Part [1] Bid Price Forms - Design-Build

Sample Priced Sub-activity Schedule Table

*[to be completed by the Bidder (more tables to be used by the bidder as appropriate)]*

Activity:

|  |  |  |
| --- | --- | --- |
| **Sub-activity No.** | **Description of Sub-activity** | **Sub-activity Price**  **(Rs)** |
| 1. |  |  |
|  |  |  |
| 2. |  |  |
|  |  |  |
| 3. |  |  |
|  |  |  |
| 4. |  |  |
|  |  |  |
| 5. | Etc. |  |
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|  |  |  |
|  |  |  |
|  | Total price of Sub-activities carried forward to the Priced Activity Schedule, Page \_\_\_\_ |  |

Appendix to Bid Financial Part

**Part [1] Bid Price Forms - Design-Build**

Schedule of Daywork Rates: 1. Labor

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item no.** | **Description** | **Unit** | **Nominal quantity** | **Rate**  **(Rs)** | **Extended amount**  **(Rs)** |
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|  |  |  |  |  |  |
|  | Subtotal | | | |  |
| D122 | Allow percent a of Subtotal for Contractor’s overhead, profit, etc. | | |  |  |
|  |  |  |  |  |  |
|  | Total for Daywork: Labor  (carried forward to Daywork Summary, p. ) | | | |  |
| a. To be entered by the Bidder. | | | | | |

Appendix to Bid Financial Part

Part [1] Bid Price Forms - Design-Build

Schedule of Daywork Rates: 2. Materials

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item no.** | **Description** | **Unit** | **Nominal quantity** | **Rate**  **(Rs)** | **Extended amount**  **(Rs)** |
|  |  |  |  |  |  |
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|  |  |  |  |  |  |
|  | Subtotal | | | |  |
|  | Allow percenta of Subtotal for Contractor’s overhead, profit, etc. | | |  |  |
|  |  |  |  |  |  |
|  | Total for Daywork: Materials  (carried forward to Daywork Summary, p. ) | | | |  |
| a. To be entered by the Bidder. | | | | | |

Appendix to Bid Financial Part

Part [1] Bid Price Forms - Design-Build

Schedule of Daywork Rates: 3. Contractor’s Equipment

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Item no.** | **Description** | **Nominal quantity (hours)** | **Basic hourly rental rate (Rs)** | **Extended amount (Rs)** |
|  |  |  |  |  |
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|  |  |  |  |  |
|  |  |  |  |  |
|  | Subtotal | | |  |
|  | Allow percenta of Subtotal for Contractor’s overhead, profit, etc. |  |  |  |
|  |  |  |  |  |
| Total for Daywork: Contractor’s Equipment  (carried forward to Daywork Summary, p. ) | | | |  |

a. To be entered by the Bidder.

Appendix to Bid Financial Part

Part [1] Bid Price Forms - Design-Build

Daywork Summary

|  |  |
| --- | --- |
|  | **Amount**  **(Rs)** |
| 1. Total for Daywork: Labor |  |
| 2. Total for Daywork: Materials |  |
| 3. Total for Daywork: Contractor’s Equipment |  |
| Total for Daywork (Provisional Sum)  (carried forward to Bid Summary, p. ) |  |

Appendix to Bid Financial Part

Part [1] Bid Price Forms - Design-Build

Specified Provisional Sums

|  |  |  |
| --- | --- | --- |
| **Item no.** | **Description** | **Amount (Rs)** |
| 1 |  |  |
|  |  |  |
|  |  |  |
| 2 |  |  |
|  |  |  |
|  |  |  |
| 3 |  |  |
|  |  |  |
|  |  |  |
| 4 | [*To be entered by the Employer; Delete if not applicable:]*  Provisional sums for any specific ESHS outcomes |  |
|  | [*To be entered by the Employer; Delete if not applicable:]* Provisional sum for sexual exploitation and abuse (SEA) / gender based violence (GBV) awareness and sensitization training. |  |
|  |  |  |
| etc. |  |  |
|  |  |  |
|  | Total for Specified Provisional Sums  (carried forward to Grand Summary (B), p. ) |  |

Appendix to Bid Financial Part

Part [1] Bid Price Forms - Design-Build

Summary (Design-Build)

|  |  |  |
| --- | --- | --- |
| **General Summary** | **Page** | **Amount (Rs)** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| *Subtotal of Activities* | *(A)* |  |
| *Total for Daywork (Provisional Sum)\** | *(B)* |  |
| *Specified Provisional Sums ii* | *(C)* | *[sum]* |
| *Total of Activities and Provisional Sums (A + B + C) i* | *(D)* |  |
| *Add Provisional Sum for Contingency Allowance (if any) ii* | *(E)* | *[sum]* |
| *Bid Design Build Price (D + E) (Carried forward to Letter of Bid)* | *(F)* |  |
|  |  |  |
| i)All Provisional Sums are to be expended in whole or in part at the direction and discretion of the Employer’s Representative in accordance with Clause 13.5 of the Conditions of Contract.  ii)To be entered by the Employer.  \* For evaluation purposes, Provisional Sum, other than Daywork will be excluded. | | |

Appendix to Bid Financial Part

Part [2] Bid Price Forms – Operation Service

Operation Service Fees

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Ref.** | **Breakdown by Operation Service fees by revenue component** | **Totals (Rs)** | **Yr. 1**  **(Rs)** | **Yr. 2**  **(Rs)** | **Yr. 3**  **(Rs)** | **etc.** |  |  |
| A | *e.g. Operation Service fixed fee* |  |  |  |  |  |  |  |
| B | *e.g. Operation Service variable fee* |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
| **C** | **Totals** |  |  |  |  |  |  |  |

i) All Provisional Sums are to be expended in whole or in part at the direction and discretion of the Employer’s Representative in accordance with Clause 13.5 of the Conditions of Contract.

ii) For evaluation purposes, Provisional Sums, other than Daywork will be excluded

***[****The Employer shall adapt the form, and add additional forms, to suit the proposed Operation Service payment basis. Add one additional Bid form for each component of the Operation Service Fee]*

Appendix to Bid Financial Part

Part [2] Bid Price Forms – Operation Service

Summary for Operation Service

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Ref.** | **Activity** | **Total Operation Service Period *[sum all years]***  **(Rs)** | **Yr. 1**  **(Rs)** | **Yr. 2**  **(Rs)** | **Yr. 3**  **(Rs)** | **etc.** |  |  |
| A | Operation Service |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
| **C** | **Totals (Rs)** |  | **Total carried forward** | | | | | |

Appendix to Bid Financial Part

Part 3: Grand Summary

|  |  |  |
| --- | --- | --- |
| **General Summary** | **Page** | **Amount (Rs)** |
|  |  |  |
| 1. Bid Design-Build Price |  | Sum |
| 2. Bid Operation Service Price |  | Sum |
| *3. Bid total price (Design-Build + Operation Service Price (Carried forward to Letter of Bid)* |  | *Sum* |
|  |  |  |
|  | | |

Section V – Eligible Countries

**Eligibility for the Provision of Goods, Works and non-consulting Services in Bank-Financed Procurement**

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

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

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

[*Note: as and when some country/ countries become ineligible insert the list of such countries following approval by the Bank to apply the restriction*]

Section VI – Bank Policy-Corrupt and Fraudulent Practice

**(Section VI shall not be modified)**

**Guidelines for Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers, dated January 2011:**

“**Fraud and Corruption:**

1.16 It is the Bank’s policy to require that Borrowers (including beneficiaries of Bank loans), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts.[[21]](#footnote-21) In pursuance of this policy, the Bank:

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

(i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;[[22]](#footnote-22);

(ii) “fraudulent practice” is 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;[[23]](#footnote-23)

(iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;[[24]](#footnote-24)

(iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;[[25]](#footnote-25)

(v) “obstructive practice” is

(aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

(bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under paragraph 1.16(e) below.

(b) will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

(c) will declare misprocurement and cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;

(d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank’s sanctions procedures,[[26]](#footnote-26) including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated[[27]](#footnote-27);

(e) will require that a clause be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers and contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Bank.”

PART 2 –Employer’s Requirements

**Section VII – Employer’s Requirements**

Employer’s Requirements

***Notes on preparing the Employer’s Requirements***

The Employer’s Requirements contains the Scope, the Specifications, the Drawings, and Supplementary Information that describe the Works and Operation Service.

This is a “single responsibility contract”. **The Employer is not expected to provide detailed technical specifications. However, the Employer must have a clear idea of what it wants and must communicate its needs to the Bidders. Hence, the section on Employer’s Requirements replaces the usual Technical Specifications of a more traditional approach**.

To enable Bidders to offer appropriate solutions, the Employer should specify the purpose for which the Works are intended (see also Sub- Clause 4.1 of the Conditions of Contract) and its particular requirements as clearly as possible. **The Employer’s requirements must therefore, specify exactly the particular requirements for the completed Works.** It will also be necessary to specify the tests that will be carried out on completion of the Works to verify compliance with the requirements specified.

The Employer should perform appropriate front-end tasks (such as geotechnical/environmental investigations and permit acquisitions) to enable the Employer to: (a) develop a realistic understanding of the contract’s scope and budget; and (b) furnish Bidders with information that they can reasonably rely upon in establishing their price and other commercial decisions.

While this section of the Bidding document should endeavor to define the Employer’s Requirements as precisely as possible **care must be taken to avoid over-specifying details** to the extent that the flexibility and potential benefits associated with a “single responsibility” IFB approach are seriously eroded. This section on Employer’s Requirements should, therefore, be carefully prepared by experts who are familiar with the requirements and with the technical aspect of the required Works. As the contractor is expected to carry out the design, the Employer should provide the criteria to which it expects the design to confirm. The functional/ performance specifications may specify the characteristics, nature and performance of the finished work and any limitations which the Employer wishes to impose.

The Employer’s requirements should specify the Contractor’s Documents (Sub-Clause 5.2 of the General Conditions of Contract) that are required and their submission/approval procedures.

The Employer’s Requirements must be drawn up to permit the widest, possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials performance and/or functions of the Works. The Employer’s Requirements should stipulate that all goods and materials to be incorporated in the Works are new, unused, of the most recent or current models and incorporate all recent improvements in design and materials.

Care must be taken when drafting the Employer’s Requirements to ensure that the requirements are not restrictive. Recognized national standards should be used as much as possible for the description of goods, materials and workmanship. Where other particular standards are specified, it should be stated that goods, materials and workmanship meeting other authoritative standards and which promise to ensure equal or higher quality than the standards specified, will also be acceptable. Where a brand name of a product is specified it should always be qualified with the terms “or equivalent”.

For such a contract, no detailed drawings would generally be available when inviting bids.

It would, however, be useful to include **conceptual drawings** and/or outline design, if any and as appropriate, to supplement or help explain the general concept of the Employer’s needs. Bidders should be advised to the extent to which the Employer’s outline design is a suggestion or a requirement.

The Employer shall make available to Bidders all relevant data in the Employer’s possession on sub-surface and hydrological conditions at the Site, including environmental aspects. (See Sub-Clause 4.10 of the Conditions of Contract). In addition, the Employer’s Requirements should also include, as appropriate, information of a technical nature referring to Employer’s Requirements in the following Sub-Clauses of the Conditions of Contract:

|  |  |  |
| --- | --- | --- |
| **Sub-Clause No.** | **Information required** | **Remarks** |
| 1.1.34 | * Employer’s Equipment |  |
|  |  |  |
| 1.1.56 | * Operation Service Requirements |  |
| 1.9 | * Number of copies of Contractor’s Documents * Publications to be kept on Site |  |
| 1.12 | * Intellectual Property rights retained by Employer |  |
| 1.14 | * Permissions being obtained by the Employer |  |
| 2.1 | * Possession of foundations, structures, plant or means of access | Please also refer to Sub-Clause 2.1 to ensure consistency and applicability. |
| 4.1 | * Intended purposes for which the Works are required | As mentioned above |
| 4.5 | * Nominated Subcontractors |  |
| 4.6 | * Other contractors and others on Site, if any * Documents relating to Contractor possession of assets |  |
| 4.7 | * Setting- out points, lines and levels of reference | The Sub-Clause states: “… specified in the contract or notified by the Employers Representative” |
| 4.18 | * Emissions, surface discharges and effluent. |  |
| 4.19 | * Details and prices of electricity, water, gas and other services if the services are to be available for the Contractor to use. |  |
| 4.20 | * Number of copies of progress reports * Contents of progress reports * Reporting requirements for the Operation Service |  |
| 4.26 | * Existing facilities |  |
| 5.1 | * Criteria (if any) for design personnel | Consistent with any such requirement in Section III- Evaluation and Qualification Criteria |
| 5.2 | * Contractor’s Documents required and whether for approval | Specify, as appropriate, the extent to which the Contractor’s Documents are required, which of them are required for approval or consent  (not just review), and the submission procedures. See “Contractor’s Documents” section below. |
| 5.4 | * Applicable Technical Standards and regulations |  |
| 5.5 | * As- built drawings and other records of the Works |  |
| 6.1 | * Engagement of staff and labour |  |
| 6.6 | * Facilities for Contractor’s Personnel * Facilities for Employer’s staff |  |
| 7.2 | * Samples |  |
| 7.4 | * Testing |  |
| 7.8 | * Royalties |  |
| 8.7 | * Handback requirements |  |
| 10.3 | * Training required for Employer’s Personnel * Training materials |  |
| 11.1 | * Tests for completion of the Design-Build |  |

*[Note: Separate draft templates for Employer’s Requirements for Water Treatment Plant and Wastewater Treatment Plant have been prepared by the Bank as Guidance Note to the Standard Procurement Documents. The Employer should also take into account the general guidance set out here when drafting the* ***Employer’s Requirements****.]*

Environmental, Social, Health and Safety Requirements

The Employer should use the services of a suitably qualified environmental, social, health and safety specialist/s to prepare this section, working with a procurement specialist/s.

*The Employer should attach or refer to the Employer’s environmental, social, health and safety policies that will apply to the project. If these are not available, the Employer should use the following guidance in drafting an appropriate policy for the Works.*

**Suggested content for an Environmental and Social Policy (Statement)**

*The Works’ policy goal, as a minimum, should be stated to integrate environmental protection, occupational and community health and safety, gender, equality, child protection, vulnerable people (including those with disabilities), sexual harassment, gender-based violence (GBV), sexual exploitation and abuse (SEA), HIV/AIDS awareness and prevention and wide stakeholder engagement in the planning processes, programs, and activities of the parties involved in the execution of the Works. The Employer is advised to consult with the World Bank to agree the issues to be included which may also address: climate adaptation, land acquisition and resettlement, indigenous people*, etc. *The policy should set the frame for monitoring, continuously improving processes and activities and for reporting on the compliance with the policy.*

*The policy shall include a statement that, for the purpose of the policy and/or code of conduct, the term “child” / “children” means any person(s) under the age of 18 years.*

*The policy should, as far as possible, be brief but specific and explicit, and measurable, to enable reporting of compliance with the policy in accordance with the Particular Conditions of the Contract Sub-Clause 4.21 and Appendix C to the General Conditions of Contract.*

*As a minimum, the policy is set out to the commitments to:*

1. *apply good international industry practice to protect and conserve the natural environment and to minimize unavoidable impacts;*
2. *provide and maintain a healthy and safe work environment and safe systems of work;*
3. *protect the health and safety of local communities and users, with particular concern for those who are disabled, elderly, or otherwise vulnerable;*
4. *ensure that terms of employment and working conditions of all workers engaged in the Works meet the requirements of the ILO labour conventions to which the host country is a signatory;*
5. *be intolerant of, and enforce disciplinary measures for illegal activities. To be intolerant of, and enforce disciplinary measures for GBV, inhumane treatment, sexual activity with children, and sexual harassment;*
6. *incorporate a gender perspective and provide an enabling environment where women and men have equal opportunity to participate in, and benefit from, planning and development of the Works;*
7. *work co-operatively, including with end users of the Works, relevant authorities, contractors and local communities;*
8. *engage with and listen to affected persons and organizations and be responsive to their concerns, with special regard for vulnerable, disabled, and elderly people;*
9. *provide an environment that fosters the exchange of information, views, and ideas that is free of any fear of retaliation, and protects whistleblowers;*
10. *minimize the risk of HIV transmission and to mitigate the effects of HIV/AIDS associated with the execution of the Works;*

*The policy should be signed by the senior manager of the Employer. This is to signal the intent that it will be applied rigorously.*

**Minimum Content of ESHS requirements**

*[In addition, set out the other ESHS requirements/standards applicable to the Works considering the following]*

* World Bank Group EHS Guidelines;
* World Bank Group stakeholder engagement and information disclosure requirements;
* *relevant international conventions or treaties etc.,* national legal and/or regulatory requirements and standards (where these represent higher standards than the WBG EHS Guidelines);
* relevant international standards e.g. WHO Guidelines for Safe Use of Pesticides; and
* relevant sector standards e.g. EU Council Directive 91/271/EEC Concerning Urban Waste Water Treatment.
* *grievance redress mechanism including types of grievances to be recorded and how to protect confidentiality e.g. of those reporting allegations of GBV/SEA.*
* *GBV/SEA prevention and management.*

*The detail specification for ESHS should, to the extent possible, describe the intended outcome rather than the method of working.*

*[In compiling the requirements/standards, the Employer is advised to consult with the World Bank. Issues to be considered include: gender, gender- based violence (GBV), climate adaptation, land acquisition and resettlement, indigenous people, etc.]*

When preparing the specifications have regard to the relevant General Conditions of Contract and Particular Conditions of Contract, and in particular:

General and Particular Conditions of Contract

Sub-clause 1.14 Compliance with Laws

Sub-clause 2.2 Permits, Licenses and Approvals

Sub-clause 4.1 Contractor’s General Obligations

Sub-clause 4.4 Subcontractors

Sub-clause 4.8 Safety Procedures

Sub-clause 4.14 Avoidance of Interference

Sub-clause 4.18 Protection of the Environment

Sub-clause 4.23 Contractor’s Operations on the Site

Sub-clause 4.24 Fossils

Sub-clause 5.2 Contractor’s Documents

Section 6 Staff and Labour (includes health and safety)

Sub-clause 7.1 Manner of Execution

**Minimum Requirements for the Bidders’s Code of Conduct**

*The Employer should set out the minimum requirement for the Code of Conduct, taking into consideration the issues, impacts, and mitigation measures identified, for example, in:*

* *any particular GBV/SEA requirements*
* *required standards including World Bank Group EHS Guidelines*
* *relevant international conventions, standards or treaties, etc., national legal and/or regulatory requirements and standards (where these represent higher standards than the WBG EHS Guidelines)*
* *relevant standards e.g. Workers’ Accommodation: Process and Standards (IFC and EBRD)*
* *relevant sector standards e.g. workers’ accommodation*
* *grievance redress mechanisms.*

*The types of issues identified could include. risks associated with: labor influx, spread of communicable diseases, sexual harassment, gender based violence, illicit behavior and crime, and* maintaining *a safe environment etc.*

*[Amend the following instructions to the Bidder taking into account the above considerations.]*

A satisfactory code of conduct will contain obligations on all Contractor’s Personnel (including sub-contractors and day workers) that are suitable to address the following issues, as a minimum. Additional obligations may be added to respond to particular concerns of the region, the location and the project sector or to specific project requirements. The code of conduct shall contain a statement that the term “child” / “children” means any person(s) under the age of 18 years.

The issues to be addressed include:

1. Compliance with applicable laws, rules, and regulations
2. Compliance with applicable health and safety requirements to protect the local community (including vulnerable and disadvantaged groups), the Employer’s Personnel, and the Contractor’s Personnel (including wearing prescribed personal protective equipment, preventing avoidable accidents and a duty to report conditions or practices that pose a safety hazard or threaten the environment)
3. The use of illegal substances
4. Non-Discrimination in dealing with the local community (including vulnerable and disadvantaged groups), the Employer’s Personnel, and the Contractor’s Personnel, (for example on the basis of family status, ethnicity, race, gender, religion, language, marital status, age, disability, (physical and mental), sexual orientation, gender identity, political conviction or social, civic, or health status)
5. Interactions with the local community(ies) members of the local community (ies), and any affected person(s) (for example to convey an attitude of respect , including to their culture and traditions)
6. Sexual harassment (for example to prohibit use of language or behavior, in particular towards women and/or children, that is inappropriate, harassing, abusive, sexually provocative, demeaning or culturally inappropriate)
7. Violence, including sexual and/or gender based violence (for example acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion, and deprivation of liberty
8. Exploitation including sexual exploitation and abuse (for example the prohibition of the exchange of money, employment, goods, or services for sex, including sexual favors or other forms of humiliating, degrading behavior, or exploitative behavior or abuse of power)
9. Protection of children (including prohibitions against sexual activity or abuse, or otherwise unacceptable behavior with children, limiting interactions towards children, and ensuring their safety in project areas)
10. Sanitation requirements (for example, to ensure workers use specified sanitary facilities provided by their employer and not open areas)
11. Avoidance of conflicts of interest (such that benefits, contracts, or employment, or any sort of preferential treatment or favors, are not provided to any person with whom there is a financial, family, or personal connection)
12. Respecting reasonable work instructions (including regarding environmental and social norms)
13. Protection and proper use of property (for example, to prohibit theft, carelessness or waste)
14. Duty to report violations of this Code
15. Non retaliation against workers who report violations of the Code, if that report is made in good faith.

The Code of Conduct should be written in plain language and signed by each worker to indicate that they have:

* received a copy of the code;
* had the code explained to them;
* acknowledged that adherence to this Code of Conduct is a condition of employment; and
* understood that violations of the Code can result in serious consequences, up to and including dismissal, or referral to legal authorities.
* *A copy of the code shall be displayed in a location easily accessible to the community and project affected people. It shall be provided in languages comprehensible to the local community, Contractor’s Personnel, Employer’s Personnel and affected persons.*

**SPECIFIED PROVISIONAL SUMS FOR ESHS OUTCOMES**

The total of the prices of the activities in the Activity Schedule is the Bidder’s offer to complete the works on a “single responsibility” basis. This includes all of the Contractor’s ESHS obligations under the Contract.

*Provisional sums may be specified by the Employer for achieving specific ESHS outcomes.* *(e.g. for HIV counselling service, and GBV/SEA awareness and sensitization or to encourage the contractor to deliver ESHS outcomes beyond the requirement of the Contract*).

Scope of the Works

*[See template of Employer Requirements for Water/ Wastewater Treatment Plant]*

Site Information

*[See template of Employer Requirements for Water/ Wastewater Treatment Plant]*

Specifications

***[Insert the specifications-see note above on drafting the specifications. The specifications should set out the applicable minimum standards that apply for the Works. In addition, other technical requirements to be incorporated in the design should be set out]***

Site Plans / Concept Drawings

Contractor’s Documents   
(reference Sub-Clause 5.2 of the General Conditions of Contract)

***[Note to the Employer: See the note on Sub- Clause 5.2 above in “Notes on preparing the Employer’s Requirements.” List the documents that are required to be submitted by the Contractor, for the Employer’s review and/or for approval e.g.:***

|  |  |  |
| --- | --- | --- |
| ***Description*** | ***For review leading to consent*** | ***For approval*** |
| 1. *Design Schedule* |  |  |
| 1. *Preliminary Design* |  |  |
| 1. *Detailed Design* |  |  |
| 1. *Design for Environmental Consents/Permits* |  |  |
| 1. *Design for Construction* |  |  |
| 1. *Environmental Design* |  |  |
| 1. *Drainage Design* |  |  |
| 1. *Temporary and Permanent  3rd Party Access Design* |  |  |
| 1. *Design Safety Report* |  |  |
| 1. *Construction Safety Report* |  |  |
| 1. *Environmental and Social Impact Assessment* |  |  |
| 1. *Permitting and Consents Plan* |  |  |
| 1. *Etc.]* |  |  |

As a general rule, there is no point in requiring documents to be submitted for approval if the Employer does not intend to give approval. The Employer should carefully weigh-in the documents that it requires for review and/or for approval. Unreasonable approval requirements may interfere in the Contractor’s design process. Further, notwithstanding the last paragraph of Sub-Clause 5.2 of the General Conditions of Contract, it may be difficult, in case a dispute arises, for the Employer to refute all liability for an approved submission.

The Employer shall specify any independent verification requirements for any of the Contractor’s Documents.

The Employer’s Requirements shall also require the Contractor to provide the following (Contractor’s Documents for approval):

* a plan describing how ESHS policy requirements will be taken into consideration
* the strategy for gathering baseline ESHS information in time to inform design development;
* a plan describing the measures to ensure geotechnical investigations or other advance works meet the ESHS requirements;
* stakeholder engagement plan;
* Construction environmental and social management plan;
* occupational and community health and safety management plan;
* Construction traffic management plan
* Operational systems comprising the processes and procedures for managing Environmental, social and health and safety risks during operation
* grievance redress mechanisms.]

Supplementary Information

PART 3 – Conditions of Contract and Contract Forms

Section VIII – General Conditions of Contract (GCC)

This section contains the general clauses of the Conditions of Contract for Design, Build and Operate Projects, and shall be applied to all contracts. The text of the clauses in this Section shall not be modified.

General Conditions of Contract

|  |  |
| --- | --- |
| **General Provisions** | |
| **1.1 Definitions** | In the Conditions of Contract ("these Conditions"), which include Particular Conditions of Contract, and these General Conditions of Contract, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.   * + 1. "Accepted Contract Amount" means the amount accepted in the Letter of Acceptance for the Design-Build of the Works and the provision of the Operation Service.     2. “Accepted Contract Amount for the Design Build” means the amount accepted in the Letter of Acceptance for the Design-Build of the Works.     3. “Accepted Contract Amount for the Operation Service” means the amount accepted in the Letter of Acceptance for the provision of the Operation Service.     4. “Bank” means the financing institution **named in the PCC** (whether acting on its own account or in its capacity as administrator of funds provided by other donors).     5. “Borrower” means the borrower or recipient of Bank’s Investment Project Financing (IPF) **identified in the PCC**.     6. "Base Date" means the date 28 days prior to the latest date for submission of the Bid.     7. "Commencement Date "means the date notified under Sub-Clause 8.1 [*Commencement Date*].     8. "Commercial Risk" means a risk which results in financial loss and/or time loss for either of the Parties, where insurance is not generally or commercially available.     9. "Commissioning Certificate" means the certificate issued by the Employer’s Representative to the Contractor under Sub-Clause 11.7 [*Commissioning Certificate*] marking the end of the Design-Build Period under Sub-Clause 9.12 [*Completion of Design-Build*] and the commencement of the Operation Service Period.     10. "Commissioning Period" means that period of time when commissioning tests are being carried out.     11. "Contract" means the Contract Agreement, the Letter of Acceptance, the Letter of Bid, these Conditions, the Employer's Requirements, the Schedules, the Contractor's Bid, the Operating License, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.     12. "Contract Agreement" means the Contract Agreement referred to in Sub-Clause 1.6 [*Contract Agreement*].     13. "Contract Completion Certificate" means the certificate issued by the Employer’s Representative under Sub-Clause 8.6 [*Contract Completion Certificate*].     14. "Contract Completion Date" means the date contained in the Contract Completion Certificate as being the date on which the Operation Service has been completed.     15. "Contract Period" means the Design-Build Period plus the Operation Service Period.     16. "Contract Price" means the price defined in Sub-Clause 14.1 [*The Contract Price*], and includes adjustments in accordance with the Contract.     17. "Contractor" means the person named as Contractor in the Letter of Bid accepted by the Employer and the legal successors in title to this person.     18. "Contractor's Equipment" means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor's Equipment excludes Temporary Works, Employer’s Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Works.     19. "Contractor's Documents" means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature supplied by the Contractor under the Contract; as described in Sub-Clause 5.2 [*Contractor's Documents*].     20. "Contractor's Bid" means the document entitled bid, which the Contractor submitted with the Letter of Bid, as included in the Contract.     21. "Contractor's Personnel" means the Contractor's Representative and all personnel whom the Contractor utilises on Site, including the Key Personnel, and other staff, labour and employees of the Contractor and of each Subcontractor, and any other personnel assisting the Contractor in the execution of the Works and provision of the Operation Service, identified in Sub-Clause 6.9.     22. "Contractor's Representative" means the person named as such by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3 [*Contractor's Representative*] who acts on behalf of the Contractor.     23. "Cost" means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.     24. "Cost Plus Profit" means Cost plus the applicable percentage agreed and **stated in the PCC**. Such percentage shall only be added where the Sub-Clause states that the Contractor is entitled to Cost Plus Profit.     25. "Country" means the Union of India, where the Permanent Works are to be executed.     26. "Cut-Off Date" means the date, at the end of a specified period **stated in the PCC**, after the Time for Completion of the Design-Build or any extension thereto granted under Sub-Clause 9.3 [Extension of Time for Completion of Design-Build].     27. The “Adjudicator” is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC 20.     28. "day" means a calendar day.     29. "Design-Build" means all work to be performed by the Contractor under the Contract to design, build, test and complete the Works and obtain the Commissioning Certificate issued in accordance with Sub-Clause 9.12 [Completion of Design-Build].     30. "Design-Build Period" means the period from the Commencement Date to the date stated in the Commissioning Certificate.     31. "Dispute" means any situation where (a) one Party makes a claim against the other Party; (b) the other Party rejects the claim in whole or in part; and (c) the first Party does not acquiesce, provided however that a failure by the other Party to oppose or respond to the claim, in whole or in part, may constitute a rejection if, in the circumstances, the Adjudicator or the arbitrator(s), as the case may be, deem it reasonable for it to do so.     32. “EMP” means the Environmental Management Plan.     33. "Employer" means the party named as Employer **in the PCC** and the legal successors in title to this person.     34. "Employer's Equipment" means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Works and/or the Operation Service, as stated in the Employer's Requirements, but does not include Plant which has not been taken over by the Employer.     35. "Employer's Personnel" means the Employer's Representative, the assistants referred to in Sub-Clause 3.2 [*Delegation by the Employer's Representative*] and all other staff, labour and other employees of the Employer's Representative and of the Employer; and any other personnel notified to the Contractor, by the Employer or the Employer's Representative, as Employer’s Personnel.     36. “Employer's Representative" means the person appointed by the Employer to act as Employer’s Representative for the purposes of the Contract and **named as such in the PCC**, or other person appointed from time to time by the Employer and notified as such to the Contractor under Sub-Clause 3.4 [Replacement of the Employer’s Representative].     37. "Employer's Requirements" means the document entitled Employer's Requirements, as included in the Contract, and any additions and modifications made thereto in accordance with the Contract. Such document specifies the purpose, scope, and/or design and/or other technical criteria for the execution of the Works and provision of the Operation Service.     38. "Exceptional Event" means an event or circumstance which is (a) beyond a Party’s control;(b) which the Party could not reasonably have provided against before entering into the Contract; (c) which having arisen, such Party could not reasonably have avoided or overcome; and (d) which is not substantially attributable to the other Party.     39. “Existing Facilities” means the existing plant, equipment, buildings and other assets at the Site to be taken over and operated by the Contractor as further described in the Employer’s Requirements.     40. "Final Payment Certificate Design-Build" means the payment certificate issued for the Design-Build under Sub-Clause 14.11 [*Issue of Final Payment Certificate Design-Build*].     41. "Final Payment Certificate Operation Service" means the payment certificate issued for the Operation Service under Sub-Clause 14.14 [*Issue of Final Payment Certificate Operation Service*].     42. "Final Statement Design-Build" means the Statement defined in Sub- Clause14.10 [*Application for Final Payment Certificate Design-Build*].     43. "Final Statement Operation Service" means the Statement defined in Sub-Clause 14.12 [*Application for Final Payment Certificate Operation Service*].     44. "Goods" means Contractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.     45. “Influent” means the untreated water/ wastewater entering the Works at the delivery point to the Works).     46. “Influent Baseline” means the quality characteristics of the untreated Influent as set out in the Employer Requirements, used as the baseline for the design of the Works     47. "Interim Payment Certificate" means a payment certificate issued under Clause 14 [*Contract Price and Paymen*t], other than the Final Payment Certificates.     48. "Laws" means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority in India.     49. "Letter of Acceptance" means the letter of formal acceptance, signed by the Employer, of the Letter of Bid, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such Letter of Acceptance, the expression" Letter of Acceptance" means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement.     50. "Letter of Bid" means the document entitled Letter of Bid, which was completed by the Contractor and includes the signed offer to the Employer for the execution of the Works and provision of the Operation Service.     51. "Local Currency" or “Currency” means Rs, the currency of India. References to foreign currency, if any are treated as deleted.     52. "Maintenance Retention Fund" and "Maintenance Retention Guarantee" mean the fund and guarantee respectively provided for under Sub-Clause 14.17 [*Maintenance Retention Fund*].     53. "Materials" means things of all kinds (other than Plant) whether on the Site or otherwise allocated to the Contract and intended to form or forming part of the Works, including the supply-only Materials (if any) to be supplied by the Contractor under the Contract.     54. "Notice" means a written communication identified as a Notice and issued in accordance with the provisions of Sub-Clause 1.3 [*Notices and Other Communications*].     55. "Operating License" means the license referred to in Sub-Clause 1.7 [*Operating License*] by which the Employer grants a royalty-free license to the Contractor to operate and maintain the Works during the Operation Service.     56. "Operation Management Requirements" means the set of procedures and requirements, provided by the Employer, included in the Employer's Requirements for the proper implementation of the Operation Service.     57. "Operation and Maintenance Plan" means the plan for operating and maintaining the facility, submitted by the Contractor, and agreed and included in the Contract.     58. "Operation Service" means the operation and maintenance of the facility as set out in the Operation Management Requirements.     59. "Operation Service Period" means the period from the date stated in the Commissioning Certificate as provided for under Sub-Clause 10.2 [*Commencement of Operation Service*] to the date stated in the Contract Completion Certificate.     60. "Party" means the Employer or the Contractor, as the context requires.     61. “Performance Security” means the security under Sub-Clause 4.2 [*Performance Security*].     62. “Performance Standards” means the standards to be achieved by the Contractor during the Operations Period and includes the standards specified in the Schedule of Performance Standards.     63. "Permanent Works" means the permanent works to be designed, executed and operated by the Contractor under the Contract.     64. "Plant" means the apparatus, machinery and vehicles intended to form or forming part of the Permanent Works.     65. "Provisional Sum" means a sum (if any) which is specified in the Contract by the Employer as a Provisional Sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause13.5 [*Provisional Sums*].     66. "Rates and Prices" means the rates and prices inserted in the Schedules for the design, execution and completion of the Works and for the provision of the Operation Service as incorporated in the Contract.     67. "Retention Money" means the accumulated retention monies which the Employer retains under Sub-Clause 14.3 [*Application for Advance and Interim Payment Certificates*].     68. "Retention Period" means the period of 1 year after the date stated in the Commissioning Certificate for the completion of outstanding work.     69. "Risk of Damage" means a risk which results in physical loss or damage to the Works or other property belonging to either Party, other than a Commercial Risk.     70. "Schedules" means the document(s) entitled Schedules, completed by the Contractor and submitted with the Letter of Bid, as incorporated in the Contract. Such documents may also include data, lists, Schedules of Payments and/or prices, and guarantees.     71. "Schedule of Payments" means those Schedules (if any) incorporated in the Contract showing the manner in which payments are to be made to the Contractor.     72. “Schedule of Performance Standards” means the schedule attached to the Contract Agreement specifying the core output Performance Standards to be achieved by the Works and the Contractor at commissioning and during the Operation Service Period.     73. “Schedule of Performance Damages” means the schedule attached to the Contract Agreement which specifies the amounts of damages payable by the Contractor in respect of a breach of the standards specified in the Schedule of Performance Standards;     74. "Section" means a part of the Works **specified in the PCC** as a Section (if any).     75. "Section Commissioning Certificate" means a certificate issued by the Employer’s Representative to the Contractor under Sub-Clause 11.7 [*Commissioning Certificate*].     76. "Site" means the places where the Permanent Works are to be executed including storage and working areas, and to which Plant and Materials are to be delivered, and where the Operation Service is to be provided, and any other places as may be specified in the Contract as forming part of the Site.     77. "Statement" means a financial Statement submitted by the Contractor as part of an application, under Clause14 [*Contract Price and Payment*], for a payment certificate.     78. "Subcontractor" means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons.     79. "Bid" means the Letter of Bid and all other documents which the Contractor submitted with the Letter of Bid, as incorporated in the Contract.     80. "Tests on Completion of Design-Build" means the tests which are specified in the Contract or agreed by both Parties or instructed as a Variation, and which are to be carried out under Clause 11 [*Testing*] before the Works or a Section (as the case may be) are deemed to be fit for purpose as defined in the Employer’s Requirements.     81. "Tests Prior to Contract Completion" means the tests (if any) which are specified in the Contract and any other such tests as may be agreed by the Employer’s Representative and the Contractor or instructed as a Variation and which are to be carried out under Clause 11 [*Testing*] before the expiry of the Contract Period.     82. "Time for Completion of Design-Build" means the time for completing the Design-Build or a Section thereof (as the case may be) under Sub- Clause 9.2 [*Time for Completion of Design-Build*], as **stated in the PCC** (with any extension under Sub-Clause 9.3 [*Extension of Time for Completion of Design-Build*]), calculated from the Commencement Date.     83. "Temporary Works" means all temporary works of every kind (other than Contractor’s Equipment) required on Site for the execution, completion and operation of the Works.     84. "Unforeseeable" means not reasonably foreseeable by an experienced contractor by the date for submission of the Bid.     85. "Variation" means any change to the Employer’s Requirements or the Works, which is instructed or approved as a Variation under Clause13 [*Variations and Adjustments*].     86. “Works” means the Permanent Works and Temporary Works or either of them as appropriate and the facility to be operated by the Contractor during the Operation Service Period.     87. "year" means 365calendar days.     88. **“ESHS”** means environmental, social (including sexual exploitation and abuse (SEA) and gender based violence (GBV), health and safety. |
| **1.2 Interpretation** | In the Contract, except where the context requires otherwise:   1. Words indicating one gender include all genders; 2. words indicating the singular also include the plural and words indicating the plural also include the singular; 3. provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing; 4. "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. |
| **1.3 Notices and Other Communications** | Wherever these Conditions provide for the giving or issuing of a Notice or other communication including approvals, certificates, consents, determinations, instructions and requests, discharges such Notice or communication shall be:   * 1. Where it is a Notice, identified as a Notice and include reference to the Clause under which it is issued;   2. where it is another form of communication, identified as such, and include reference to the Clause under which it is issued where appropriate;   3. in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted by using any of the agreed systems of electronic transmission as **stated in the PCC**; and   4. delivered, sent or transmitted to the address for the recipient's communications as **stated in the PCC**. However:      1. if the recipient gives Notice of another address, communications and Notices shall thereafter be delivered accordingly; and      2. if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.   Notices and other communications shall not be unreasonably withheld or delayed. 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 Employer’s Representative, a copy shall be sent to the Employer’s Representative or the other Party, as the case maybe. |
| **1.4 Law and Language** | The Contract shall be governed by and interpreted in accordance with the law of India.  The language for communications, and the ruling language of the Contract shall be English. |
| **1.5 Priority of Documents** | The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:   * 1. the Contract Agreement(if any),   2. the Letter of Acceptance,   3. the Letter of Bid,   4. the Particular Conditions of Contract   5. these General Conditions of Contract,   6. the Employer's Requirements,   7. the Schedules, and   8. the Contractor's Bid and any other documents forming part of the Contract.   If an ambiguity or discrepancy is found in the documents, the Employer's Representative shall issue any necessary clarification or instruction. |
| **1.6 Contract Agreement** | The Parties shall enter into a Contract Agreement within 21days after the Contractor receives the Letter of Acceptance, unless the Particular Conditions of Contract establish otherwise. The Contract Agreement shall be based upon the sample form included in the bidding documents. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer. |
| **1.7 Operating License** | In consideration of the Contractor’s performance of the Operation Service, from the date of commencement of the Operation Service the Employer grants to the Contractor for the Operation Service Period, the exclusive right, license and authority to occupy, use and enjoy the Site free of charge and free and clear of all claims for the purposes of carrying the Operation Services.  Together with the Letter or Acceptance, the Employer shall, where necessary, issue, or cause to be issued, to the Contractor the Operating License or equivalent legal authorization to enable the Contractor to operate and maintain the Works during the Operation Service Period.  This Operating License shall come into full force and effect upon the issue of the Commissioning Certificate required under Clause 11.7 and shall remain in force during the Operation Service Period.  The Operating License shall only extend to those parts of the Site which it is required to occupy for the purposes of carrying out the Works and Operation Service as set out in the Contract. The Operating License granted pursuant to this Sub-Clause shall not operate nor be deemed to operate as a tenement or a demise of the Site or any part thereof. The Contractor shall not have or be entitled to any estate right, title, or interest in the Site. The license will immediately terminate upon the termination of this Contract for whatever reason |
| **1.8 Assignment** | (a) Except as provided in (b), (c) and (d) below, neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract without the consent of the other Party.  (b) The Contractor may as security in favour of a bank or financial institution, assign its right to any monies due, or to become due, under the Contract.  (c) During the Operation Service Period, the Employer may assign the whole of the Contract to the agency, if any, **specified in the PCC** subject to the following:   1. The Employer shall provide at least 90 days’ written notice to the Contractor of its intention to assign the Contract. Such notice shall specify the financial arrangements that have been made for payment of the Contract Price to the Contractor. 2. The Employer shall not assign the Contract until reasonable evidence has been provided to the Contractor that financial arrangements have been made, and will be maintained, which will enable the agency to pay the Contract Price punctually.   (d) Where the Contractor is composed of a joint venture, no joint venture member shall assign or novate its interest in the Contract or the joint venture until the second anniversary of the date of the Commissioning Certificate. Following the second anniversary of the issue of the Commissioning Certificate a joint venture party that is not the lead member of the joint venture may assign its interest to the other partners to the joint venture on the consent of the Employer, such consent not to be unreasonably withheld.  (e) Where the Contractor is an SPV, no member of the SPV shall assign its holding in the SPV until the second anniversary of the date of the Commissioning Certificate. Following the second anniversary of the issue of the Commissioning Certificate a member of the SPV on the consent of the Employer, such consent not to be unreasonably withheld, dilute its shareholding in the SPV to the percentage stated in the BDS. |
| **1.9 Care and Supply of Documents** | Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Employer's Representative six copies of each of the Contractor's Documents.  The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Employer's Requirements, the Contractor's Documents, and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.  If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give Notice to the other Party of such error or defect. |
| **1.10 Errors in the Employer's Requirements** | Notwithstanding the Contractor’s obligations to scrutinize the Employer’s Requirements under Sub-Clause 5.1 [*General Design Obligations*], if the Contractor finds an error in the Employer’s Requirements, he shall immediately give a written Notice to the Employer’s Representative advising him of the nature and details of the error and requesting instruction regarding its rectification.  After receiving this Notice, the Employer’s Representative shall, without prejudice to other rights and obligations of the Parties, promptly confirm to the Contractor:   1. Whether or not there is an error in the Employer's Requirements as stated in the Contractor's Notice; 2. whether or not an experienced contractor should have discovered the error when scrutinizing the Employer’s Requirements under Sub-Clause 5.1 [*General Design Obligations*];and 3. the measures which the Employer's Representative requires the Contractor to take to rectify the error.   If the Contractor suffers delay and/or incurs cost as a result of an error in the Employer’s Requirements, and an experienced contractor exercising due care would not have discovered the error when scrutinizing the Employer’s Requirements under Sub-Clause 5.1 [*General Design Obligations*], the Contractor shall be entitled, subject to Sub-Clause 20.1 [*Contractor’s Claims*], to:   1. an extension of time for any such delay, if completion is or will be delayed under Sub-Clause 9.3 [*Extension of Time for Completion of Design-Build*]; and 2. payment of any such Cost Plus Profit, which shall be included in the Contract Price. |
| **1.11 Employer's Use of Contractor's Documents** | As between the Parties, the Contractor shall retain the copyright and other intellectual property rights In the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.  The Contractor shall be deemed (by signing the Contract) to give to the Employer a non-terminable transferable non-exclusive royalty-free license to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This license shall:   1. apply throughout the actual or intended working life (whichever is longer) of the relevant part of the Works; 2. entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works; 3. in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor; and 4. enable the Employer to relet the Contract as provided for under Sub-Clause 15.2 [*Termination for Contractor's Default*].   The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Employer for purposes other than those permitted under this Sub-Clause. |
| **1.12 Contractor's Use of Employer's Documents** | As between the Parties, the Employer shall retain the copyright and other intellectual property rights in the Employer's Requirements and other documents made by (or on behalf of) the Employer. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Employer's consent, be copied, used, or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract. |
| **1.13 Confidential Details** | The Contractor’s Personnel and the Employer’s Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify compliance with the Contract and allow its proper implementation.  Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects. |
| **1.14 Compliance with Laws** | The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in the Employer's Requirements:   * 1. the Employer shall have obtained (or shall obtain) the planning, zoning, building permit, or similar permission for the Permanent Works and for the Operation Service, and any other permissions described in the Employer's Requirements as having been (or being) obtained by the Employer; and the Employer shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so;   2. the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all further permits, licenses and approvals, as required by the Laws, in relation to the design, execution and completion of the Works and Operation Service and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so, unless the Contractor is impeded to accomplish these actions and shows evidence of its diligence; and   3. the Contractor shall at all times and in all respects comply with, give all notices under, and pay all fees required by any license obtained by the Employer in respect of the Site or the Works or Operation Service, whether relating to the Works or Operation Service on or off the Site. |
| **1.15 Joint and Several Liability** | 1.15.1 If the Contractor constitutes (under applicable Laws) a joint venture, consortium or other unincorporated grouping of two or more persons:   1. these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract; 2. these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and 3. the Contractor shall not alter his composition or legal status without the prior consent of the Employer.   1.15.2 If the Contractor is an SPV, throughout the Contract Period, the Contractor shall be bound to maintain its share capital at a minimum level **set out in the PCC** of the total paid up share capital of the Contractor. The share capital may be increased without the Employer’s prior approval but a written notice of information shall be sent to the Employer. Any reduction of the Contractor’s share capital shall be subject to the prior written consent of the Employer.  1.15.3 The Lead Member who holds at least fifty-one percent (51%) of the subscribed and paid up equity of the Contractor at the Commencement Date shall continue holding at least fifty-one percent (51%) of the subscribed and paid up equity of the Contractor for a period up to the second anniversary of the date of the Commissioning Certificate, [and at least twenty-six percent (26%) for the following five (5) years] subject to the transferee having similar experience to the Lead Member and the approval of the Employer[[28]](#footnote-28).  1.15.4 The other Members who hold less than forty-nine percent (49%) of the subscribed and paid up equity of the Contractor at the Commencement Date shall continue holding the same percentage of the subscribed and paid up equity of the Concessionaire up to the second anniversary of the date of the Commissioning Certificate.[[29]](#footnote-29) |
| **1.16 Inspections and Audit by the Bank** | Pursuant to paragraph 1.1.6 (e) of Appendix B to the General Conditions of Contract, the Contractor shall permit and shall cause its subcontractors and sub-consultants to permit, the Bank and/or persons appointed by the Bank to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the Bank if requested by the Bank. The Contractor’s and its Subcontractors’ and sub-consultants’ attention is drawn to Sub-Clause 15.6 (Fraud and Corruption) which provides, inter alia, that acts intended to materially impede the exercise of the Bank’s inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Bank’s prevailing sanctions procedures). |
| **The Employer** | |
| **2.1 Right of Access to the Site** | The Employer shall give the Contractor right of access to, and possession of, all or part of the Site within the time (or times) **stated in the PCC**. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Employer is required to give the Contractor possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Employer's Requirements. However, the Employer may withhold any such right or possession until the Performance Security has been received.  If no such time is stated in the PCC, the Employer shall give the Contractor right of access to, and possession of, the Site within such times as may be required to enable the Contractor to proceed in accordance with the program submitted under Sub-Clause 8.3 [*Program*].  If the Contractor suffers delay and/or incurs cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give Notice to the Employer's Representative and shall be entitled subject to Sub- Clause 20.1 [*Contractor's Claims*] to:   1. an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.3 [Extension of Time for Completion of Design-Build]; and 2. payment of any such Cost Plus Profit, which shall be included in the Contract Price.   After receiving this Notice, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.  However, if and to the extent that the Employer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time or cost. |
| **2.2 Permits, Licenses or Approvals** | The Employer shall provide, at the request of the Contractor, such reasonable assistance as to allow the Contractor to obtain:   1. copies of the Laws of India which are relevant to the Contract but are not readily available; and 2. any permits, licenses or approvals required by the Laws of India, including details of the information required to be submitted by the Contractor in order to obtain such permits, licenses or approvals:    1. which the Con tractor is required to obtain under Sub-Clause 1.14 [*Compliance with Laws*];    2. for the delivery of Goods, including clearance through customs; and    3. for the export of Contractor's Equipment when it is removed from the Site. |
| **2.3 Employer's Personnel** | The Employer shall be responsible for ensuring that the Employer's Personnel and the Employer's other contractors on the Site:   1. co-operate with the Contractor's efforts under Sub-Clause 4.6 [*Co-operation*]; and 2. take actions similar to those which the Contractor is required to take under sub- paragraphs (a), (b) and (c) of Sub-Clause 4.8 [*Safety Procedures*] and under Sub-Clause 4.18 [*Protection of the Environment*]. |
| **2.4 Employer's Financial Arrangements** | If the Bank has notified to the Borrower that the Bank has suspended disbursements under its loan, which finances in whole or in part the execution of the Works, the Employer shall give Notice of such suspension to the Contractor with detailed particulars, including the date of such notification, with a copy to the Employer’s Representative, within 7 days of the Borrower having received the suspension notification from the Bank, and confirm availability of alternative funds in appropriate currencies to continue making payments to the Contractor beyond a date 60 days after the date of Bank notification of the suspension. |
| **The Employer’s Representative** | |
| **3.1 Employer's Representative's Duties and Authority** | The Employer shall appoint the Employer's Representative prior to the signing of the Contract, who shall be suitably qualified and experienced and who shall carry out the duties assigned to him in the Contract. The Employer's Representative's staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties.  The Employer's Representative shall have no authority to amend the Contract.  The Employer's Representative may exercise the authority attributable to the Employer's Representative as specified in or necessarily to be implied from the Contract. The Employer shall promptly inform the Contractor of any change to the authority attributed to the Employer’s Representative.  The Employer undertakes not to impose further constraints on the Employer's Representative's authority, except as agreed with the Contractor.  However, whenever the Employer's Representative exercises a specified authority for which the Employer's approval is required, then (for the purposes of the Contract) the Employer shall be deemed to have given approval.  Except as otherwise stated in these Conditions:   1. whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Employer's Representative shall be deemed to act for the Employer; 2. the Employer's Representative has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract; 3. any approval, check, certificate, consent, examination, inspection, instruction, Notice, proposal, request, test or similar act by the Employer's Representative (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances; and 4. any act by the Employer’s Representative in response to a Contractor’s request except as otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt.   The Employer’s Representative shall obtain the specific approval of the Employer before taking action under the-following Sub-Clauses of these Conditions:  (a) Sub-Clause 4.12: agreeing or determining an extension of time and/or additional cost.  (b) Sub-Clause 13.1: instructing a Variation, except;  (i) in an emergency situation as determined by the Employer’s Representative, or  (ii) if such a Variation would increase the Accepted Contract Amount by less than the percentage **specified in the PCC.**  (c) Sub-Clause 13.3: Approving a bid for Variation submitted by the Contractor in accordance with Sub Clause 13.1 or 13.2.  Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Employer’s Representative, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Employer’s Representative, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Employer’s Representative. The Employer’s Representative shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 13 and shall notify the Contractor accordingly, with a copy to the Employer. |
| **3.2 Delegation by the Employer's Representative** | The Employer’s Representative may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties. However, unless otherwise agreed by both Parties, the Employer’s Representative shall not delegate the authority to determine any matter in accordance with Sub-Clause 3.5 [Determinations].  Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].  Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorized to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, Notice, proposal, request, test or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Employer's Representative. However:   1. any failure to disapprove any work, Plant, Materials or any part of the Operation Service shall not constitute approval, and shall therefore not prejudice the right of the Employer's Representative to reject the work, Plant, Materials or any part of the Operation Service; and 2. if the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Employer's Representative, who shall promptly confirm, reverse or vary the determination or instruction. |
| **3.3 Instructions of the Employer's Representative** | The Employer's Representative may issue to the Contractor (at any time) instructions which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Employer's Representative, or from an assistant to whom the appropriate authority has been delegated under this Clause. If an instruction constitutes a Variation, Clause13 [*Variations and Adjustments*] shall apply.  The Contractor shall comply with the instructions given by the Employer's Representative or delegated assistant on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Employer’s Representative or a delegated assistant:   * + 1. gives an oral instruction,     2. receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and     3. does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation,   then the confirmation shall constitute the written instruction of the Employer’s Representative or delegated assistant (as the case may be).  If the Contractor considers that any instruction of the Employer’s Representative does not comply with applicable Laws or is technically impossible, he shall immediately notify the Employer’s Representative in writing. The Employer’s Representative shall then either confirm or amend such instruction. |
| **3.4 Replacement of the Employer's Representative** | If the Employer intends to replace the Employer’s Representative, the Employer shall, not less than 21 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement Employer’s Representative. If the Contractor considers the intended replacement Employer’s representative to be unsuitable, he has the right to raise objection against him by notice to the Employer, with supporting particulars, and the Employer shall give full and fair consideration to this objection. |
| **3.5 Determinations** | Whenever these Conditions provide that the Employer's Representative shall proceed in accordance with this Sub-Clause to agree or determine any matter, the Employer's Representative shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Employer's Representative shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.  The Employer’s Representative shall give notice to both Parties of each agreement or determination, with supporting particulars, within 28 days from the receipt of the corresponding claim or request except when otherwise specified. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [*Claims, Disputes and Arbitration*]. |
| **The Contractor** | |
| **4.1 Contractor's General Obligations** | The Contractor shall design, execute and complete the Works and provide the Operation Service in accordance with the Contract and shall remedy any defects in the Works. When completed, the Works shall be fit for the purposes for which the Works are intended as defined in the Contract, and the Contractor shall be responsible for ensuring that the Works remain fit for such purposes during the Operation Service Period.  The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required to meet the Contractor's obligations under the Contract. All equipment, material, and services to be incorporated in or required for the Works shall have their origin in any eligible source country as defined by the Bank.  The Works shall include any work which is necessary to satisfy the Employer's Requirements, Contractor's Proposal and Schedules, or is implied by the Contract, and all works which (although not mentioned in the Contract) are necessary for stability or for the completion, or safe and proper operation, of the Works.  The Contractor shall be responsible for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works during both the Design- Build Period and the Operation Service Period.  The Contractor shall, whenever required by the Employer's Representative, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. Notwithstanding Sub-Clause 8.1, the Contractor shall not carry out works, including mobilization and/or pre-construction activities (e.g. limited clearance for haul roads, site accesses and work site establishment, geotechnical investigations or investigations to select ancillary features such as quarries and borrow pits), unless the Employer’s Representative is satisfied that appropriate measures are in place to address environmental, social, health and safety risks and impacts. The Contractor shall submit, on a continuing basis, for the Employer’s Representative’s prior approval, a Contractor’s Environmental and Social Management Plan (C-ESMP) to manage the ESHS risks and impacts of the Works. The C-ESMP shall be approved prior to the commencement of construction activities (e.g. excavation, earth works, bridge and structure works, stream and road diversions, quarrying or extraction of materials, concrete batching and asphalt manufacture). The approved C-ESMP shall be reviewed, periodically (but not less than every six (6) months), and updated in a timely manner, as required, by the Contractor to ensure that it contains measures appropriate to the Works activities to be undertaken. The updated C-ESMP shall be subject to prior approval by the Employer’s Representative.  The Contractor shall attend all meetings as reasonably required by the Employer or the Employer's Representative. |
| **4.2 Performance Security** | The Contractor shall obtain at his cost the Performance Security for proper performance of the Contract, and if applicable, an Environmental, social, Safety and Health (ESHS) Performance Security[[30]](#footnote-30) for compliance with the contractor’s ESHS obligations, in the amount **set out in the PCC**.  At the end of the Retention Period, the amount of the Performance Security may be reduced, as **stated in the PCC**.  The Contractor shall deliver the Performance Security to the Employer, and if applicable, an Environmental, social, Safety and Health (ESHS) Performance Security within 21 days after receiving the Letter of Acceptance, and shall send a copy to the Employer's Representative. The Performance Security, and if applicable, ESHS Performance Security shall be issued by a Nationalized/ Scheduled Bank in India, and shall be in the Form included in the bidding documents.  The Contractor shall ensure that the Performance Security is valid and enforceable until the issue of the Contract Completion Certificate. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Contract Completion Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works and the Operation Service have been completed.  The Contractor shall ensure that the ESHS Performance Security is valid and enforceable until the issue of the Commissioning Certificate. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Commissioning Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the ESHS Performance Security until the Contractor has been entitled to receive the Commissioning Certificate.  Failure by the Contractor to maintain the validity of the Performance Security, and if applicable, ESHS Performance Security shall be grounds for termination in accordance with Sub-Clause 15.2 [*Termination for Contractor's Default*].  The Employer shall not make a claim under the Performance Security or the ESHS Performance Security, as applicable, except for amounts to which the Employer is entitled under the Contract, in the event of.   1. failure by the Contractor to extend the validity of the Performance Security, or the ESHS Performance Security as described in the preceding paragraph, in which event the Employer may claim the full or, in case of an earlier reduction, the reduced amount of the Performance Security; 2. failure by the Contractor to pay the Employer an amount due, as either agreed by the Contractor or determined under Sub-Clause 3.5 [*Determinations*] or Clause 20 [*Claims, Disputes and Arbitration*], within 42 days after this agreement or determination; 3. failure by the Contractor to remedy a default within 42 days after receiving the Employer's Notice requiring the default to be remedied; or 4. circumstances which entitle the Employer to terminate under Sub-Clause 15.2 [*Termination for Contractor's Default*], irrespective of whether Notice of termination has been given.   Without limitation to the provisions of the rest of this Sub-Clause, whenever the Employer’s Representative determines an addition or a reduction to the Contract Price as a result of a change in cost and/or legislation, or as a result of a Variation, amounting to more than 25 percent of the Contract Price, the Contractor shall at the Employer’s Representative's request promptly increase, or may decrease, as the case may be, the value of the Performance Security, and the ESHS Performance Security.  The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security which the Employer was not entitled to make.  The Employer shall return the ESHS Performance Security to the Contractor within 21 days after receiving a copy of the Contract Commissioning Certificate.  Throughout this bidding document the term ‘performance security’, unless the context clearly indicates otherwise, means and includes both ‘the performance security and the ESHS performance security’ to be submitted by the successful bidder in the specified amounts. |
| **4.3 Contractor's Representative** | The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract.  Unless the Contractor's Representative is **named in the Contract**, the Contractor shall, prior to the Commencement Date, submit to the Employer's Representative for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.  The Contractor shall not, without the prior consent of the Employer's Representative, revoke the appointment of the Contractor's Representative or appoint a replacement.  The whole time of the Contractor's Representative shall be given to directing the Contractor's performance of the Contract. If the Contractor's Representative is to be temporarily absent from the Site during the execution of the Works or provision of the Operation Service, a suitable replacement person shall be appointed, subject to the Employer's Representative's prior consent, and the Employer's Representative shall be notified accordingly.  The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.3 [*Instructions of the Employer's Representative*].  The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Employer's Representative has received prior Notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.  The Contractor's Representative and all these persons shall be fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Languag*e].  If the Contractor’s Representative’s delegates are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Employer’s Representative. |
| **4.4 Subcontractors** | The Contractor shall not subcontract the whole of the Works. Unless otherwise agreed, the Contractor shall not subcontract the provision of the Operation Service.  The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor. Unless otherwise stated in the Particular Conditions of Contract:   1. the Contractor shall not be required to obtain consent to suppliers solely of Materials, or to a subcontract for which the Subcontractor is named in the Contract; 2. the prior consent of the Employer's Representative shall be obtained to other proposed Subcontractors; and 3. the Contractor shall give Notice to the Employer's Representative not less than 28 days prior to the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site.   If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from any risk on terms additional to or broader than those specified in the Contract, such additional or broader events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under the Contract. The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.13 [Confidential Details] apply equally to each Subcontractor.  “The Employer's Representative should satisfy whether (a) the circumstances brought out warrant such sub-contracting; and (b) the sub-contractors so proposed for the Work possess the necessary experience, qualifications and equipment for the job proposed to be entrusted to them in proportion to the quantum of work to be sub-contracted.  If the contractor proposed payments to be made directly to the sub-contractor, this should be subject to specific authorization by the contractor so that such consent does not relieve him from any liability or obligations under the contract.”  *[Note: 1. Sub-contracting for certain specialized elements of works is acceptable for carrying out the works more effectively; but vertical splitting of the works for sub-contracting is not acceptable.*  *2. In any case, proposal for sub-contracting in addition to what was specified in bid and stated in contract agreement will not be acceptable if the value of such additional sub-contracting exceeds 25% of value of work which was to be executed by Contractor without sub-contracting]* |
| **4.5 Nominated Subcontractors** | In this Sub-Clause, "nominated Subcontractor" means a Subcontractor named as such in the Employer's Requirements or whom the Employer's Representative, under Clause 13 [*Variations and Adjustments*], instructs the Contractor to employ as a Subcontractor. The Contractor shall not be under any obligation to employ a nominated Subcontractor against whom the Contractor raises reasonable objection by Notice to the Employer's Representative as soon as practicable, with supporting particulars. |
| **4.6 Co-operation** | The Contractor shall, as specified in the Contract or as instructed by the Employer's Representative, allow appropriate opportunities for carrying out work to:   1. the Employer's Personnel; 2. any other contractors employed by the Employer; and 3. the personnel of any legally constituted public authorities;   who may be employed in the execution on or near the Site of any work not included in the Contract.  Any such instruction shall constitute a Variation if and to the extent that it causes the Contractor to suffer delays and/or to incur Unforeseeable cost. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor.  The Contractor shall be responsible for his construction and operation activities on the Site, and shall co-ordinate his own activities with those of other contractors to the extent (if any) specified in the Employer's Requirements.  If, under the Contract, the Employer is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Employer's Representative in the time and manner stated in the Employer's Requirements. |
| **4.7 Setting Out** | The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract or notified by the Employer's Representative. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.  The Employer shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.  If the Contractor suffers delay and/or incurs cost from executing work which was necessitated by an error in these items of reference, and an experienced contractor could not reasonably have discovered such error and avoided this delay and/or cost, the Contractor shall give Notice to the Employer's Representative and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claim*s] to:   * 1. an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.3 [*Extension of Time for Completion of Design-Build*]; and   2. payment of any such Cost Plus Profit, which shall be included in the Contract Price.   After receiving this Notice, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) whether and (if so) to what extent the error could not reasonably have been discovered, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent. |
| **4.8 Safety Procedures** | The Contractor shall:   1. comply with all applicable safety regulations; 2. take care for the safety of all persons entitled to be on the Site; 3. use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons; 4. provide fencing, lighting, guarding and watching of the Works until the issue of the Contract Completion Certificate; and 5. provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land. |
| **4.9 Quality Assurance** | The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Employer's Representative shall be entitled to audit any aspect of the system.  Details of all procedures and compliance documents shall be submitted to the Employer's Representative for information before each design, execution and operation stage is commenced. When any document of a technical nature is issued to the Employer's Representative, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.  Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract. |
| **4.10 Site Data** | The Employer shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in the Employer's possession on sub-surface, hydrological and climatic conditions at the Site, including environmental aspects. The Employer shall similarly make available to the Contractor all such data which come into the Employer's possession after the Base Date. The Contractor shall be responsible for interpreting all such data.  To the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Bid or Works or the provision of the Operation Service. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Bid as to all relevant matters, including (without limitation):   1. the form and nature of the Site, including sub-surface conditions; 2. the hydrological and climatic conditions; 3. the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects; 4. the Laws, procedures of regulatory and other authorities and labour practices of India; and 5. the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services. |
| **4.11 Sufficiency of the Accepted Contract Amount** | The Contractor shall be deemed to:   1. have satisfied himself as to the correctness and sufficiency of the Accepted Contract Amount; and 2. have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 4.10 [*Site Data*], and any further data relevant to the Contractor's design.   The Accepted Contract Amount covers all the Contractor's obligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper design, execution and completion of the Works, the remedying of any defects and the provision of the Operation Service. |
| **4.12 Unforeseeable Physical Conditions** | In this Sub-Clause, "physical conditions" means natural physical conditions and man- made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions.  If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give Notice to the Employer's Representative as soon as practicable.  This Notice shall describe the physical conditions, so that they can be inspected by the Employer's Representative, and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Employer's Representative may give. If an instruction constitutes a Variation, Clause 13 [*Variations and Adjustments*] shall apply.  If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives such a Notice, and suffers delay and/or incurs cost due to these conditions, the Contractor shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:   * 1. an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.3 [*Extension of Time for Completion of Design-Build*]; and   2. payment of any such Cost, which shall be included in the Contract Price.   After receiving such Notice and inspecting and/or investigating these physical conditions, the Employer's Representative shall proceed in accordance with Sub- Clause 3.5 [*Determinations*] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in sub- paragraphs (a) and (b) above.  However, before additional Cost is finally agreed or determined under (ii), the Employer's Representative may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen when the Contractor submitted the Bid. If and to the extent that these more favourable conditions were encountered, the Employer's Representative may proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and payment certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.  The Employer’s Representative shall take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Bid, which shall be made available by the Contractor, but shall not be bound by the Contractor’s interpretation of any such evidence. |
| **4.13 Rights of Way and Facilities** | Unless otherwise specified in the Contract the Employer shall provide effective access to and possession of the Site including special and/or temporary rights-of-way which are necessary for the Works. The Contractor shall obtain, at his risk and cost, any additional rights of way or facilities outside the Site which he may require for the purposes of the Works. |
| **4.14 Avoidance of Interference** | The Contractor shall not interfere unnecessarily or improperly with:   1. the convenience of the public; or 2. the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.   The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference. |
| **4.15 Access Route** | The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site at Base Date. The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.  Except as otherwise stated in these Conditions:   1. the Contractor shall (as between the Parties) be responsible for any maintenance which may be required as a result of his use of access routes; 2. the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions; 3. the Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route; 4. the Employer does not guarantee the suitability or availability of particular access routes; and 5. Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor. |
| **4.16 Transport of Goods** | Unless otherwise stated in the Particular Conditions of Contract:   1. The Contractor shall give Notice to the Employer's Representative not less than 21 days prior to the date on which any Plant or a major item of other Goods will be delivered to the Site; and 2. The Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works or provision of Operation Service; and 3. the Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods, and shall negotiate and pay all claims arising from their transport. |
| **4.17 Contractor's Equipment** | The Contractor shall be responsible for all Contractor's Equipment. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works and provision of the Operation Service. The Contractor shall not remove from the Site any major items of Contractor's Equipment without the consent of the Employer's Representative. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site. |
| **4.18 Protection of the Environment** | The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.  The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values indicated in the Employer's Requirements, or prescribed by applicable Laws.  The Contractor’s obligations with respect to the preparation and implementation of the Environmental Management Plan (hereinafter the “EMP”) shall be as detailed in the Employer’s Requirements. The Contractor shall at all times comply with the conditions of the approved EMP. Unless stated otherwise **in the PCC**, the Contract Price shall be deemed to include all things necessary to meet the requirements of the EMP.  During continuance of the contract, the Contractor and his sub-contractors shall abide at all times by all existing enactments on environmental protection and rules made thereunder, regulations, notifications and bye-laws of the State or Central Government, or local authorities and any other law, bye-law, regulations that may be passed or notification that may be issued in this respect in future by the State or Central Government or the local authority. Salient features of some of the major laws that are applicable for protection of environment are given in Appendix D |
| **4.19 Electricity, Water and Gas** | Except as stated below, the Contractor shall be responsible for the provision of all electricity, water and other services he may require.  The Contractor shall be entitled to use for the purposes of the Works and provision of the Operation Service such supplies of electricity, water, gas and other services as may be available on the Site and of which details are given in the Employer's Requirements.  In such a case the Contractor shall takeover in his own name and shall be responsible for payment of the electricity, water, gas and other services to the utility provider. The Contractor will be allowed to take over the existing service entry and provision points and shall be responsible for taking and recording such information as is necessary for the utility providers to correctly charge the Contractor from the Commencement Date. |
| **4.20 Progress Reports** | During the Design-Build Period, monthly progress reports, in a format agreed with the Employer's Representative shall be prepared by the Contractor and submitted to the Employer's Representative in one original and five copies, unless otherwise stated in the Employer's Requirements. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.  Reporting on progress shall continue until the Contractor has received the Contract Completion Certificate. Details of the content of the progress reports for the Design- Build Period and the Operation Service Period shall be as specified in the Employer's Requirements.  Unless otherwise stated or agreed, each progress report shall include:   1. charts and detailed descriptions of progress, including each stage of design, Contractor's Documents, procurement, manufacture, delivery to Site, construction or replacement, erection, testing, commissioning, trial operation and provision of Operation Service; 2. photographs showing the status of manufacture or replacement and of progress on the Site; 3. for the manufacture or replacement of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:    1. commencement of manufacture,    2. Contractor's inspections,    3. tests, and    4. shipment and arrival at the Site; 4. the details described in Sub-Clause 6.10 [*Records of Contractor's Personnel and Equipment*]; 5. copies of quality assurance documents, test results and certificates of Materials; 6. list of Variations, Notices given under Sub-Clause 20.1 [*Contractor's Claims*] and Notices given under Sub-Clause 20.2 [*Employer's Claims*]; 7. the Environmental, Social, Health and Safety (ESHS) metrics set out in Appendix C; 8. comparison of actual and planned progress, with details of any events or circumstances which may jeopardise the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays; and 9. Action taken/current status of implementation on the decisions taken in the periodical review meetings held earlier.   The particular reporting requirements during the Operation Service Period shall be as specified in the Employer's Requirements.  The Contractor shall provide immediate notification to the Employer’s Representative of incidents in the following categories. Full details of such incidents shall be provided to the Employer’s Representative within the timeframe agreed with the Employer’s Representative.   * + 1. confirmed or likely violation of any law or international agreement;     2. any fatality or serious (lost time) injury;     3. significant adverse effects or damage to private property (e.g. vehicle accident, damage from fly rock, working beyond the boundary)     4. major pollution of drinking water aquifer or damage or destruction of rare or endangered habitat (including protected areas) or species; or     5. any allegation of gender-based violence (GBV), sexual harassment or sexual misbehavior, child abuse, defilement, or other violations involving children. |
| **4.21 Security of the Site** | The Contractor shall be responsible for the security of the Site. Unless otherwise stated in the Particular Conditions of Contract:   1. the Contractor shall be responsible for keeping unauthorized persons off the Site; and 2. authorized persons shall be limited to the Contractor's Personnel and the Employer's Personnel, and to any other personnel notified to the Contractor, by the Employer or the Employer's Representative, as authorized personnel of the Employer's other contractors on the Site. |
| **4.22 Contractor's Operations on Site** | The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Employer's Representative as working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.  At all times the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall promptly clear away and remove from the Site any surplus material, wreckage, rubbish and Temporary Works which are no longer required.  Upon the issue of a Commissioning Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which the Commissioning Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition.  The Contract Completion Certificate shall not be issued until the Contractor has removed any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site which are not required. The Contractor shall leave the Site and the Works in a clean and safe condition. |
| **4.23 Fossils** | All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.  The Contractor shall, upon discovery of any such finding, promptly give Notice to the Employer's Representative, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs cost from complying with the instructions, the Contractor shall give a further Notice to the Employer's Representative and shall be entitled, subject to Sub-Clause 20.1 [*Contractor*'*s Claims*], to:   * 1. an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.3 [*Extension of Time for Completion of Design-Build*]; and   2. payment of any such Cost, which shall be included in the Contract Price.   After receiving this further Notice, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters. |
| **4.24 Changes in the Contractor’s Financial Situation** | If the Contractor becomes aware of any change in the Contractor's financial situation which will or could adversely affect his ability to complete and fulfil all his obligations under the Contract, he shall immediately give Notice to the Employer with detailed particulars. Within 28 days of receiving such Notice, the Employer shall advise the Contractor of what action he intends to take and/or what action the Employer requires the Contractor to take.  In any event, the Contractor shall provide the Employer annually with his audited financial statements and reports. |
| **4.25 Demolition** | The Contractor shall not demolish any building or structure except where specified in the Employer’s Requirements, or with the prior written approval of the Employer’s Representative.  The conditions for the re-use, sale and disposal of demolished materials shall be as specified in the Employer Requirements. |
| **4.26 Existing Facilities** | The Contractor shall take over, rehabilitate, upgrade, operate and maintain the Existing Facilities to the extent specified in the Employer’s Requirements.  Unless stated otherwise in the Employer’s Requirements, the Contractor shall provide, and pay for, all labour, equipment, materials (including spare parts and consumables), and electricity necessary to operate and maintain the Existing Facilities.  During the Design-Build Period,  (a) the Contractor shall use all reasonable endeavors to meet the standards of performance specified for the Existing Facilities in the Employer’s Requirements;  (b) The Employer shall indemnify and hold harmless the Contractor against any and all claims made against it in respect of the operation of the Existing Facilities to the extent that the condition or design of the Existing Facilities renders them unable to meet the applicable performance standards.”  As at the date of commencement of the Operation Service the Existing Facility, unless specified otherwise in the Employer’s Requirements, will be deemed to form part of the Works, and all references in the Contract to Works, Permanent Works, Plant and Site etc. shall be deemed to include the Existing Facilities. |
| **Design** | |
| **5.1 General Design Obligations** | The Contractor shall carry out, and be responsible for, the design of the Works. Design shall be prepared by qualified designers who are engineers or other professionals who comply with the criteria (if any) stated in the Employer's Requirements. Unless otherwise stated in the Contract, the Contractor shall submit to the Employer's Representative for consent the name and particulars of each proposed designer and design Subcontractor.  The Contractor warrants that he, his designers and design Subcontractors have the experience and capability necessary for the design. The Contractor undertakes that the designers shall be available to attend discussions with the Employer's Representative at all reasonable times.  Upon receiving Notice under Sub-Clause 8.1 [*Commencement Date*], the Contractor shall scrutinize the Employer's Requirements (including design criteria and calculations, if any) and the items of reference mentioned in Sub-Clause 4.7 [*Setting Out*]. Within the period **stated in the PCC**, calculated from the Commencement Date, the Contractor shall give Notice to the Employer's Representative of any error, fault or other defect found in the Employer's Requirements or these items of reference.  After receiving this Notice, the Employer's Representative shall determine whether Clause 13 [*Variations and Adjustments*] shall be applied, and shall give Notice to the Contractor accordingly. If and to the extent that (taking account of cost and time) an experienced contractor exercising due care would have discovered the error, fault or other defect when examining the Site and the Employer's Requirements before submitting the Bid, the Time for Completion shall not be extended and the Contract Price shall not be adjusted.  If the Contractor finds any error, fault or other defect in the Employer's Requirements after the period stated in the PCC, then Sub-Clause 1.10 [*Errors in the Employer's Requirements*] shall be applicable. |
| **5.2 Contractor's Documents** | The Contractor's Documents shall comprise the technical documents specified in the Employer's Requirements, documents required to satisfy all regulatory approvals, and the documents described in Sub-Clause 5.5 [*As-Built Documents*] and Sub-Clause 5.6 [*Operation and Maintenance Manuals*]. Unless otherwise stated in the Employer's Requirements, the Contractor's Documents shall be written in English for communications defined in Sub-Clause 1.4 [*Law and Language*].  The Contractor shall prepare all Contractor's Documents, and shall also prepare any other documents necessary to instruct the Contractor's Personnel. The Employer's Personnel shall have the right to inspect the preparation of all these documents, wherever they are being prepared.  If the Employer's Requirements describe the Contractor's Documents which are to be submitted to the Employer's Representative for review leading to consent and/or for approval, they shall be submitted accordingly, together with a Notice as described below. The Employer's Representative gives his consent to a document when he is satisfied that the Contractor's Documents conform to the Employer's Requirements. In the following provisions of this Sub-Clause, (i) "review period" means the period required by the Employer's Representative for review leading to consent and (if so specified) for approval, and (ii) "Contractor's Documents" exclude any documents which are not specified as being required to be submitted for review leading to consent and/or for approval. The Contractor's Documents which require approval from the Employer's Representative shall be as **listed in the PCC**.  Unless otherwise stated in the Employer's Requirements or agreed with the Employer's Representative, each review period shall not exceed 21 days, calculated from the date on which the Employer's Representative receives a Contractor's Document and the Contractor's Notice. This Notice shall state that the Contractor's Document is considered ready for review leading to either approval (if so specified) or consent with regard to conformity with the Employer's Requirements, in accordance with this Sub-Clause and for use. The Notice shall also state that the Contractor's Document complies with the Contract, or the extent to which it does not comply.  The Employer's Representative may, within the review period, give Notice to the Contractor that a Contractor's Document fails (to the extent stated) to conform with the Contract. If a Contractor's Document so fails to conform, it shall be rectified, resubmitted and reviewed (and, if specified, approved) in accordance with this Sub- Clause, at the Contractor's cost. If such re-submission and review causes the Employer to incur additional costs, the Contractor shall, subject to Sub-Clause 20.2 [*Employer's Claims*], pay these costs to the Employer.  For each part of the Works, and except to the extent that the prior approval or consent of the Employer's Representative shall have been obtained:   1. in the case of a Contractor's Document which has (as specified) been submitted for the Employer's Representative's approval or consent:    1. the Employer's Representative shall give Notice to the Contractor that the Employer's Representative gives his consent that the Contractor's Document conforms with the Employer's Requirements or is approved, or that it does not (to the extent stated) comply with the Contract;    2. execution of such part of the Works shall not commence until the Employer's Representative has either approved or given his consent to the Contractor's Document; and    3. the Employer's Representative shall be deemed to have approved the Contractor's Documents or given his consent that the Contractor's Documents conform to the Employer's Requirements upon the expiry of the review periods for all the Contractor's Documents which are relevant to the design and execution of such part, unless the Employer's Representative has previously notified otherwise in accordance with sub-paragraph (i); 2. execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Contractor's Documents which are relevant to its design and execution; 3. execution of such part of the Works shall be in accordance with those Contractor's Documents for which the Employer's Representative has given his consent as to the conformity with the Employer's Requirements, (and, if specified, approved); and 4. if the contractor wishes to modify any design or document which has previously been submitted for review (and, if specified, approval), the Contractor shall immediately give Notice to the Employer's Representative, accompanied by a written explanation of the need for such modification. Thereafter, the Contractor shall submit revised documents to the Employer's Representative in accordance with the above procedure.   Any such consent and/or approval (where specified) (under this Sub-Clause or otherwise) shall not relieve the Contractor from any obligation or responsibility. |
| **5.3 Contractor's Undertaking** | If the Employer's Representative reasonably instructs that further Contractor's Documents are required, the Contractor shall prepare them promptly at his own cost. The Contractor undertakes that the design, the Contractor's Documents, the execution and the completed Works will be in accordance with:   1. the Laws of India; and 2. the documents forming the Contract, as altered or modified by Variations. |
| **5.4 Technical Standards and Regulations** | Unless otherwise stated, the design, the Contractor's Documents, the execution and the completed Works shall comply with India’s technical standards, building, construction and environmental Laws, Laws applicable to the product being produced from the Works, and other standards specified in the Employer's Requirements, applicable to the Works, or defined by the applicable Laws.  All these Laws shall, in respect of the Works and each Section, be those prevailing when the Commissioning Certificate is issued in accordance with Sub-Clause 11.7 [*Commissioning Certificate*]. References in the Contract to published standards shall be understood to be references to the edition applicable on the Base Date, unless stated otherwise.  If changed or new applicable standards come into force in India after the Base Date, the Contractor shall give Notice to the Employer's Representative and (if appropriate) submit proposals for compliance. In the event that:   1. the Employer's Representative determines that compliance is required; and 2. the proposals for compliance constitute a variation,   then the Employer's Representative shall initiate a Variation in accordance with Clause 13 [*Variations and Adjustments*]. |
| **5.5 As-Built Documents** | The Contractor shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed. These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause. At least two copies shall be supplied to the Employer's Representative prior to the commencement of the Tests on Completion of Design-Build.  In addition, the Contractor shall supply to the Employer's Representative as-built drawings of the Works, showing all Works as executed, and submit them to the Employer's Representative for review under Sub-Clause 5.2 [*Contractor's Documents*]. The Contractor shall obtain the consent of the Employer's Representative as to their size, the referencing system, and other relevant details.  Prior to the issue of the Commissioning Certificate, the Contractor shall supply to the Employer's Representative the specified numbers and types of copies of the relevant as-built drawings, in accordance with the Employer's Requirements. The relevant work shall not be considered to be completed for the purposes of issuing the Commissioning Certificate under Sub-Clause 11.7 [*Commissioning Certificate*] until the Employer's Representative has received these documents. |
| **5.6 Operation and Maintenance Manuals** | Prior to the commencement of the Commissioning Period, the Contactor shall supply to the Employer's Representative two copies of all operation and maintenance manuals in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair the Plant and the Works. The Contractor shall supply the balance of the required operation and maintenance manuals prior to the issue of the Commissioning Certificate. The Works or any Section shall not be considered to be completed for the purposes of issuing the Commissioning Certificate under Sub-Clause 11.7 [*Commissioning Certificate*] until the Employer's Representative has received these documents. |
| **5.7 Design Error** | If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's Documents, they and the Works shall be corrected at the Contractor's cost, notwithstanding any consent or approval under this Clause. |
| **Staff and Labour** | |
| **6.1 Engagement of Staff and Labour** | Except as otherwise stated in the Employer's Requirements, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport and, when appropriate, housing.  The cost to comply with the requirements of all the “social clauses” (G.C.C Sub-Clauses 6.1 through 6.24), to the level and extent specified in the Specification and General Conditions of Contract, is to be considered by the bidder as part of its general Overheads included in the unit rates of items and no separate payment will be made for these items, except where specified otherwise under any specific clause. |
| **6.2 Rates of Wages and Conditions of Employment** | The Contractor shall pay rates of wages and observe conditions of labour which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.  The Contractor shall inform the Contractor’s Personnel about their liability to pay personal income taxes in India in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the Laws of India 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. |
| **6.3 Persons in the Service of Employer** | The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel.  The employees of the Contractor and the Sub-Contractor(s) in no case shall be treated as the employees of the Employer at any point of time.  The Contractor shall not employ any retired Gazetted officer of the Government who has either not completed the mandatory period after the date of retirement or has not obtained permission from the Government, as per extent government directives, for employment with the Contractor. |
| **6.4 Labour Laws** | The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.  The Contractor shall require the Contractor's Personnel to obey all applicable Laws, including those concerning safety at work.  During continuance of the contract, the Contractor and his sub-Contractors shall abide at all times by all existing labour enactments and rules made thereunder, regulations, notifications and bye laws of State or Central Government or local authority and any other labour law (including rules), regulations, bye laws that may be passed or notification that may be issued under any labour law in future either by the State or the Central Government or the local authority.  The Contractor shall keep the Employer indemnified in case any action is taken against the Employer by the competent authority on account of contravention of any of the provisions of any Act or rules made thereunder, regulations or notifications including amendments. If the Employer is caused to pay or reimburse, such amounts as may be necessary to cause or observe, or for non-observance of the provisions stipulated in the notifications/bye laws/acts/rules/regulations including amendments, if any, on the part of the Contractor, the Employer shall also have right to recover from the contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer.  Salient features of major labour and other laws that are applicable to construction industry in India are given as Appendix D to these General Conditions of Contract. |
| **6.5 Working Hours** | No work shall be carried out on the Site on locally recognized days of rest or outside the normal working hours **stated in the PCC**, unless:   1. otherwise stated in the Contract; 2. the Employer's Representative gives consent; 3. 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 Employer's Representative; or 4. required for the proper fulfilment of the requirements of the Operation Service Period. |
| **6.6 Facilities for Staff and Labour** | Except as otherwise stated in the Employer's Requirements, 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 Employer's Requirements.  The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the Site of the Works, save where the Employer has given the Contractor permission in writing. |
| **6.7 Health and Safety** | The Contractor shall at all times during the Contract Period 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.  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 execution and operation of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.  The Contractor shall send details of any accident to the Employer's Representative as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Employer's Representative may reasonably require.  HIV-AIDS Prevention. The Contractor shall conduct an HIV-AIDS awareness program via an approved service provider, and shall undertake such other measures as are specified in this Contract to reduce the risk of the transfer of the HIV virus between and among the Contractor’s Personnel and the local community, to promote early diagnosis and to assist affected individuals.  The Contractor shall throughout the contract (including the Defects Notification Period): (i) conduct Information, Education and Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and Labour (including all the Contractor's employees, all Subcontractors and any other Contractor’s or Employer’s personnel 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 labour as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counselling and referral to a dedicated national STI and HIV/AIDS program, (unless otherwise agreed) of all Site staff and labour.  The Contractor shall include in the program to be submitted for the execution of the Works under Sub-Clause 8.3 an alleviation program for Site staff and labour 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 Employer’s Requirements. 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. |
| **6.8 Contractor's Superintendence** | For the complete Contract Period, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect, test and monitor the design and execution of the Works and the provision of the Operation Service in accordance with his obligations under the Contract.  Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [*Law and Language*]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works and the provision of the Operation Service. |
| **6.9 Contractor's Personnel** | The Contractor's Personnel **as stated in PCC** shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Employer's Representative may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative if applicable, who:   1. persists in any misconduct or lack of care; 2. carries out duties incompetently or negligently; 3. fails to conform with any provisions of the Contract; 4. persists in any conduct which is prejudicial to safety, health, or the protection of the environment; 5. based on reasonable evidence, is determined to have engaged in Fraud and Corruption during the execution of the Works; or 6. Undertakes behavior which breaches the Code of Conduct (ESHS) (e.g. spreading communicable diseases, sexual harassment, gender-based violence (GBV), sexual exploitation or abuse, illicit activity or crime.   If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.  The Contractor’s Personnel includes Key Personnel. If the Contractor intends to replace a Key Personnel, the Contractor shall, not less than 30 days before the intended date of replacement, give notice to the Employer’s Representative, the name, address, academic qualifications and relevant experience of the intended replacement Key Personnel. The Contractor shall not, without the prior consent of the Employer’s Representative, revoke the appointment of the Key Personnel or appoint a replacement.  The Employer’s Representative shall approve any proposed replacement of Key Personnel only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid. |
| **6.10 Records of Contractor's Personnel and Equipment** | During the Design-Build Period, the Contractor shall submit, to the Employer's Representative, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Any changes to the Personnel or Equipment shall be notified at the end of each calendar month to the Employer's Representative.  During the Operation Service Period, any changes to the Personnel or Equipment shall be notified at the end of each calendar month to the Employer's Representative. |
| **6.11 Disorderly Conduct** | The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site. |
| **6.12 Foreign personnel** | The Contractor may bring in to India any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. 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, and national or government permission required for bringing in the Contractor’s personnel.  The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in India of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial. |
| **6.13 Supply of Food stuffs** | The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Employer’s Requirements at reasonable prices for the Contractor’s Personnel for the purposes of or in connection with the Contract. |
| **6.14 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. |
| **6.15 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 the danger to their health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide. |
| **6.16 Alcoholic Liquor or Drugs** | The Contractor shall not, otherwise than in accordance with the Laws of India, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal thereof by Contractor's Personnel. |
| **6.17 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. |
| **6.18 Festivals and religious Customs** | The Contractor shall respect India's recognized festivals, days of rest and religious or other customs. |
| **6.19 Funeral Arrangements** | The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of his local employees who may die while engaged upon the Works. |
| **6.20 Prohibition of Forced or Compulsory Labour** | The Contractor shall not employ forced labour, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour -contracting arrangements. |
| **6.21 Prohibition of Harmful Child Labour** | The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development. Where the relevant labour laws of India have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work. |
| **6.22 Employment Records of Workers** | The Contractor shall keep complete and accurate records of the employment of labour at the Site. The records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis and submitted to the Employer’s Representative. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor’s Personnel and Equipment]. |
| **6.23 Workers’ Organizations** | In countries where the relevant labour laws recognize workers’ rights to form and to join workers’ organizations of their choosing without interference and to bargain collectively, the Contractor shall comply with such laws. Where the relevant labour laws substantially restrict workers’ organizations, the Contractor shall enable alternative means for the Contractor’s Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where the relevant labour laws are silent, the Contractor shall not discourage the Contractor’s Personnel from forming or joining workers’ organizations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor’s Personnel who participate, or seek to participate, in such organizations and bargain collectively. The Contractor shall engage with such workers’ representatives. Workers’ organizations are expected to fairly represent the workers in the workforce. |
| **6.24 Non-Discrimination and Equal Opportunity** | The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of 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, access to training, promotion, termination of employment or retirement, and discipline. In countries where the relevant labour laws provide for non-discrimination in employment, the Contractor shall comply with such laws. When the relevant labour laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause’s requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination. |
| **Plant, Materials, and Workmanship** | |
| **7.1 Manner of Execution** | The Contractor shall carry out the manufacture and/or replacement and/or repair of Plant, the production and manufacture of Materials, and all other activities during the execution of the Works and provision of the Operation Service:   * 1. in accordance with the applicable Laws in the manner (if any) specified in the Contract;   2. in a proper workmanlike and careful manner, in accordance with recognized good practice; and   3. with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract. |
| **7.2 Samples** | The Contractor shall submit the following samples of Materials, and relevant information, to the Employer's Representative for review in accordance with the procedures for Contractor's Documents described in Sub-Clause 5.2 [*Contractor's Documents*]:   * + 1. manufacturer's standard samples of Materials and samples specified in the Contract, all at the Contractor's cost; and     2. additional samples instructed by the Employer's Representative as a Variation.   Each sample shall be labelled as to origin and intended use in the Works. |
| **7.3 Inspection** | The Employer's Personnel and other persons authorized by the Employer shall at all reasonable times:   1. have full access to all parts of the Site and to all places from which natural Materials are being obtained; 2. during production, manufacture and construction (at the Site and elsewhere), operation and maintenance, be entitled to examine, inspect, measure and test the Materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials; and 3. carry out other authorized duties and inspections.   The Contractor shall give the Employer's Personnel and other persons authorized by the Employer full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.  The Contractor shall give Notice to the Employer's Representative whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Employer's Representative shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give Notice to the Contractor that the Employer's Representative does not require to do so. If the Contractor fails to give the Notice, he shall, if and when required by the Employer's Representative, uncover the work and thereafter reinstate and make good, all at the Contractor's cost. |
| **7.4 Testing** | This Sub-Clause shall apply to all tests on Plant, Materials and workmanship specified in the Contract.  Except as otherwise specified in the Contract, the Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Employer's Representative, the time and place for the specified testing of any Plant, Materials and other parts of the Works.  The Employer's Representative may, under Clause 13 [*Variations and Adjustments*], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.  The Employer's Representative shall give Notice to the Contractor not less than 24 hours prior to the tests, of the Employer's Representative's intention to attend the tests. If the Employer's Representative does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Employer's Representative, and the tests shall then be deemed to have been made in the Employer's Representative's presence.  If the Contractor suffers delay in carrying out the tests and/or incurs cost from complying with these instructions or as a result of a delay for which the Employer is responsible, the Contractor shall give Notice to the Employer's Representative and shall be entitled, subject to Sub-Clause 20.1 [*Contractor's Claims*], to:   1. an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.3 [*Extension of Time for Completion of Design-Build*]; and 2. payment of any such Cost Plus Profit, which shall be included in the Contract Price.   After receiving this Notice, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.  The Contractor shall promptly forward to the Employer's Representative duly certified reports of the tests. When the specified tests have been passed, the Employer's Representative shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Employer's Representative has not attended the tests, he shall be deemed to have accepted the readings as accurate. |
| **7.5 Rejection** | If, as a result of an examination, inspection, measurement or testing, any Plant, Materials, or workmanship is found to be defective or otherwise not in accordance with the Contract, the Employer's Representative may reject the Plant, Materials, design or workmanship by giving Notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect at the Contractor's cost and ensure that the rejected item complies with the Contract.  If the Employer's Representative requires this Plant, Materials, or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Employer to incur additional costs, the Contractor shall, subject to Sub-Clause 20.2 [*Employer's Claims*], pay these costs to the Employer. |
| **7.6 Remedial Work** | At any time during the Contract Period, notwithstanding any previous test or certification, the Employer's Representative may instruct the Contractor to:   1. repair, remove from the Site and replace, any Plant or Materials which is not in accordance with the Contract; 2. remove and re-execute any other work which is not in accordance with the Contract; and 3. execute any work which is urgently required for the safety of the Works or the provision of the Operation Service, whether because of an accident, unforeseeable event or otherwise.   The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under sub-paragraph (c).  Except to the extent that the Contractor may be entitled to payment for the work required under sub-paragraph (c), the Contractor shall bear the cost of such remedial work.  If the Contractor fails to comply with the instruction, the Employer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall, subject to Sub-Clause 20.2 [*Employer's Claims*], pay to the Employer all costs arising from this failure. |
| **7.7 Ownership of Plant and Materials** | Except as otherwise specified in the Contract, each item of Plant and Materials shall, to the extent consistent with the Laws of India, become the property of the Employer at whichever is the earlier of the following times, free from liens and other encumbrances:   1. when it is delivered to the Site; 2. when the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 9.9 [*Payment for Plant and Materials in Event of Suspension*]; and 3. when the Contractor is paid the corresponding value of the Plant and Materials under Sub- Clause 14.5 [*Payment for Plant and Materials intended for the Works*].   For the avoidance of doubt, vehicles, trucks, mobile plant and site equipment (other than temporary mobile plant and temporary site equipment brought onto the site to undertake specific remedial tasks), tools, office equipment, software and office consumables used by the Contractor for the Operation Service shall become the property of the Employer. Vehicles used for personal transportation of the Contractor’s Personnel and computers and mobile devices allocated for the personal use of the Contractor’s Personnel shall be Contractor’s Equipment.  The Contractor shall maintain up-to-date inventories of the Contractor’s Equipment, Materials and Temporary Works throughout the term of the Contract. |
| **7.8 Royalties** | Unless otherwise stated in the Employer's Requirements, the Contractor shall pay all royalties, rents and other payments for:   1. natural Materials obtained from outside the Site; and 2. the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract. |
| **Commencement Date, Completion and Program** | |
| **8.1 Commencement Date** | **8.1 Commencement of Work**  Except as otherwise specified in the Contract, the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Employer’s Representative’s notification recording the agreement of both Parties on such fulfilment and instructing to commence the Work is received by the Contractor:  (a) signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities of India;  (b) deleted.  (c) except if otherwise **specified in the PCC**, effective access to and possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.14 [Compliance with Laws] as required for the commencement of the Works  (d) receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [Advance Payment] provided that the corresponding bank guarantee has been delivered by the Contractor.  (e) receipt by the Employer’s Representative, Certificates for Insurance taken in accordance with GCC 19.  If the said Employer’s Representative’s instruction is not received by the Contractor within 180 days from his receipt of the Letter of Acceptance, the Contractor shall be entitled to terminate the Contract under Sub-Clause 16.2 [Termination by Contractor].  Without prejudice to Sub-Clause 4.1 of the Particular Conditions of Contract, the Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date, and shall then proceed with the Works with due expedition and without delay. |
| **8.2 Time for Completion** | The Contractor shall complete the whole of the Design-Build and each Section (if any), in accordance with Sub-Clause 9.2 [*Time for Completion of Design-Build*], or as extended under Sub-Clause 9.3 [*Extension of Time for Completion of Design-Build*], and shall provide the Operation Service for the period **stated in the PCC**.  The Contractor’s completion of the whole of the Works, includes protection of environment, and assurance of public health and safety, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be). |
| **8.3 Program** | The Contractor shall submit a detailed time program to the Employer's Representative within 28 days after receiving the Notice under Sub-Clause 8.1 [*Commencement Date*]. The Contractor shall also submit a revised program whenever the previous program is inconsistent with actual progress or with the Contractor's obligations. Each program shall include:   1. the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design, Contractor's Documents, procurement, manufacture, inspection, delivery to Site, construction, erection, testing, commissioning and trial operation; 2. the period of Operation Service; 3. the periods for reviews under Sub-Clause 5.2 [*Contractor's Documents*] and for any other submissions, including the supply of samples in accordance with Sub-Clause 7.2 [*Samples*], approvals and consents specified in the Employer's Requirements; 4. the sequence and timing of inspections and tests specified in the Contract, and 5. a supporting report which includes:    1. a general description of the methods which the Contractor intends to adopt for both the Design-Build and the Operation Service;    2. details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each major stage; and    3. the Contractor's proposed manning schedule for the Operation Service.   Unless the Employer's Representative, within 21 days after receiving a program, gives Notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the program, subject to his other obligations under the Contract. The Employer's Personnel shall be entitled to rely upon the program when planning their activities.  If, at any time, the Employer's Representative gives Notice to the Contractor that a program fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit, within 14 days, a revised program to the Employer's Representative in accordance with this Sub-Clause. |
| **8.4 Advance Warning** | Each Party shall endeavour to advise the other Party in advance of any known or probable future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works or the Operation Service. The Employer's Representative may require the Contractor to submit an estimate of the anticipated effect of the future events or circumstances, and/or a proposal under Sub-Clause 13.3 [*Variation Procedure*]. |
| **8.5 Delay Damages** | If the Contractor fails to complete the Design-Build in accordance with the requirements of Sub-Clause 9.2 [*Time for Completion of Design-Build*], he shall pay delay damages as detailed in Sub-Clause 9.6 [*Delay Damages relating to Design-Build*].  If the Contractor fails or is unable to provide the Operation Service for the complete period specified in the Contract, or parts of the Operation Service, and such failure is:   1. due to a cause for which the Contractor is responsible; and 2. results in the Employer losing revenue or income which the Employer would normally have expected to receive during the Operation Service Period; or 3. results in the Employer suffering any other loss which he would not have suffered but for such failure,   then the Contractor shall pay to the Employer compensation in accordance with Sub- Clause 10.4 [*Delays and Interruptions during the Operation Service*]. |
| **8.6 Contract Completion Certificate** | Performance of the Contractor's obligations in respect of the Contract shall not be considered to have been completed until the Contract Completion Certificate has been signed by the Employer's Representative and issued to the Contractor, stating the date on which the Contractor completed his obligations in respect of both the Design-Build and the Operation Service (Contract Completion Date).  The Employer's Representative shall, subject to Sub-Clause 11.8 [*Joint Inspection Prior to Contract Completion*], Sub-Clause 10.6 [*Completion of Operation Service*] and Sub-Clause 4.22 [*Contractor's Operations on Site*], issue the Contract Completion Certificate to the Contractor, with a copy to the Employer, within 21 days after the last day of the Contract Period. No extension of the Operation Service Period shall be allowed except by written agreement between the Parties.  Only the Contract Completion Certificate shall be deemed to constitute the Employer's acceptance of the Contractor's completion of his obligations under the Contract. Following the issue of the Contract Completion Certificate the Employer shall be fully responsible for the care, safety, operation, servicing and maintenance of the Works. |
| **8.7 Handback Requirements** | The Contractor shall ensure that the Works comply with the handback requirements specified in the Employer's Requirements prior to the issue of the Contract Completion Certificate. |
| **8.8 Unfulfilled Obligations** | After the Contract Completion Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation under the Contract which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force. |
| **Design-Build** | |
| **9.1 Commencement of Design-Build** | The Contractor shall commence the design and execution of the Works within 28 days of the Commencement Date, and shall then proceed with the Design-Build with due expedition and without delay. |
| **9.2 Time for Completion of Design-Build** | The Contractor shall complete the whole of the Design-Build of the Works, and each Section (if any), within the Time for Completion of Design-Build of the Works or Section (as the case may be) as **set out in the PCC**, including:   1. passing the Tests on Completion under Sub-Clause 11.1 [*Testing of the Works*]; 2. completing all work which is stated in the Contract as being required under Sub-Clause 11.5 [*Completion of the Works and Sections*]; and 3. preparation and delivery to the Employer's Representative of Contractor's Documents required under Sub-Clause 5.2 [*Contractor's Documents*]. |
| **9.3 Extension of Time for Completion of Design-Build** | The Contractor shall be entitled, subject to Sub-Clause 20.1 [*Contractor's Claims*], to an extension of the Time for Completion of Design-Build if and to the extent that completion for the purposes of Sub-Clause 11.5 [*Completion of the Works and Sections*] is or will be delayed by any of the following causes:   1. a Variation (unless an adjustment to the Time for Completion of Design-Build has been agreed under Sub-Clause 13.3 [*Variation Procedure*]); 2. a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions 3. exceptionally adverse climatic conditions; 4. unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions; or 5. any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors on the Site.   If the Contractor considers himself to be entitled to an extension of the Time for Completion of Design-Build, the Contractor shall give Notice to the Employer's Representative in accordance with Sub-Clause 20.1 [*Contractor's Claims*]. When determining each extension of time, the Employer's Representative shall review previous determinations and may increase, but shall not decrease, the total extension of time.  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 the Adjudicator under Sub-Clause 20.3. |
| **9.4 Delays Caused by Authorities** | If the following conditions apply during the Design-Build Period, namely:   1. the Contractor has diligently followed the procedures laid down by the relevant legally constituted public and/or local authorities in India; 2. these authorities delay or disrupt the Contractor's work; and 3. the delay or disruption was Unforeseeable,   then this delay or disruption will be considered as a cause of delay under sub- paragraph (b) of Sub-Clause 9.3 [*Extension of Time for Completion of Design-Build*]. |
| **9.5 Rate of Progress** | If, in the opinion of the Employer's Representative, at any time during the Design-Build Period:   1. actual progress is too slow to complete within the Time for Completion of Design-Build; and/or 2. progress has fallen (or will fall) behind the current program under Sub-Clause 8.3 [*Program*],   other than as a result of a cause listed in Sub-Clause 9.3 [*Extension of Time for Completion of Design-Build*], then the Employer's Representative may instruct the Contractor to submit, under Sub-Clause 8.3 [*Program*], a revised program and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion of Design-Build.  Unless the Employer's Representative notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Employer to incur additional costs, the Contractor shall, subject to Sub-Clause 20.2 [*Employer's Claims*], pay these costs to the Employer, in addition to delay damages (if any) under Sub-Clause 9.6 [*Delay Damages relating to Design-Build*] below.  Additional costs of revised methods including acceleration measures, instructed by the Employer’s Representative to reduce delays resulting from causes listed under Sub-Clause 8.4 [Extension of Time for Completion] shall be paid by the Employer, without generating, however, any other additional payment benefit to the Contractor. |
| **9.6 Delay Damages relating to Design-Build** | If the Contractor fails to comply with Sub-Clause 9.2 [*Time for Completion of Design- Build*], the Contractor shall, subject to Sub-Clause 20.2 [*Employer's Claims*], pay delay damages to the Employer for this default. These delay damages shall be the amount **stated in the PCC**, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Commissioning Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages (if any) **stated in the PCC**.  These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Clause 15 [T*ermination by Employer*] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Design-Build and the Operation Service, or from any other duties, obligations or responsibilities which he may have under the Contract. |
| **9.7 Suspension of Work** | The Employer's Representative may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store, secure and maintain such part or the Works against any deterioration, loss or damage.  The Employer's Representative shall also notify the cause for the suspension. If and to the extent that the cause is the responsibility of the Contractor, the following Sub- Clauses 9.8, 9.9 and 9.10 shall not apply. |
| **9.8 Consequences of Suspension** | If, during the Design-Build Period, the Contractor suffers delay and/or incurs cost from complying with the Employer's Representative's instructions under Sub-Clause 9.7 [*Suspension of Work*] and/or from resuming the work, the Contractor shall give Notice to the Employer's Representative and shall be entitled, subject to Sub-Clause 20.1 [*Contractor's Claims*], to:   * 1. an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.3 [*Extension of Time for Completion of Design-Build*]; and   2. payment of any such Cost, which shall be included in the Contract Price.   After receiving this Notice, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters.  The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-Clause 9.7 [*Suspension of Work*]. |
| **9.9 Payment for Plant and Materials in Event of Suspension** | The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:   1. the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days; and 2. the Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Employer's Representative's instructions.   Payment for Plant and/or Materials made pursuant to this Sub-Clause shall, if requested by the Employer's Representative, be subject to the production of satisfactory evidence by the Contractor that the said Plant and/or Materials are fully owned by the Contractor and are not subject to any retention of title by the supplier. |
| **9.10 Prolonged Suspension** | If the suspension under Sub-Clause 9.7 [*Suspension of Work*] has continued for more than 84 days, the Contractor may request the Employer's Representative's permission to proceed. If the Employer's Representative does not give permission within 28 days after being requested to do so, the Contractor may, by giving Notice to the Employer's Representative, treat the suspension as an omission under Clause13 [*Variations and Adjustments*] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give Notice of termination under Sub-Clause 16.2 [*Termination by Contractor*]. |
| **9.11 Resumption of Work** | After the permission or instruction to proceed is given, the Contractor and the Employer's Representative shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension, after receiving from the Employer’s Representative an instruction to this effect under Clause 13 [Variations and Adjustments]. The Employer's Representative shall make a written record of all making good required to be carried out by the Contractor. |
| **9.12 Completion of Design-Build** | The Design-Build shall not be considered as complete until all of the following are achieved:   1. the Works have been fully designed and executed in accordance with the Employer's Requirements and other relevant provisions of the Contract; 2. the Works have passed the Tests on Completion of Design-Build in accordance with Sub-Clause 11.1 [*Testing of the Works*]; 3. Contractor's Documents in accordance with Sub-Clause 5.5 [*As-Built Documents*] and Sub-Clause 5.6 [*Operation and Maintenance Manuals*] have been supplied and approved by the Employer's Representative; and 4. The Commissioning Certificate required under Sub-Clause 11.7 [*Commissioning Certificate*] has been issued stating the date upon which the Design-Build has been completed and the Operation Service shall commence. |
| **9.13 Failure to Complete** | Should the Contractor fail to complete the Design-Build prior to the Cut-Off Date, the Employer may, at his sole option, either:   1. permit the Contractor to continue the Design-Build for a further named period, with an absolute right to re-apply this Sub-Clause in the event that the Contractor fails to complete the Design-Build within the extended period; or 2. terminate the Contract in accordance with Sub-Clause 15.2 [*Termination for Contractor's Default*] and, if he so chooses, complete the work and subsequently execute the Operation Service himself or by engaging others.   In either case, the Employer will be entitled to recover from the Contractor any direct loss incurred, including any loss resulting from the delayed operation of the Works, subject to the limitations contained in Sub-Clause 9.6 [*Delay Damages Relating to Design-Build*] and Sub-Clause 17.8 [*Limitation of Liability*]. |
| **Operation Service** | |
| **10.1 General Requirements** | The Contractor shall comply with the Operation Management Requirements, and Performance Standards as provided for in the Contract and any revisions thereof which are agreed during the Contract Period.  The Contractor shall follow the requirements of the operation and maintenance manuals and any additional Operation Service plans and manuals, prepared by the Contractor in accordance with the Operation Management Requirements. No significant alteration to such arrangements and methods shall be made without the prior approval of the Employer's Representative.  During the Operation Service, the Contractor shall be responsible for ensuring that the Works remain fit for the purposes for which they are intended.  The operators and maintenance personnel for the Works, including Plant operators, shall have the appropriate experience and qualifications to perform the Operation Service. The names, with details of their qualifications and experience, of all operation and maintenance personnel shall be submitted to the Employer for approval, and no such personnel shall be engaged prior to receiving such approval. |
| **10.2 Commencement of Operation Service** | Unless otherwise **stated in the PCC**, the date of commencement of the Operation Service shall be the date seven days following the date of issuance of the Commissioning Certificate issued under Sub-Clause 11.7 [Commissioning Certificate], or such earlier date the Parties may agree to.  The Operation Service shall not commence until the Design-Build of the Works or any Sections has been completed in accordance with Sub-Clause 9.12 [*Completion of Design-Build*].  Should the Commissioning Certificate, or any Notice attached or pertaining thereto, contain requirements or restrictions over and above those in the Contract, the Contractor shall comply with such requirements and/or restrictions, and, to the extent that the Contractor suffers additional Cost as a result, and subject to the provisions of Sub-Clause 20.1 [*Contractor's Claims*], he shall be reimbursed by the Employer unless such requirements or restrictions were as a result of a fault or failure of the Contractor.  The Contractor shall thereafter provide the Operation Service in compliance with the Operation Management Requirements and in accordance with Sub-Clause 5.5 [*As- Built Documents*] and Sub-Clause 5.6 [*Operation and Maintenance Manuals*].  If the Contractor wishes to modify a document which has previously been submitted and approved, the Contractor shall immediately notify the Employer's Representative, and shall subsequently submit revised document(s) to the Employer's Representative for review accompanied by a written explanation of the need for such modification.  The Contractor shall not implement any proposed modification in accordance with sub- paragraph (d) of Sub-Clause 5.2 [*Contractor's Documents*] until such modification has been reviewed by the Employer's Representative, and consent to proceed has been given in writing. However, any such approval or consent, or any review (under this Sub- Clause or otherwise), shall not relieve the Contractor from any obligation or responsibility. |
| **10.3 Training** | The Contractor shall carry out the training of Employer's Personnel in the operation and maintenance of the Works to the extent specified in the Employer's Requirements.  The program and scheduling of the training shall be agreed with the Employer, and the Contractor shall provide experienced training staff, and all training materials as stated in the Employer's Requirements. The Employer shall be responsible for providing the training facilities and nominating and selecting suitable personnel for training. |
| **10.4 Delays and Interruptions during the Operation Service** | Delays and interruptions during the Operation Service shall be agreed and determined as follows:   1. Delays or Interruptions caused by the Contractor   If there are any delays or interruptions during the Operation Service which are caused by the Contractor or by a cause for which the Contractor is responsible, the Contractor, subject to Sub-Clause 3.5 [*Determinations*], shall pay the Employer the performance damages for delay and interruptions specified in the Schedule of Performance Damages. The Employer shall be entitled to recover the amounts due by making corresponding deductions from the payments due to the Contractor. However, the amount of Performance Damages in any contract year of the Operation Service, and the total amount of Performance Damages payable by the Contractor to the Employer, shall not exceed the amounts **stated in the PCC**.  There will be no extension of the period of the Operation Service as a result of any such delay or interruption.  If a delay or interruption results in a failure to meet Performance Standards and the Contractor is also liable to pay performance damages pursuant to Sub-Clause 10.5, then damages shall not be imposed under both clauses, and the Employer shall determine whether to impose damages under this Sub-Clause 10.4 (a) or under Sub-Clause 10.5.   1. Delays or Interruptions caused by the Employer   If there are any delays or interruptions during the Operation Service which are caused by the Employer or by a cause for which the Employer is responsible, the Employer shall compensate the Contractor for any cost and losses including loss of revenue and loss of profit. The amount of compensation due shall be agreed or determined according to Sub-Clause 3.5 [*Determinations*], and the Employer shall pay the amount due by making a corresponding adjustment to the next payment due to the Contractor. In any event other than in the case of election by the Employer to terminate for his convenience pursuant to Sub-Clause 15.5 [*Termination for Employer's Convenience*], the total amount of compensation payable by the Employer to the Contractor shall not exceed the amount **stated in the PCC**. There will be no extension of the period of the Operation Service as a result of any such delay or interruption.   1. Suspension by the Employer   The Employer's Representative may at any time during the Operation Service instruct the Contractor to suspend progress of the Operation Service. During such suspension, the Contractor shall protect, store, secure and maintain the Plant against any deterioration, loss or damage.  If the need to suspend the Operation Service by the Employer is due to any failure of the Contractor or circumstances for which the Contractor is responsible under the Contract, the provisions of paragraph (a) of this Sub- Clause shall apply.  If the need to suspend the Operation Service is a result neither of any failure by the Contractor nor of circumstances for which the Contractor is responsible under the Contract, the provisions of paragraph (b) of this Sub-Clause shall apply.  If a suspension, which is due neither to any failure by the Contractor nor to circumstances for which the Contractor is responsible under the Contract, has continued for more than 84 days, the Contractor may request the Employer's Representative's permission to proceed. If the Employer's Representative does not give permission within 28 days after being requested to do so, the Contractor may give Notice of termination under Sub-Clause 16.2 [*Termination by Contractor*].  After the permission or instruction to proceed is given, the Contractor and the Employer's Representative shall jointly examine the Works. The Contractor shall make good any deterioration or defect in the Plant and the Employer's Representative shall make a written record of all making good required to be carried out by the Contractor. If the suspension is due neither to any failure by the Contractor nor to circumstances for which the Contractor is responsible under the Contract, the Contractor shall be entitled to be paid the Cost Plus Profit of making good the Works prior to re-commencing the Operation Service. |
| **10.5 Failure to Meet Performance Standards** | In the event that the Contractor fails to achieve the Performance Standards required under the Contract, the Parties shall jointly establish the cause of such failure.  (a) If the failure is due to the Employer or any of his servants or agents, then, after consultation with the Contractor, the Employer shall give written instruction to the Contractor of the measures which the Employer requires the Contractor to take.  If the Contractor suffers any additional cost as a result of the failure or the measures instructed by the Employer, the Employer, subject to Sub-Clause 3.5 [*Determinations*] and Sub-Clause 20.1 [*Contractor's Claims*], shall pay the Contractor his Cost Plus Profit.  (b) If the failure is due to the Contractor then, after due consultation with the Employer, the Contractor shall at its own expense make any changes, modifications or additions to the Works, to its operating procedures, and to the Contractor’s Personnel, as may be necessary to bring the Works and Operation Service into compliance with the Performance Standards.  If the failure relates to a Performance Standard for which damages are specified in the Schedule of Performance Damages, then he Contractor, subject to Sub-Clause 3.5 [*Determinations*], shall pay the Employer the performance damages specified in the Schedule of Performance Damages. The Employer shall be entitled to recover the amount due by making corresponding deductions from the payments due to the Contractor.  The amount of compensation payable by the Contractor to the Employer under this sub-clause in any contract year of the Operation Service Period and total amount of compensation payable by the Contractor under this Sub-Clause 10.5 (*Failures to meet Performance Standards*) shall not exceed the amounts **stated in the PCC**.  Unless otherwise **stated in the PCC**, if the failure continues for a period of more than 84 days and the Contractor is unable to achieve the required Performance Standards, the Employer may either:  (i) continue with the Operation Service at a reduced level of compensation determined in accordance with Sub-Clause 3.5 [*Determinations*]; or,  (ii) give Notice to the Contractor of not less than 56 days of its decision to terminate the Contract, in accordance with Sub-Clause 15.2 [*Termination for Contractor's Default*]. In such an event, the Employer shall be free to continue the Operation Service itself or by others. |
| **10.6 Completion of Operation Service** | Unless the Parties have mutually agreed to prolong the Operation Service, the obligation of the Contractor to operate and maintain the Plant under the Operation Service shall cease at the end of the period stated in the Contract as the Operation Service Period.  Notwithstanding the foregoing, other services to be performed by the Contractor must be completed before the Contractor will be entitled to receive the Contract Completion Certificate in accordance with Sub-Clause 8.6 [*Contract Completion Certificate*].  Pre-conditions which must be fulfilled by the Contractor before the Contract Completion Certificate will be issued are:   1. Inspection in accordance with Sub-Clause 11.8 [*Joint Inspection Prior to Contract Completion*]; 2. Testing in accordance with Sub-Clause 11.9 [*Procedure for Tests Prior to Contract Completion*]; 3. Updating Operation and Maintenance manuals providing performance records and data in accordance with Sub-Clause 5.6 [*Operation and Maintenance Manuals*]; and 4. Remedying defects found during inspection in accordance with Sub-Clause 11.8 [*Joint Inspection Prior to Contract Completion*]. |
| **10.7 Ownership of Output and Revenue** | Unless specified otherwise **in the PCC**, during the Operation Service, any production output and revenue shall be the exclusive property of the Employer. |
| **Testing** | |
| **11.1 Testing of the Works** | The Contractor shall carry out the Tests on Completion of Design-Build in accordance with this Clause and Sub-Clause 7.4 [*Testing*], after providing the documents in accordance with Sub-Clause 5.5 [*As-Built Documents*] and Sub-Clause 5.6 [*Operation and Maintenance Manuals*].  The Contractor shall give Notice to the Employer's Representative not less than 21 days prior to the date after which the Contractor will be ready to carry out each of the Tests on Completion of Design-Build. Unless otherwise agreed, Tests on Completion of Design-Build shall be carried out within 14 days after this date, on such day or days as the Employer's Representative shall instruct.  Unless otherwise **stated in the Particular Conditions of Contract**, the Tests on Completion of Design-Build shall be carried out in the following sequence and are further detailed in the Employer's Requirements:   * 1. pre-commissioning tests, which shall include the appropriate inspections and ("dry" or "cold") functional tests to demonstrate that each item of Plant can safely undertake the next stage, (b);   2. commissioning tests, which shall include the specified operational tests to demonstrate that the Works or Section can be operated safely and as specified, under all available operating conditions; and   3. trial operation, which shall demonstrate that the Works or Section perform reliably and in accordance with the Contract.   The Employer shall be the sole beneficiary of any revenue or benefit resulting from the Tests on Completion of Design-Build.  During trial operation, when the Works are operating under stable conditions, the Contractor shall give Notice to the Employer's Representative that the Works are ready for any other Tests on Completion of Design-Build, including performance tests to demonstrate whether the Works conform with criteria specified in the Employer's Requirements and with the Schedule of Performance Standards.  Trial operation shall not constitute a commencement of the Operation Service under Sub-Clause 10.2 [*Commencement of Operation Servic*e].  In considering the results of the Tests on Completion of Design-Build, the Employer's Representative shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed each of the Tests on Completion of Design-Build described in sub-paragraph (a), (b) or (c) above, the Contractor shall submit a report certified by the Contractor of the results of these Tests to the Employer's Representative. |
| **11.2 Delayed Tests on Completion of Design-Build** | If the Tests on Completion of Design-Build are being unduly delayed by the Employer, Sub-Clause 7.4 [*Testing*] (fifth paragraph) shall be applicable.  If the Tests on Completion of Design-Build are being unduly delayed by the Contractor, the Employer's Representative may by Notice require the Contractor to carry out such Tests within 21 days after receiving the Notice. The Contractor shall carry out such Tests on the day or days within that period as the Contractor may fix and of which he shall give Notice to the Employer's Representative.  If the Contractor fails to carry out the Tests on Completion of Design-Build within the period of 21 days, the Employer's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate. |
| **11.3 Retesting of the Works** | If the Works, or a Section, fail to pass the Tests on Completion of Design-Build, Sub- Clause 7.5 [*Rejection*] shall apply, and the Employer's Representative or the Contractor may require the failed Tests, and Tests on Completion of Design-Build on any related work, to be repeated under the same terms and conditions. |
| **11.4 Failure to Pass Tests on Completion of Design-Build** | If the Works, or a Section, fail to pass the Tests on Completion of Design-Build repeated under Sub-Clause 11.3 [*Retesting of the Works*] the Employer's Representative shall be entitled to:   1. order further repetition of Tests on Completion of Design-Build under Sub-Clause 11.3 [*Retesting of the Works*]; or 2. issue a Notice under Sub-Clause 15.1 [*Notice to Correct*]. |
| **11.5 Completion of the Works and Sections** | Except as stated in Sub-Clause 11.11 [*Failure to Pass Tests Prior to Contract Completion*], the Works shall be deemed by the Employer to be completed when:   1. the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 9.2 [*Time for Completion of Design-Build*] and Sub-Clause 5.6 [*Operation and Maintenance Manuals*] and except as allowed in sub-paragraph (i) below; and 2. a Commissioning Certificate has been issued, or is deemed to have been issued, in accordance with this Sub-Clause.   The Contractor may apply by Notice to the Employer's Representative for a Commissioning Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for commencement of the Operation Service Period. If the Works are divided into Sections, the Contractor may similarly apply for a Commissioning Certificate for each Section.  The Employer's Representative shall, within 28 days after receiving the Contractor's application:   1. issue the Commissioning Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (listing such outstanding work and defects which are to be remedied); or 2. reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Commissioning Certificate to be issued.   The Contractor shall then complete the work referred to in sub-paragraph (ii) above before issuing a further Notice under this Sub-Clause.  If the Employer's Representative either fails to issue the Commissioning Certificate or reject the Contractor's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Commissioning Certificate shall be deemed to have been issued on the last day of that period. |
| **11.6 Commissioning of Parts of the Works** | The Employer's Representative may, at the request of the Contractor, issue a Section Commissioning Certificate for any part of the Permanent Works.  If a Section Commissioning Certificate has been issued for a part of the Works, the delay damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this Section Commissioning Certificate, the proportional reduction in these delay damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or Section (as the case may be) as a whole. The Employer’s Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of delay damages under Sub-Clause 9.6 [*Delay Damages relating to Design-Build*], and shall not affect the maximum amount of these damages (if any). |
| **11.7 Commissioning Certificate** | Performance of the Contractor's Design-Build obligations, including care of the Works, shall not be considered to have been completed until the Commissioning Certificate has been signed by the Employer's Representative and delivered to the Contractor, stating the date on which the Contractor, in the opinion of the Employer's Representative, completed all such obligations in accordance with the Contract (subject to the outstanding works and defects listed in accordance with Sub-Clause 11.5 [*Completion of the Works and Sections*]).  The Employer's Representative shall issue the Commissioning Certificate to the Contractor within 28 days after the application by the Contractor for the Commissioning Certificate subject to the provisions of Sub-Clause 11.5 [*Completion of the Works and Sections*].  Only the Commissioning Certificate shall be deemed to constitute acceptance of the Works. |
| **11.8 Joint Inspection Prior to Contract Completion** | Not less than two years prior to the expiry date of the Operation Service Period, the Employer's Representative and the Contractor shall carry out a joint inspection of the Works and, within 28 days of the completion of the joint inspection, the Contractor shall submit a report on the condition of the Works, for the Approval of the Employer’s Representative, identifying all remedial works and asset replacements (excluding routine maintenance works) that are necessary a) to satisfy the handback requirement specified in the Employer’s Requirements, and b) to ensure that the Works can be operated in full compliance with the Performance Standards after the Contract Completion Date.  The Contractor shall submit a program for carrying out such works over the remainder of the Operation Service Period.  Following receipt of the Contractor's report, the Employer's Representative may, throughout the remainder of the Operation Service Period, instruct the Contractor to carry out all or part of the works identified in the Contractor's report at the Contractor's cost.  Upon satisfactory completion of the items identified in this Sub-Clause the Employer shall instruct the Contractor to commence the Tests Prior to Contract Completion in accordance with Sub-Clause 11.9 [*Procedure for Tests Prior to Contract Completion*]. |
| **11.9 Procedure for Tests Prior to Contract Completion** | The Tests Prior to Contract Completion ("Tests") are to be carried out by the Contractor who shall provide all necessary labour, materials, electricity, fuel and water, any other items required, and undertake any required remedial works as may be required. The Tests are to be carried out in accordance with the Employer's Requirements.  The Tests shall be carried out towards the end of the Operation Service Period. The Employer shall give Notice to the Contractor not less than 21 days prior to the date after which the Tests shall be carried out. Unless otherwise agreed, such Tests shall be commenced within 14 days after this date, on the day or days determined by the Employer's Representative.  The results of the Tests shall be compiled and evaluated by the Employer's Representative and the Contractor. The Contractor shall make the results of any tests, inspections or monitoring available to the Employer's Representative within 7 days of their receipt. Any effect on the results of the Tests which can reasonably be shown to be due to prior use of the Works by the Contractor during the Operation Service Period shall be taken into account in assessing such results.  As soon as the Contractor has completed the Tests, the Contractor shall notify the Employer's Representative that the Works are complete and ready for final inspection. Upon the Employer's Representative being satisfied that the Contractor has satisfied the requirements of the Tests regarding such final inspection, the Employer's Representative shall notify the Employer and the Contractor prior to the issue of the Contract Completion Certificate. |
| **11.10 Delayed Tests Prior to Contract Completion** | If the Employer incurs cost as a result of any unreasonable delay by the Contractor in carrying out the Tests Prior to Contract Completion ("Tests"), the Employer shall be entitled, subject to Sub-Clause 20.2 [*Employer's Claims*], to payment of any such cost which shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due, or to become due, to the Contractor.  If the Contractor fails to commence the Tests on the day or days determined under Sub-Clause 11.9 [*Procedure for Tests Prior to Contract Completion*], the Employer's Representative shall give Notice to the Contractor that unless the Tests are commenced within 14 days of this Notice the Employer's Representative may order that the Tests be undertaken by others on behalf of the Employer. In such event, the Contractor shall be bound by the results of such Tests as being accurate and the Employer shall be entitled to deduct the costs associated with the undertaking of the Tests by others from any monies due, or to become due, to the Contractor.  If, for reasons not attributable to the Contractor, the Tests Prior to Contract Completion of the Works, or any Section, cannot be completed during the Contract Period (or any other period agreed upon by both Parties), then the Works or Section shall be deemed to have passed the Tests. |
| **11.11 Failure to Pass Tests Prior to Contract Completion** | If the Works or a Section thereof, fails to pass the Tests Prior to Contract Completion ("Tests") under Sub-Clause 11.9 [*Procedure for Tests Prior to Contract Completion*], the Employer's Representative shall be entitled to:   * + 1. order further repetition of Tests under Sub-Clause 11.12 [*Retesting Prior to Contract Completion*];     2. reject the Works or a Section thereof (as the case may be), in which event the Employer shall have the same remedies against the Contractor as provided under Clause 15 [*Termination by Employer*]; or     3. issue a Contract Completion Certificate, if the Employer so requires. The Contract Price shall then be reduced by such an amount as may be agreed by the Employer and the Contractor (in full satisfaction of such failure only),   and the Contractor shall then proceed in accordance with his other obligations under the Contract.  In the event of (c) above, if the Works, or a Section, fail to pass any of the Tests and the Contractor proposes to make adjustments or modifications to the Works or such Section, the Contractor may be instructed by (or on behalf of) the Employer that right of access to the Works or Section cannot be given until a time that is convenient to the Employer. The Contractor shall then remain liable to carry out the adjustments or modifications and to satisfy this Test, within a reasonable period of receiving Notice by (or on behalf of) the Employer of the time that is convenient to the Employer. However, if the Contractor does not receive this Notice during the relevant Contract Period, the Contractor shall be relieved of this obligation and the Works or Section (as the case may be) shall be deemed to have passed the Tests.  If the Contractor incurs additional cost as a result of any unreasonable delay by the Employer in permitting access to the Works or Plant by the Contractor after issue of the Contract Completion Certificate, either to investigate the causes of a failure to pass any of the Tests or to carry out any adjustments or modifications, the Contractor shall be paid the additional Cost Plus Profit, as determined or agreed in accordance with Sub-Clause 3.5 [*Determinations*], caused by such a delay. |
| **11.12**  **Retesting**  **Prior to Contract Completion** | If the Works, or a Section, fail to pass the Tests Prior to Contract Completion:   1. sub-paragraph (b) of Sub-Clause 12.1 [*Completion of Outstanding Work and Remedying Defects*] shall apply; and 2. the Employer may require the failed Tests, and the Tests Prior to Contract Completion on any related work, to be repeated under the same terms and conditions.   If such failure and retesting results from a default of the Contractor and causes the Employer to incur additional costs, such costs shall be recoverable from the Contractor by the Employer, subject to Sub-Clause 20.2 [*Employer's Claims*], and may be deducted by the Employer from any monies due, or to become due, to the Contractor.  The Employer's Representative may carry out such additional tests, inspections and monitoring as he deems necessary. The costs of such tests, except where such tests are carried out for the purpose of remedying any damage, defect or failure to meet standards that are the responsibility of the Contractor under the Contract, shall be borne by the Employer. |
| **Defects** | |
| **12.1 Completion of Outstanding Work and Remedying Defects** | The requirements regarding the completion of outstanding work and the remedying of defects are as follows:   1. Design-Build Period: In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract, the Contractor shall:    1. complete any work which is outstanding on the date stated in the Commissioning Certificate as soon as practicable after such date, and not later than one year after such date; and    2. execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Employer.   Final payment for the Design-Build Period, in accordance with Clause 14 [*Contract Price and Payment*], will not be certified until the above requirements have, in the opinion of the Employer's Representative, been met.  If a defect appears or damage occurs, the Contractor shall be notified accordingly, by (or on behalf of) the Employer.   1. Operation Service Period: The Contractor shall be responsible for repairing and making good any damage or defect occurring during the Operation Service Period, whether such defect or damage is notified by the Employer or his Representative, or observed by the Contractor himself.   The Contract Completion Certificate issued under Sub-Clause 8.6 [*Contract Completion Certificate*] will not be issued until all defects and damage and all outstanding work, including all such items identified during the joint inspection made in accordance with Sub-Clause 11.8 [*Joint Inspection Prior to Contract Completion*], have been completed. |
| **12.2 Cost of Remedying Defects** | All work required to repair defects or damage shall be executed at the risk and cost of the Contractor, except:   1. where it is attributable to any act by the Employer or the Employer's Personnel or agents; or 2. where it is as a result of an event that is covered under Clause 18 [*Exceptional Risks*].   Where the Contractor is required to remedy a defect or damage to the Works under sub-paragraphs (a) or (b) of this Sub-Clause, the Contractor shall notify the Employer's Representative and shall be entitled to a Variation under Clause 13 [V*ariations and Adjustments*]. |
| **12.3 Failure to Remedy Defects** | If the Contractor fails to remedy any defect or damage arising during either the Design- Build Period or the Operation Service Period within a reasonable time, a date may be fixed by (or on behalf of) the Employer's Representative, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable Notice of this date.  If the Contractor fails to remedy the defect or damage by such date and the necessity for such work is due to the Contractor subject to Sub-Clause 12.2 [*Cost of Remedying Defects*], the Employer may (at his sole discretion):   * 1. require the Employer's Representative to determine and certify a reasonable reduction in the Contract Price or the Rates and Prices submitted for the Operation Service Period in accordance with Sub-Clause 3.5 [*Determinations*]; or   2. if the defect or damage is such that the Contractor has been unable to commission the Works or continue providing the Operation Service and the Employer has been deprived of substantially the whole of the benefit of the Works or parts of the Works, the Employer shall be entitled to terminate the Contract in respect of such parts of the Works as cannot be put to the intended use in accordance with the provisions of Clause 15 [*Termination by Employer*].   In the event of (b) above occurring, the Employer shall, notwithstanding the provisions of Sub-Clause 15.4 [*Payment after Termination for Contractor*'*s Default*]:   1. during the Design-Build Period, be entitled to recover from the Contractor all sums paid for such parts of the Works plus financing costs together with the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor; or, if the Employer chooses to complete the Works himself or by engaging others, the Employer shall be entitled to recover the extra costs, if any, of completing the Works after allowing for any sum due to the Contractor under Sub-Clause 15.3 [*Valuation at Date of Termination for Contractor's Default*]. If there are no such extra costs, the Employer shall pay any balance to the Contractor; and 2. during the Operation Service Period, not be liable to make any further payments to the Contractor until the costs of operation and maintenance, completion and remedying of any defects and all other costs incurred and to be incurred by the Employer have been established. |
| **12.4 Further Tests** | If the work of remedying any defect or damage may affect the performance of the Works, the Employer's Representative may require the repetition of any of the tests described in the Contract. The requirement shall be made by Notice within 28 days after the defect or damage is remedied.  These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 12.2 [*Cost of Remedying Defects*], for the cost of the remedial work. |
| **12.5 Removal of Defective Work** | If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security. |
| **12.6 Contractor to Search** | The Contractor shall, if required by the Employer's Representative, search for the cause of any defect, under the direction of the Employer's Representative. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 12.2 [*Cost of Remedying Defects*], the Cost Plus Profit of the search shall be agreed or determined by the Employer's Representative in accordance with Sub-Clause 3.5 [*Determinations*] and shall be included in the Contract Price. |
| **Variations and Adjustments** | |
| **13.1 Right to Vary** | Variations may be initiated by the Employer's Representative at any time prior to issuing the Commissioning Certificate, either by an instruction to the Contractor by the Employer's Representative or by a request for the Contractor to submit a proposal.  The Contractor shall execute and be bound by each Variation; unless the Contractor promptly gives Notice to the Employer's Representative stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, (ii) it will reduce the safety or suitability of the Works for the purposes for which they were intended under the Contract; (iii) it will have an adverse impact on the achievement of the Schedule of Performance Standards; or (iv) such Variation triggers a substantial change in the sequence or progress of the Works. It will have an adverse effect on the provision of the Operation Service under the Contract. Upon receiving this Notice, the Employer's Representative shall cancel, confirm or vary the instruction and the Contractor shall execute and be bound by it.  If the Employer or the Employer's Representative wishes to instruct a Variation during the Operation Service Period, he shall give the Contractor written details of his requirements. The Contractor shall then proceed in accordance with Sub-Clause 13.3 [*Variation Procedure*] sub-paragraphs (a), (b) and (c). However, the Contractor shall not be obliged to proceed with the Variation until the matters covered in Sub-Clause  13.3 [*Variation Procedure*] sub-paragraphs (a), (b) and (c) have been agreed between the Employer and the Contractor. |
| **13.2 Value Engineering** | Deleted. |
| **13.3 Variation Procedure** | If the Employer's Representative requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:   1. a description of the proposed design and/or work to be performed and a program for its execution and sufficient ESHS information to enable an evaluation of ESHS risks and impacts; 2. the Contractor's proposal for any necessary modifications to the program according to Sub-Clause 8.3 [*Program*] and to the Time for Completion; and 3. the Contractor's proposal for adjustment to the Contract Price.   The Employer's Representative shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [*Value Engineering*] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.  Each instruction to execute a Variation, with any requirements for the recording of costs, shall be issued by the Employer's Representative to the Contractor, who shall acknowledge receipt.  Upon instructing or approving a Variation, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations]* to agree or determine adjustments to the Contract Price and the Schedule of Payments. These adjustments, except adjustments made under Sub-Clause 13.6 [*Adjustments for Changes in Legislation]* and Sub-Clause 13.7 [*Adjustments for Changes in Technology*], shall include reasonable profit, and shall take account of the Contractor's submissions under Sub-Clause 13.2 [*Value Engineering*] if applicable. |
| **13.4 Payment Currencies** | All payments shall be made in Indian Rupees only. |
| **13.5 Provisional Sums** | Each Provisional Sum shall only be used, in whole or in part, in accordance with the Employer's Representative's instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Employer's Representative shall have instructed. For each Provisional Sum, the Employer's Representative may instruct:   1. work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.3 [*Variation Procedure*]; and/or 2. Plant, Materials or services to be purchased by the Contractor, for which there shall be included in the Contract Price:    1. the actual amounts paid (or due to be paid) by the Contractor; and    2. a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such rate, the percentage rate **stated in the PCC** shall be applied.   The Contractor shall, when required by the Employer's Representative, produce quotations, invoices, vouchers and accounts or receipts in substantiation. |
| **13.6 Adjustments for Changes in Legislation** | Adjustments to the execution of the Works or provision of the Operation Service necessitated by a change in Law shall be dealt with as a Variation and as provided for under Clause 13 [*Variations and Adjustments*]. Either Party may, by written Notice to the other, require that adjustments shall be made to the provision of the Contract as are necessary to enable the Contractor to comply with changes in Law.  However, these adjustments, after ascertaining the facts, 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, if applicable.  The Contract Price and program for design, execution and operation of the Works shall be adjusted to take account of any increase or decrease in cost resulting from a change in the Laws of India (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws or changes to technical standards and regulations in accordance with Sub-Clause 5.4 [*Technical Standards and Regulations*], made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.  If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give Notice to the Employer's Representative providing evidence supporting any adjustment, an indication of the nature of change in cost and how the Contractor proposes to implement the necessary change.  The Contractor shall be entitled, subject to Sub-Clause 20.1 [*Contractor's Claims*], to:   1. an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.3 [*Extension of Time for Completion of Design-Build*]; and 2. payment of any such additional Cost, which shall be included in the Contract Price.   After receiving this Notice, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters. |
| **13.7 Adjustments for Changes in Technology** | The Contract Price and program for design, execution and operation of the Works shall be adjusted to take into account any increase or decrease in cost resulting from any changes in technology, new materials or products which the Contractor is obliged to adopt, either:   1. where a proposal from the Contractor under Sub-Clause 13.2 [V*alue Engineering*] is accepted by the Employer's Representative; 2. where the Employer's Representative instructs the Contractor to use new technology or new materials or products; or 3. there is a statutory requirement for the Contractor to use new technology or new materials or products.   In any such case, the Contractor shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:   * 1. an extension of time for any such delay, if the events delay the completion of the Design-Build; and   2. any additional Cost, subject to an adjustment for any operational or other savings which the Contractor may make as a result of the introduction of such new technology, materials or products.   After receiving a Notice of claim, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations]* to agree or determine these matters. Where appropriate, the Employer's Representative shall issue a Variation to the Contractor with details of the required changes.  Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8 [Adjustments for Changes in Cost]. |
| **13.8 Adjustments for Changes in Costs** | The Contract Price and the Rates and Prices shall be adjusted in accordance with the Schedules of cost indexation as contained in the Schedule of Payments. If there are no such Schedules of cost indexation included in the Contract, this Sub-Clause shall not apply. |
| **13.9 Adjustments for Changes in Influent Quality** | If provided for **in the PCC**, the Contract Price and/or Performance Standards shall be adjusted to take account of the impacts of long term changes in the characteristics of the Influent received at the delivery point to the Works, relative to the Influent Baseline, provided that:   1. The changes in Influent characteristics are sustained and permanent; 2. The changes give rise to an increase or decrease in the Contractor’s annual Operation Service costs of greater than 5 % [*or Employer may insert alternative value*] relative to what the costs would have been had the long term changes in the characteristics of the Influent not occurred.   In such case, either the Employer or the Contractor shall be entitled to initiate an adjustment in the Contract Price and/or Performance Standards. The Contractor shall be entitled to make a claim for an adjustment in the Contract Price in accordance with Sub-Clause 20.1 (Contractor’s Claims), and/or may submit a bid for an adjustment in the Performance Standards under Sub-Clause 13.2 (Value Engineering). The Employer shall be entitled to vary the Contract Price or Performance Standards by issuing a Variation in accordance with Clause 13 (Variations and Adjustments)  Following a successful claim under this Sub-Clause, the Employer’s Representative shall update the Influent Baseline to reflect the long term changes to the characteristics, and the updated Influent Baseline shall be used as the baseline against which to evaluate any further claims for price adjustment under this Sub-Clause. |
| **Contract Price and Payment** | |
| **14.1 The Contract Price** | The Contract Price shall be the amount or amounts submitted by the Contractor for the Design-Build and the Operation Service, priced at the Base Date, and due to be paid to the Contractor in accordance with the Contract together with any adjustments as provided for under Clause 13 [*Variations and Adjustments*] or arising as a result of claims under Clause 20 [*Claims, Disputes and Arbitration*].  The Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract and the Contract Price shall not be adjusted for changes in any of these costs, except as provided for in Sub-Clause 13.6 [*Adjustments for Changes in Legislation*] and to the extent allowed for under Clause 20 [*Claims, Disputes and Arbitration*].  The contractor will be solely responsible for ascertaining and obtaining tax/duty exemption benefits available in India to the contracts financed under World Bank loan/credits. The Employer will not compensate the contractor in case of failure to receive such benefits. The Employer will give only necessary certificates in terms of the Government of India’s relevant notifications as per information given in Declaration Form. |
| **14.2 Advance Payment** | The Employer shall make an advance payment in Indian Rs, as an interest-free loan for mobilization and cash flow support, when the Contractor submits a guarantee in accordance with this Sub-Clause. The total advance payment, the number and timing of instalments (if more than one), shall be as **stated in the PCC**.  Unless and until the Employer receives this guarantee, or if the total advance payment is not stated **in the PCC**, this Sub-Clause shall not apply.  The Employer’s Representative shall deliver to the Employer and to the Contractor an Interim Payment Certificate for the advance payment or its first instalment after receiving a Statement (under Sub-Clause 14.3 [Application for Advance and Interim Payment Certificates]) and after the Employer receives (i) the Performance Security in accordance with Sub-Clause 4.2 [Performance Security] and (ii) a guarantee of amount equal to the advance payment. This guarantee shall be issued by a Nationalized/ Scheduled bank in India and shall be in the form of Bank Guarantee attached hereto in Section X, Contract Forms.  The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount shall be progressively reduced (each instalment not less than Rs 500,000) by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.  Unless stated otherwise **in the PCC**, the advance payment shall be repaid through percentage deductions from the interim payments determined by the Employer’s Representative in accordance with Sub-Clause 14.6 [Issue of Advance and Interim Payment Certificates], as follows:   1. deductions shall commence in the next interim Payment Certificate following that in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds 30 percent (30%) of the Accepted Contract Amount for the Design Build less Provisional Sums; and 2. deductions shall be made at the amortization rate **stated in the PCC** of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the proportions of the advance payment until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when 90 percent (90%) of the Accepted Contract Amount less Provisional Sums has been certified for payment.   If the advance payment has not been repaid prior to the issue of the Commissioning Certificate for the Works or prior to termination under Clause 15 [Termination by Employer], Clause 16 [Suspension and Termination by Contractor] or Clause 18 [Exceptional Risks] (as the case may be), the whole of the balance then outstanding shall immediately become due and in case of termination under Clause 15 [Termination by Employer], except for Sub-Clause 15.5 [Employer’s Entitlement to Termination for Employer’s Convenience], payable by the Contractor to the Employer.” |
| **14.3 Application for Advance and Interim Payment Certificates** | When submitting the advance payment guarantee required under Sub-Clause 14.2 [*Advance Payment]*, the Contractor shall include his application for the advance payment.  The Contractor shall thereafter submit a Statement in one original and five copies to the Employer's Representative after the end of each month (unless otherwise stated in the Contract), in a form approved by the Employer's Representative, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents. The Contractor shall prepare separate Statements for the Design-Build and for the Operation Service.  The Statement shall include the following items, as applicable, expressed in Indian Rs:   1. the estimated contract value of the Works executed and the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (j) below); 2. any amounts to be added and deducted for changes in legislation, changes in cost and changes in technology, in accordance with Sub-Clause 13.6 [*Adjustments for Changes in Legislation*], Sub-Clause 13.7 [*Adjustments for Changes in Technolog*y] and Sub-Clause 13.8 [*Adjustments for Changes in Cost*]; 3. any amount to be deducted for retention, calculated by applying the percentage of retention **stated in the PCC** to the total of the above amounts, until the amount so retained by the Employer's Representative reaches the limit of Retention Money (if any) **stated in the PCC**; 4. any amounts to be added and deducted for the advance payment and repayments in accordance with Sub-Clause 14.2 [*Advance Payment*]; 5. any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause 14.5 [*Payment for Plant and Materials intended for the Works*]; 6. any amounts due for Plant, Materials or services purchased by the Contractor under Sub-Clause 13.5 [*Provisional Sums*]; 7. amounts due for the Operation Service; 8. adjustments due for the Maintenance Retention Fund; 9. any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 20 [*Claims, Disputes and Arbitration*]; 10. the deduction of amounts certified in all previous Interim Payment Certificates; and 11. The amount to be deducted towards the advance income tax shall be at the rate of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\* [Blank to be filled) percent and the advance works contract tax at the rate of \_\_\_\_\_\_\_\_\_\_\* percent.”   \* The percentages as indicated above will be subject to change applicable according to law from time to time. |
| **14.4 Schedule of Payments** | If the Contract includes a Schedule of Payments for the Design-Build Period and/or the Operation Service Period specifying the instalments in which the Contract Price and/or the Rates and Prices will be paid, then, unless otherwise stated in this Schedule.   1. the instalments quoted in the Schedule of Payments shall be the estimated values for the purposes of Sub-Clause 14.3 [*Application for Advance and Interim Payment Certificates*]; 2. Sub-Clause 14.5 [*Payment for Plant and Materials intended for the Works*] shall not apply; and 3. if these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to differ from that on which the Schedule of Payments was based, then the Employer's Representative may proceed in accordance with Sub-Clause 3.5 [*Determinations]* to agree or determine revised instalments which shall take account of the extent to which progress differs from that on which the instalments were previously based.   If the Contract does not include a Schedule of Payments for the Design-Build Period and/or the Operation Service Period, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals until the Contract Completion Certificate has been issued. |
| **14.5 Payment for Plant and Materials intended for the Works** | If this Sub-Clause applies, Interim Payment Certificates shall include, under sub- paragraph (e) of Sub-Clause 14.3 [Application *for Advance and Interim Payment Certificates]*, (i) an amount for Plant and Materials which have been sent to the Site for incorporation in the Permanent Works, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works under sub- paragraph (a) of Sub-Clause 14.3.  If the lists referred to in sub-paragraphs (b)(i) or (c)(i) below are not included in the PCC, this Sub-Clause shall not apply.  The Employer's Representative shall determine and certify each addition if the following conditions are satisfied:   1. the Contractor has:    1. kept satisfactory records (including the orders, receipts, costs and use of Plant and Materials) which are available for inspection; and 2. submitted a statement of the cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence; and either: 3. the relevant Plant and Materials:    1. are those **listed in the PCC** for payment when delivered to the Site; and 4. have been delivered to and are properly stored on the Site, are protected against loss, damage or deterioration, and appear to be in accordance with the Contract.   The additional amount to be certified shall be the equivalent of eighty percent (80%) of the Employer's Representative determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this Sub- Clause and of the contract value of the Plant and Materials.  The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under sub-paragraph (a) of Sub- Clause 14.3 [*Application for Advance and Interim Payment Certificates*]. At that time, the Interim Payment Certificate shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials. |
| **14.6 Issue of Advance and Interim Payment Certificates** | No amount will be certified or paid until the Employer has received and approved the Performance Security provided for in Sub-Clause 4.2 [*Performance Security*]. Upon receipt of the Contractor's application for the advance payment, the Employer's Representative shall, within 14 days of receiving the application, deliver to the Employer and to the Contractor an Interim Payment Certificate in respect of such payment, with a copy to the Contractor. Thereafter, in respect of interim payment applications the Employer's Representative shall, within 28 days after receiving a Statement and supporting documents, issue to the Employer an Interim Payment Certificate which shall state the amount which the Employer's Representative fairly determines to be due, with supporting particulars, and shall include any amounts due to or from the Contractor in accordance with a decision by the Adjudicator made under Sub-Clause 20.3.  However, prior to issuing the Commissioning Certificate, the Employer's Representative shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of Interim Payment Certificates (if any) **stated in the PCC**. In this event, the Employer's Representative shall give Notice to the Contractor accordingly.  An Interim Payment Certificate shall not be withheld for any other reason, although:   1. if anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or 2. if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Employer's Representative, the value of this work or obligation may be withheld until the work or obligation has been performed. 3. if the Contractor was, or is, failing to perform any ESHS obligations or work under the Contract, the value of this work or obligation, as determined by the Employer’s Representative, may be withheld until the work or obligation has been performed, and/or the cost of rectification or replacement, as determined by the Employer’s Representative, may be withheld until rectification or replacement has been completed. Failure to perform includes, but is not limited to the following: 4. failure to comply with any ESHS requirements described in the Employer’s Requirements; 5. failure to regularly review C-ESMP and/or update it in a timely manner to address emerging ESHS issues, or anticipated risks or impacts; 6. failure to implement the C-ESMP e.g. failure to provide required training or sensitization; 7. failing to have appropriate consents/permits prior to undertaking Works or related activities; 8. failure to submit ESHS report/s (as described in Particular Conditions of Contract 4.21 and/or Appendix C), or failure to submit such reports in a timely manner; 9. failure to implement remediation as instructed by the Employer’s Representative within the specified timeframe (e.g. remediation addressing non-compliance/s).   The Employer's Representative may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. An Interim Payment Certificate shall not be deemed to indicate the Employer's Representative's acceptance, approval, consent or satisfaction of the Works. |
| **14.7 Payment** | The Employer shall pay to the Contractor:   1. the advance payment within 21 days after receiving the documents in accordance with Sub-Clause 4.2 [*Performance Security*] and Sub-Clause 14.2 [A*dvance Payment*] and the Payment Certificate for the advance payment issued in accordance with Sub-Clause 14.6 [*Issue of Advance and Interim Payment Certificates*]; 2. the amount certified in each Interim Payment Certificate within 56 days after the Employer’s Representative receives the Statement and supporting documents; or, at a time when the Bank’s loan or credit (from which part of the payments to the Contractor is being made) is suspended, the amount shown on any statement submitted by the Contractor within 14 days after such statement is submitted, any discrepancy being rectified in the next payment to the Contractor; and 3. the amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate; or, at a time when the Bank’s loan or credit (from which part of the payments to the Contractor is being made) is suspended, the undisputed amount shown in the Final Statement within 56 days after the date of notification of the suspension in accordance with Sub-Clause 16.2 [Termination by Contractor].   Payment of the amount due shall be made in Indian Rs. into the bank account, nominated by the Contractor. |
| **14.8 Delayed Payment** | If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [*Paymen*t], the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [*Payment*], irrespective (in the case of its sub-paragraph (b) of the date on which any Interim Payment Certificate is issued.  These financing charges shall be calculated at the annual rate **specified in the PCC** and shall be paid in Indian Rupees.  The Contractor shall be entitled to this payment without formal Notice or certification, and without prejudice to any other right or remedy. |
| **14.9 Payment of Retention Money** | When the Commissioning Certificate has been issued, the first half of the Retention Money shall be certified by the Employer’s Representative for payment to the Contractor. If a Section Commissioning Certificate is issued for a Section, the relevant percentage of the first half of the Retention Money shall be certified and paid to the Contractor. Such amount shall be included for payment in the next Interim Payment Certificate following the issue of the Commissioning Certificate.  The Contractor shall be entitled to include the second half of the Retention Money in the Final Statement Design-Build.  Unless otherwise stated in the Contract, when the Commissioning Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Employer’s Representative, the Contractor may be permitted by the Employer to substitute a bank guarantee, in the form of the bank guarantee attached hereto in Section X, Contract Forms and issued by a Nationalized/ Scheduled bank in India, for the second half of the Retention Money. The Contractor shall ensure that the guarantee is in the amount of the second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security in Sub-Clause 4.2. On receipt by the Employer of the required guarantee, the Employer’s Representative shall certify and the Employer shall pay the second half of the Retention Money. The release of the second half of the Retention Money against a guarantee shall then be in lieu of the release under the second paragraph of this Sub-Clause. The Employer shall return the guarantee to the Contractor within 21 days after receiving a copy of the performance certificate. |
| **14.10 Application for Final Payment Certificate Design-Build** | Within 28 days after the end of the Retention Period, the Contractor shall submit to the Employer's Representative one original and five copies of the Final Statement Design-Build with supporting documents showing:   1. the value of all work done in respect of the Design-Build; and 2. any further sums which the Contractor considers to be due to him under the Contract in respect of the Design-Build.   Together with the Final Statement Design-Build, the Contractor shall submit a written undertaking that the Statement is in full and final settlement of all matters under or in connection with the Contract relating to the Design-Build.  If the Employer’s Representative disagrees with or cannot verify any part of the Final Statement Design-Build, the Employer’s Representative and the Contractor shall attempt to agree such matters, and the Contractor shall re-submit his Final Statement based on the agreement with the Employer’s Representative. The Employer’s Representative shall then issue a Final Payment Certificate Design-Build under Sub-Clause 14.11 [*Issue of Final Payment Certificate Design-Build*] for the agreed amount. If the Parties cannot agree on such matters, or if the Contractor has failed to submit his application for payment within the said 28 days, the Employer’s Representative shall issue an Interim Payment Certificate under Sub-Clause 14.6 [I*ssue of Advance and Interim Payment Certificates*] for the amount which he considers to be due to the Contractor. If the Contractor is dissatisfied with the amount certified, he may refer the matter to the Adjudicator for a decision in accordance with Clause 20.3. |
| **14.11 Issue of Final Payment Certificate Design-Build** | Within 28 days of receiving the Final Statement Design-Build, or the resubmitted Final Statement (as the case may be), and the written undertaking from the Contractor in accordance with Sub-Clause 14.10 [*Application for Final Payment Certificate Design- Build*], the Employer's Representative shall deliver to the Employer and to the Contractor, with a copy to the Contractor, the Final Payment Certificate Design-Build stating:   1. the amount which he fairly determines is finally due for the Design-Build; and 2. after giving credit to the Employer for all amounts previously paid by the Employer and all sums to which the Employer is entitled in respect of the Design-Build, the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be.   Upon receipt of the Final Payment Certificate Design-Build, the Employer shall pay the Contractor the amount, if any, due in accordance with the provisions of Sub-Clause 14.7 [*Payment*]. |
| **14.12 Application for Final Payment Certificate Operation Service** | Within 56 days after receiving the Contract Completion Certificate, the Contractor shall submit to the Employer's Representative one original and five copies of the Final Statement Operation Service with supporting documents showing:   1. the value of all work done in respect of the Operation Service; and 2. any further sums which the Contractor considers to be due to him under the Contract including any unused monies from the Maintenance Retention Fund.   Together with the Final Statement Operation Service, the Contractor shall submit a written discharge according to the requirements of Sub-Clause 14.13 [*Discharge*]. |
| **14.13 Discharge** | When submitting the Final Statement Operation Service, the Contractor shall submit a written discharge which confirms that the total of the Final Statement Operation Service, together with the Final Statement Design-Build submitted according to Sub-Clause 14.10 [*Application for Final Payment Certificate Design-Build*] represents full and final settlement of all monies due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective only after payment due under the Final Payment Certificate Operation Service has been made and the Performance Security referred to in Sub-Clause 4.2 [*Performance Security*] has been returned to the Contractor. |
| **14.14 Issue of Final Payment Certificate Operation Service** | Within 28 days of receiving the Final Statement Operation Service and the written discharge from the Contractor in accordance with Sub-Clause 14.12 [*Application for Final Payment Certificate Operation Service*] and Sub-Clause 14.13 [*Discharge*] respectively, the Employer's Representative shall deliver to the Employer and to the Contractor, with a copy to the Contractor, the Final Payment Certificate Operation Service stating:   1. the amount which he fairly determines is finally due for the Operation Service; and 2. the amount which he fairly determines is finally due for the Contract; and 3. after giving credit to the Employer for all amounts previously paid by the Employer and all sums to which the Employer is entitled in respect of the Contract, the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be.   If the Employer's Representative disagrees with or cannot verify any part of the Final Statement Operation Service, the Employer's Representative and the Contractor shall attempt to agree such matters, and the Employer's Representative shall issue a Final Payment Certificate Operation Service for the agreed amount. If the Parties cannot agree on such matters, the Employer's Representative shall issue a Final Payment Certificate Operation Service for the amount which he considers to be due to the Contractor. If the Contractor is dissatisfied with the amount certified, he may refer the matter to the Adjudicator for a decision in accordance with Clause 20.3.  Upon receipt of the Final Payment Certificate Operation Service, the Employer shall pay the Contractor in accordance with the provisions of Sub-Clause 14.7 [Payment]. |
| **14.15 Cessation of Employer's Liability** | The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it in the Final Statement Design-Build or the Final Statement Operation Service.  However, this Sub-Clause shall not limit the Employer's liability under his indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer.  Furthermore, if the Contractor has not submitted any matter to the Adjudicator under GCC 20 within 56 days of receiving notification from the Employer's Representative of the amounts included for payment in either the Final Certificate Design-Build or the Final Certificate Operation Service, then he will be deemed to have accepted the amounts so certified, and the Employer shall be deemed to have no further liability to the Contractor, subject only to that payment due under the Final Payment Certificate Operation Service has been made and that the Performance Security referred to in Sub-Clause 4.2 [*Performance Security*] has been returned to the Contractor. |
| **14.16 Currencies of Payment** | All payments shall be made in Indian Rupees only. |
| **14.17 Maintenance Retention Fund** | During the Operation Service Period, a Maintenance Retention Fund shall be created by deducting five percent (5%) from the value of each interim payment, determined by the Employer’s Representative in accordance with Sub-Clause 14.6 [*Issue of Advance and Interim Payment Certificates*], due to the Contractor, commencing with the first payment following the issue of the Commissioning Certificate, and continuing until the last Interim Payment Certificate is issued or until the amount in the Maintenance Retention Fund has reached the value (if any) **stated in the PCC**, whichever is the earlier. If the Contractor so chooses, the Maintenance Retention Fund may be replaced by a Maintenance Retention Guarantee in a form and with an entity approved by the Employer. However, the value of the Guarantee shall not exceed the maximum amount of the Maintenance Retention Fund stated in the PCC. The Contractor shall ensure that the Maintenance Retention Guarantee remains valid and in force until the issue of the Contract Completion Certificate.  If the maintenance required under the Contract has not been carried out, the Employer may, after giving due Notice to the Contractor, carry out such maintenance himself and apply any amounts standing to the credit of the Maintenance Retention Fund in so doing. Where such amounts are insufficient to cover the Employer's whole costs of carrying out the maintenance, the unrecovered costs shall be set off against any payment due to the Contractor under the Contract, or to the extent that no such payment is due, shall become a debt due by the Contractor to the Employer.  Following the issue of the Contract Completion Certificate under Sub-Clause 8.6 [*Contract Completion Certificate*], all funds remaining in the Maintenance Retention Fund shall be included in the Final Payment Certificate Operation Service and paid to the Contractor with the final payment. |
| **Termination by Employer** | |
| **15.1 Notice to Correct** | If the Contractor fails to carry out any obligation under the Contract, the Employer's Representative shall by Notice require the Contractor to make good the failure and to remedy it within the time specified in the said Notice. |
| **15.2 Termination for Contractor's Default** | The Employer shall be entitled to terminate the Contract if the Contractor:   * + 1. fails to comply with Sub-Clause 4.2 [*Performance Security*] or with a Notice under Sub-Clause 15.1 [*Notice to Correct*],     2. abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,     3. without reasonable excuse fails:        1. to proceed with the Works in accordance with Sub-Clause 9.1 [*Commencement of Design-Build*] or Sub-Clause 10.2 [*Commencement of Operation Service*]; or        2. to comply with a Notice issued under Sub-Clause 7.5 [*Rejection*] or Sub-Clause 7.6 [*Remedial Work*], within 28 days after receiving it;     4. subcontracts the whole of the Works or assigns the Contract without the required agreement or subcontracts the Operation Service or any parts of the Works in breach of Sub-Clause 4.4 [*Subcontractors*];     5. either gives Notice to the Employer under Sub-Clause 4.24 [*Changes in the Contractor’s Financial Situation*] from which the Employer reasonably concludes that the Contractor will be unable to complete or fulfil his obligations under the Contract or, if the Contractor fails to give such a Notice, but the Employer in any event reasonably concludes that the Contractor will be unable to complete or fulfil his obligations under the Contract due to the Contractor’s financial situation;     6. becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events;     7. gives or offers to give (directly or indirectly, either before or during the currency of the Contract) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:        1. for doing or forbearing to do any action in relation to the Contract; or        2. for showing or forbearing to show favour or disfavour to any person in relation to the Contract;  1. based on reasonable evidence, has engaged in Fraud and Corruption as defined in paragraph 1.16 of the Appendix B to these General Conditions of Contract, in competing for or in executing the Contract or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in sub-paragraph (g). However, lawful inducements and rewards to Contractor's Personnel shall not give a right to termination;    * + 1. fails to complete the Design-Build by the Cut-Off Date stated in the PCC or, if no such date is given, then a period of 182 days after the Time for Completion of Design-Build.   In any of these events or circumstances, the Employer may, not less than 14 days after giving Notice to the Contractor, terminate the Contract and expel the Contractor from the Site unless the Contractor cures the event or circumstance within the said 14 days. However, in the case of sub-paragraph (f) or (g) or (h), the Employer may by Notice terminate the Contract immediately.  The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.  The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Employer's Representative. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the Notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.  After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.  The Employer shall then give Notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor. |
| **15.3 Valuation at Date of Termination for Contractor's Default** | As soon as practicable after a Notice of termination under Sub-Clause 15.2 [*Termination for Contractor's Default*] has taken effect, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract. |
| **15.4 Payment after Termination for Contractor's Default** | After a Notice of termination under Sub-Clause 15.2 [*Termination for Contractor's Default*] has taken effect, the Employer may:   1. proceed in accordance with Sub-Clause 20.2 [*Employer's Claims*]; 2. withhold further payments to the Contractor until the costs of design, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established; and/or 3. recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [Valuation at Date of Termination for *Contractor's Default*]. After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor |
| **15.5 Termination for Employer's Convenience** | If at any time the Employer elects to terminate the Contract for reasons other than those specified in Sub-Clause 15.2 [*Termination for Contractor's Default*], and subject to the applicable Law of the Contract, he shall notify the Contractor in writing, with a copy to the Employer's Representative. Such termination shall be deemed to be termination for the convenience of the Employer.  Upon issuing a Notice to terminate under this Sub-Clause, the Employer shall immediately make arrangements to return the Performance Security to the Contractor, and the termination shall take effect 28 days after the date the Contractor receives the Notice, or 28 days after he receives the Performance Security, whichever is the later. Upon issuing the Notice, the Employer shall immediately cease to have any right of use of any of the Contractor’s Documents, and shall forthwith return all and any such Contractor’s Documents to the Contractor.  The Employer shall not terminate the Contract under this Sub-Clause in order to execute or operate the Works (or any part thereof) himself, or arrange for the Works (or any part thereof) to be executed or operated by another contractor. |
| **15.6 Valuation at Date of Termination for Employer's Convenience** | As soon as practicable after a Notice of termination under Sub-Clause 15.5 [*Termination for Employer's Convenience*] has taken effect, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract. |
| **15.7 Payment after Termination for Employer's Convenience** | After termination for the Employer's convenience under Sub-Clause 15.5 [*Termination for Employer's Convenience*], the Contractor shall proceed in accordance with Sub- Clause 16.3 [*Cessation of Work and Removal of Contractor's Equipment*] and shall be paid in accordance with Sub-Clause 16.4 [*Payment on Termination*]. |
| **15.8 Fraud and Corruption** | The Bank requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Appendix B to these General Conditions of Contract. |
| **Suspension and Termination by Contractor** | |
| **16.1 Contractor's Entitlement to Suspend Work** | If the Employer's Representative fails to certify in accordance with Sub-Clause 14.6 [*Issue of Advance and Interim Payment Certificates*], or the Employer fails to comply with Sub-Clause 2.4 [*Employer's Financial Arrangements*] or Sub-Clause 14.7 [*Paymen*t], the Contractor may, not less than 21 days after giving Notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Interim Payment Certificate, reasonable evidence or payment, as the case may be and as described in the Notice.  Notwithstanding the above, if the Bank has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Works, and no alternative funds are available as provided for in Sub-Clause 2.4 [Employer’s Financial Arrangements], the Contractor may by Notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from the Bank.  The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [*Delayed Payment*] and to termination under Sub-Clause 16.2 [*Termination by Contractor*].  If the Contractor subsequently receives such Interim Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above Notice) before giving a Notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.  If the Contractor suffers delay and/or incurs cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give Notice to the Employer's Representative and shall be entitled, subject to Sub- Clause 20.1 [*Contractor's Claims*], to:   1. an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.3 [*Extension of Time for Completion of Design-Build*]; and 2. payment of any such Cost Plus Profit, which shall be included in the Contract Price.   After receiving this Notice, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters. |
| **16.2 Termination by Contractor** | The Contractor shall be entitled to terminate the Contract if:   1. the Contractor does not receive the reasonable evidence within 42 days after giving Notice under Sub-Clause 16.1 [*Contractor's Entitlement to Suspend Work*] in respect of a failure to comply with Sub-Clause 2.4 [*Employer's Financial Arrangements*]; 2. the Employer's Representative fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate; 3. the Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [*Payment*] within which payment is to be made (except for deductions in accordance with Sub-Clause 20.2 [*Employer's Claims*]); 4. the Employer substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract, 5. the Employer fails to comply with Sub-Clause 1.6 [*Contract Agreement*] or Sub-Clause 1.8 [*Assignment*]; 6. a prolonged suspension affects the whole of the Works as described in Sub-Clause 9.10 [*Prolonged Suspension*]; 7. the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events; or 8. the Contractor does not receive the Employer’s Representative’s instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works]   In any of these events or circumstances, the Contractor may, not less than 14 days after giving Notice to the Employer, terminate the Contract unless the Employer cures the event or circumstance within the said 14 days. However, in the case of sub- paragraph (f) or (g), the Contractor may by Notice terminate the Contract immediately.  In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [Payment] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [Delayed Payment], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1, or (ii) terminate the Contract by giving notice to the Employer, with a copy to the Employer’s Representative, such termination to take effect 14 days after the giving of the notice.  The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise. |
| **16.3 Cessation of Work and Removal of Contractor's Equipment** | After a Notice of termination under Sub-Clause 16.2 [*Termination by Contractor*] or Sub-Clause 18.5 [*Optional Termination, Payment and Release*] has taken effect, the Contractor shall, unless the Employer cured the event or circumstance within the 14- days' Notice period, promptly:   1. cease all further work, except for such work as may have been instructed by the Employer's Representative for the protection of life or property or for the safety of the Works or protection of the environment. For all such instructed work, the Contractor shall be entitled to be paid Cost Plus Profit and shall be relieved of further liabilities under Sub-Clauses 4.8 [*Safety Procedures*] and 4.18 [*Protection of the Environment*]; 2. hand over to the Employer the Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment, including those items listed in the Employer’s Requirements; and 3. remove all other Goods from the Site, except as necessary for safety, and leave the Site. |
| **16.4 Payment on Termination** | After a Notice of termination under Sub-Clause 16.2 [*Termination by Contracto*r] has taken effect, the Employer shall promptly:   * 1. return the Performance Security to the Contractor;   2. pay the Contractor in accordance with Sub-Clause 18.6 [*Optional Termination, Payment and Release*]; and   3. pay to the Contractor the amount of any loss of profit or other loss or damage sustained by the Contractor as a result of this termination. |
| **Risk Allocation** | |
| **17.1 The Employer's Risks during the Design-Build Period** | Subject to the provisions of Sub-Clause 17.8 [*Limitation of Liability*], the risks allocated to the Employer and for which the Employer is liable during the Design-Build Period are divided into:   1. The Employer's Commercial Risks, which are:    1. the financial loss, delay or damage allocated to the Employer under the Contract or for which the Employer is liable by law, unless otherwise modified under the Contract;    2. the right of the Employer to construct the Works or any part thereof on, over, under, in or through the Site;    3. the use or occupation of the Site by the Works or any part thereof, or for the purpose of design, construction or completion of the Works other than the abusive or wrongful use by the Contractor; and    4. the use or occupation by the Employer of any part of the Permanent Works, except as may be specified in the Contract;   and   1. The Employer's Risks of Damage, which are:    1. damage due to any interference, whether temporary or permanent, with any right of way, light, air, water or other easement (other than that resulting from the Contractor's method of construction) which is the unavoidable result of the construction of the Works in accordance with the Contract;    2. fault, error, defect or omission in any element of the design of the Works by the Employer or which may be contained in the Employer’s Requirements, other than design carried out by the Contractor pursuant to his obligations under the Contract;    3. any operation of the forces of nature (other than those allocated to the Contractor **in the PCC**) against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions; and    4. The Exceptional Risks under Clause 18 [*Exceptional Risks*]. |
| **17.2 The Contractor's Risks during the Design-Build Period** | Subject to the provisions of Sub-Clause 17.8 [*Limitation of Liability*], the risks allocated to the Contractor and for which the Contractor is liable during the Design- Build Period are all the risks other than those listed under Sub-Clause 17.1 [*The Employer’s Risks during the Design-Build Period*], including the care of both the Works and the Goods. |
| **17.3 The Employer's Risks during the Operation Service Period** | Subject to the provisions of Sub-Clause 17.8 [*Limitation of Liability*], the risks allocated to the Employer and for which the Employer is liable during the Operation Service Period are divided into:   1. The Employer's Commercial Risks, which are: 2. the financial loss, delay or damage allocated to the Employer under the Contract or for which the Employer is liable by law, unless otherwise modified under the Contract; 3. the use or occupation by the Employer of any part of the Permanent Works, except as may be specified in the Contract; and 4. the use or occupation of the Site by the Works or any part thereof, or for the purpose of operating and maintaining the Permanent Works;   and   1. The Employer's Risks of Damage, which are: 2. damage due to any interference, whether temporary or permanent, with any right of way, light, air, water or other easement (other than that resulting from the Contractor's methods of operation and maintenance) which is the unavoidable result of operating and maintaining the Permanent Works in accordance with the Contract; 3. fault, error, defect or omission in any element of the design of the Works by the Employer or which may be contained in the Employer’s Requirements, other than design carried out by the Contractor pursuant to his obligations under the Contract; 4. any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions; and 5. The Exceptional Risks under Clause 18 [*Exceptional Risks*] |
| **17.4 The Contractor's Risks during the Operation Service Period** | Subject to the provisions of Sub-Clause 17.8 [*Limitation of Liability*], the risks allocated to the Contractor and for which the Contractor is liable during the Operation Service Period are:   1. all risks resulting or arising from the design (excluding any design allocated to the Employer under Sub-Clauses 17.1(b)(ii) and 17.3(b)(ii) or construction of the Works, or the Materials used therein, notwithstanding any testing carried out by or approved or witnessed by the Employer or the Employer's Representative during the Design-Build Period; and 2. all risks resulting or arising from the operation and maintenance of the Permanent Works and the care of the Works excluding the Employer's Risks listed under Sub-Clause 17.3 [*The Employer's Risks during the Operation Service Period*]. |
| **17.5 Responsibility for Care of the Works** | Unless the Contract is terminated in accordance with these Conditions, the Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Commissioning Certificate for the whole of the Works is issued pursuant to Sub-Clause 11.7 [*Commissioning Certificate*]. If the Contract is terminated in accordance with these Conditions, the Contractor shall cease to be responsible for the care of the Works from the date of expiry of the Notice of termination.  The Contractor shall also be responsible for the care of the Permanent Works during the Operation Service Period in accordance with the requirements of the Operating License pursuant to Sub-Clause 1.7 [*Operating License*].  The Contractor shall also be responsible for the care of any part of the Permanent Works for which a Section Commissioning Certificate has been issued.  The Contractor shall also take full responsibility for any outstanding work which he shall have undertaken to complete during the Operation Service Period until all such outstanding work is completed. |
| **17.6 Consequences of the Employer's Risks of Damage** | Subject to the provisions of Sub-Clause 18.4 [*Consequences of an Exceptional Event*], if any of the risks allocated as an Employer's Risk under Sub-Clause 17.1 [*The Employer's Risks during the Design-Build Period*] and 17.3 [*The Employer's Risks during the Operation Service Period*] occurs and results in damage to the Works or other property or Goods or Contractor's Documents, the Contractor shall promptly give Notice to the Employer's Representative, and shall thereafter rectify such loss and/or damage to the extent required by instruction of the Employer's Representative. Such instruction shall be deemed a Variation.  In the event of the allocation of the risk not being governed by any other term of the Contract, and such risk occurs during the Design-Build Period and the Contractor is delayed and/or incurs cost from rectifying this damage, the Contractor shall give a further Notice to the Employer's Representative and shall be entitled to:   1. an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.3 [*Extension of Time for Completion of Design-Build*]; and 2. payment of Cost Plus Profit, which shall be included in the Contract Price.   If the event occurs during the Operation Service Period, sub-paragraph (b) of this Sub- Clause shall apply, but sub-paragraph (a) of this Sub-Clause shall not apply.  The Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations]* to determine the amounts due. |
| **17.7 Consequences of the Contractor's Risks resulting in Damage** | If any of the risks allocated as a Contractor's risk under Sub-Clause 17.2 [*The Contractor's Risks during the Design-Build Period*] and 17.4 [*The Contractor's Risks during the Operation Service Period*] occurs and results in damage to the Works or other property or Goods, the Contractor shall promptly give Notice to the Employer's Representative, and shall thereafter rectify such damage to the extent required by the Employer's Representative. All such work of replacement, repair or rectification shall be carried out by the Contractor at his own cost. |
| **17.8 Limitation of Liability** | Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in Sub-Clause 9.8 [Delay Damages relating to Design Build]; Sub-Clause 10.4 [Delays and Interruption during the Operation Service]; Sub-Clause 10.5 [Failure to Meet Performance Standards]; Sub-Clause 12.2 [Cost of Remedying Defects]; Sub-Clause 15.4 [Payment after Termination for Contractor’s Default]; Sub-Clause 16.4 [Payment on Termination]; Sub-Clause 17.9 [Indemnities by the Contractor]; Sub-Clause 17.10 [Indemnities by the Employer]; Sub-Clause 17.6(b) [Consequences of Employer’s Risks resulting in Damage], Sub-Clause 17.12 [Risk of Infringement of Intellectual and Industrial Property Rights], Sub-Clause 19.1 [failure to provide insurance or non-recovery of insurance from insurers].  The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights], shall not exceed the sum resulting from the application of a multiplier (less or greater than one) to the Accepted Contract Amount, as **stated in the PCC**, or (if such multiplier or other sum is not so stated) the Accepted Contract Amount.  This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party. |
| **17.9 Indemnities by the Contractor** | The Contractor shall indemnify and hold harmless the Employer, the Employer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:   1. bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's design, execution, completion or operation and maintenance of the Works, unless attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents; and 2. damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by reason of the design, the execution and completion or operation and maintenance of the Works, unless and to the extent that any such damage or loss is attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer’s Personnel.   The Contractor shall also indemnify the Employer against all errors in the Contractor's design of the Works and other professional services which result in the Works not being fit for purpose or result in any loss and/or damage for the Employer. |
| **17.10 Indemnities by the Employer** | The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:   1. bodily injury, sickness, disease or death, or loss of or damage to any property other than the Works, which is attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents; and 2. the Employer's Risks as set out in Sub-Clauses 17.1 [*The Employer's Risks during the Design-Build Period*] and 17.3 [*The Employer's Risks during the Operation Service Period*]. |
| **17.11 Shared Indemnities** | The Contractor's liability to indemnify the Employer, as aforesaid, shall be reduced proportionately to the extent that the Employer's Risks may have contributed to the said damage, loss or injury. Similarly, the Employer's liability to indemnify the Contractor, as aforesaid, shall be reduced proportionately to the extent that the Contractor's risks may have contributed to the said damage, loss or injury. |
| **17.12 Risk of Infringement of Intellectual and Industrial Property Rights** | In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trademark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.  Whenever a Party does not give Notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.  The Employer shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:   1. an unavoidable result of the Contractor's compliance with the Employer's Requirements; or 2. a result of any Works being used by the Employer:    1. for a purpose other than that indicated by, or reasonably to be inferred from, the Contract; or    2. in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.   The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the Contractor's design, manufacture, construction or execution of the Works, (ii) the use of Contractor's Equipment, or (iii) the proper use of the Works.  If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by the other Party. |
| **17.13 Use of Employer’s Accommodation/Facilities** | The Contractor shall take full responsibility for the care of the Employer provided accommodation and facilities, if any, as detailed in the Employer’s Requirements, from the respective dates of hand-over to the Contractor until cessation of occupation (where hand-over or cessation of occupation may take place after the date stated in the Commissioning Certificate for the Works).  If any loss or damage happens to any of the above items while the Contractor is responsible for their care arising from any cause whatsoever other than those for which the Employer is liable, the Contractor shall, at his own cost, rectify the loss or damage to the satisfaction of the Employer’s Representative. |
| **Exceptional Risks** | |
| **18.1 Exceptional Risks** | An exceptional risk is a risk arising from an Exceptional Event which includes, but is not limited to:   1. war, hostilities (whether war be declared or not), invasion, act of foreign enemies; 2. sabotage by persons other than the Contractor’s Personnel, rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within India; 3. riot, commotion or disorder within India by persons other than the Contractor's Personnel; 4. strike or lockout not solely involving the Contractor's Personnel and other employees of the Contractor and Subcontractors; 5. munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within India, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; and natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity which are Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions; 6. upstream pollution of the Influent that prevents the Contractor from providing the Operation Service in accordance with this Agreement; 7. if provided for **in the PCC**, events of high Influent turbidity in which the suspended solids exceed the value **specified in the PCC** and which prevent the Contractor from providing the Operation Service in accordance with this Agreement. [*Only relevant for water treatment - provision to be deleted for wastewater treatment plant projects*]; 8. the wastewater Influent flow exceeds a capacity Performance Standard for the Works and prevents the Contractor from providing the Operation Service in accordance with this Agreement [*provision to be deleted for water treatment plant projects*]. |
| **18.2 Notice of an Exceptional Event** | If a Party is or will be prevented from performing any of its obligations under the Contract due to an Exceptional Event, then it shall give Notice to the other Party of such event or circumstance and shall specify the obligations, the performance of which is or will be prevented. The Notice shall be given within 14 days after the Party became aware, or should have become aware, of the event or circumstance constituting an Exceptional Event.  The Party shall, having given Notice, be excused performance of such obligations for so long as such Exceptional Event prevents it from performing them.  Notwithstanding any other provision of this Clause, the obligations of either Party to make payments to the other Party under the Contract shall not be excused by an Exceptional Event. |
| **18.3 Duty to Minimise Delay** | Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of an Exceptional Event.  A Party shall give Notice to the other Party when it ceases to be affected by an Exceptional Event. |
| **18.4 Consequences of an Exceptional Event** | If the Contractor is prevented from performing any of his obligations under the Contract due to an Exceptional Event of which Notice has been given under Sub- Clause 18.2 [*Notice of an Exceptional Event*] and suffers delay and/or incurs cost by reason of such Exceptional Event, the Contractor shall be entitled, subject to Sub- Clause 20.1 [*Contractor's Claims*], to:   1. an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.3 [*Extension of Time for Completion of Design-Build*]; and 2. if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 18.1 [Exceptional Risks] and, in sub-paragraphs (b) to (e), and (f) to (h), occurs in India, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Exceptional Event, to the extent they are not recovered through the insurance policy referred to in Sub-Clause 19.2 [Insurances to be Provided by the Contractor during the Design-Build Period].   If the Exceptional Event occurs during the Operation Service Period, sub-paragraph (a) of this Sub-Clause 18.4 will not apply.  After receiving this Notice, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [Determinations*]* to agree or determine these matters. |
| **18.5 Optional Termination, Payment and Release** | If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of an Exceptional Event of which Notice has been given under Sub-Clause 18.2 [*Notice of an Exceptional Event*], or for multiple periods which total more than 140 days due to the same notified Exceptional Event, then either Party may give to the other Party a Notice of termination of the Contract. In this event, the termination shall take effect 7 days after the Notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Cessation of Work and Removal of Contractor's Equipment*].  Upon such termination, the Employer's Representative shall determine the value of the work done and issue a payment certificate which shall include:   * 1. the amounts payable for any work carried out for which a price is stated in the Contract;   2. the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery. This Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;   3. any other Cost or liability which in the circumstances was reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;   4. the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and   5. the Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination. |
| **18.6 Release from Performance under the Law** | Notwithstanding any other provision of this Clause, if any event arises outside the control of the Parties (including, but not limited to, an Exceptional Event) which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon Notice by either Party to the other Party of such event:   1. the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract; and 2. the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 18.5 [*Optional Termination, Payment and Release*] if the Contract had been terminated under that Sub-Clause. |
| **Insurance** | |
| **19.1 General Requirements** | Without limiting his or the Employer’s obligations or responsibilities under the Contract, the Contractor shall effect and maintain all insurances for which he is responsible with insurers and in terms, both of which shall be subject to approval by the Employer, such approval shall not be unreasonably withheld or delayed.  The insurances required to be provided herein are the minimum required by the Employer, and the Contractor may, at his own cost, add such other insurances that he may deem prudent.  Whenever required by the Employer, the Contractor shall produce the insurance policies which he is required to effect under the Contract. As each premium is paid, the Contractor shall send a copy of each receipt of payment to the Employer.  If the Contractor fails to effect and keep in force any of the insurances required under Sub-Clause 19.2 [*Insurances to be provided by the Contractor during the Design- Build Period*], or fails to provide the policies or receipts as aforementioned, then, and in any such case, the Employer may effect and keep in force such insurances and pay any premium as may be necessary and recover the same from the Contractor from time to time by deducting the amount(s) so paid from any monies due to the Contractor or otherwise recover the same as a debt from the Contractor.  Wherever the Employer is the insuring Party, each insurance shall be effected with insurers and in terms acceptable to the Contractor. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause  If either the Contractor or the Employer fails to comply with the conditions attaching to the insurances effected pursuant to the Contract, the Party so failing to comply as aforesaid shall indemnify the other Party against all losses and claims arising from such failure.  The Contractor shall also be responsible for the following:   * 1. notifying the insurers of any changes in the nature, extent or program for the execution of the Works;   2. notifying the insurers of any changes in the nature, extent or program for the provision of the Operation Service; and   3. the adequacy and validity of the insurances in accordance with the Contract at all times during the performance of the Contract.   The permitted deductible limits allowed in any policy shall not exceed the amounts stated in the PCC.  Where there is a shared liability the loss shall be borne by each Party in proportion to its liability under Clause 17 [*Risk Allocation*] or Clause 18 [*Exceptional Risks*], provided the non-recovery from insurers has not been caused by a breach of this Clause by the Contractor. In the event that non-recovery from insurers has been caused by such a breach of Contract by the Contractor, the Contractor shall bear the loss suffered.  The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to the insurance referred to Clause 19) with insurers from any eligible source country. |
| **19.2 Insurances to be provided by the Contractor during the Design-Build Period** | Unless otherwise **stated in the PCC**, the Contractor shall provide the following insurances during the Design-Build Period:   1. The Works   The Contractor shall insure and keep insured in the joint names of the Contractor and the Employer from the Commencement Date until the date of issue of the Commissioning Certificate:   * 1. the Works, together with Materials and Plant for incorporation therein, for their full replacement value with deductible limits not exceeding those **stated in the PCC**. The insurance cover shall extend to include loss and damage of any part of the Works as a consequence of failure of elements defectively designed or constructed with defective material or workmanship; and   2. an additional sum of fifteen percent (15%) of such replacement value (or such sum as may be **specified in the PCC**) to cover any additional costs incidental to the rectification of loss or damage, including professional fees and the cost of demolition and removal of debris.   The insurance cover shall cover the Employer and the Contractor against all loss or damage from whatever cause arising until the Commissioning Certificate is issued. Thereafter, the insurance shall continue until the date of issue of the Final Payment Certificate Design Build in respect of any incomplete work for loss or damage arising from any cause occurring prior to the date of the Commissioning Certificate, and for any loss or damage occasioned by the Contractor in the course of any operation carried out by him for the purpose of complying with his obligations under Clause 12 [*Defects*].  The insurance cover provided by the Contractor for the Works may exclude any of the following:   * + 1. the cost of making good any part of the Works which is defective (including defective material and workmanship) or otherwise does not comply with the Contract, provided that it does not exclude the cost of making good any loss or damage to any other part of the Works attributable to such defect or non-compliance.     2. indirect or consequential loss or damage including any reductions in the Contract Price for delay.     3. wear and tear, shortages and pilferages.     4. the Employer's Risks set out in Sub-Clause 17.1 [*Employer's Risks during the Design-Build Period*] unless otherwise **stated in the PCC** regarding the risks in sub-paragraph (b)(iii) thereof.     5. the Exceptional Risks set out in Sub-Clause 18.1 [*Exceptional Risks*] unless, otherwise **stated in the PCC** regarding the risks in sub- paragraph (f) thereof.     6. Contractor's Equipment   The Contractor shall insure in the joint names of the Employer and the Contractor the Contractor's Equipment and other things brought onto Site by the Contractor to the extent **specified in the PCC**.   * + 1. Injury to persons and damage to property   The Contractor shall insure, in the joint names of the Contractor and the Employer, against liabilities for death or injury to any person, or loss of or damage to any property (other than the Works) arising out of the performance of the Contract and occurring before the issue of the Final Payment Certificate Design-Build, other than loss or damage caused by any event covered under Sub-Clause 17.1 [*Employer's Risks during the Design-Build Period*] or Sub- Clause 18.1 [*Exceptional Risks*].  The insurance policy shall include a cross liability clause such that the insurance shall apply to the Contractor and the Employer as separate insureds.  Such insurance shall be effected before the Contractor begins any work on the Site and shall remain in force until the issue of the Final Payment Certificate Design- Build and shall be for not less than the amount **specified in the PCC**.   1. Injury to employees   The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.  The Employer and the Employer's Representative shall also be indemnified under the policy of insurance, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Employer or of the Employer's Personnel.  The insurance shall be maintained in full force and effect during the whole time that the Contractor's Personnel are assisting in the execution of the Works. For any person employed by a Subcontractor, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for the Subcontractor's compliance with this Sub-Clause.   1. Other insurances required by Law and by local practice   Other insurances required by Law and by local practice (if any) shall be **detailed in the PCC** and the Contractor shall provide such other insurances in compliance with the details given, at his own cost.  For those insurances required under this Sub-Clause to be in the joint names of the Parties, the Parties shall be jointly entitled to receive payments from the insurers, payments being held or allocated to the Party actually bearing the costs of rectifying the loss or damage. |
| **19.3 Insurances to be provided by the Contractor during the Operation Service Period** | Unless otherwise **stated in the PCC**, the Contractor shall provide the following insurances during the Operation Service Period:   1. Fire extended cover for the Works   The Contractor shall provide, in the joint names of the Employer and the Contractor, fire extended cover insurance for the Works as **specified in the PCC** for the Operation Service Period. Notwithstanding any other provision in the Contract, the Operation Service shall not commence until the fire extended cover insurance is effected and the terms and details have been approved by the Employer.  The terms of the policy shall be submitted to the Employer for his approval no later than 28 days before the date upon which the Commissioning Certificate is due to be issued, and shall come into force on the date stated in the Commissioning Certificate.   1. Injury to any person and damage to property   The Contractor shall ensure that an insurance as required under Sub-Clause 19.2 (c) [*Injury to persons and damage to property*] be effected prior to the issue of the Commissioning Certificate and maintained until the issue of the Contract Completion Certificate. Such insurance shall be for an amount and in terms as **specified in the PCC**.   1. Injury to employees   The Contractor shall ensure that an insurance as required under Sub-Clause 19.2(d) [*Injury to employees*] be effected prior to the issue of the Commissioning Certificate and maintained until the issue of the Contract Completion Certificate, or the last of his or any of his Subcontractors' employees have left the Site, whichever is the later.   1. Other insurances required by Law and by local practice   Other insurances required by Law and by local practice (if any) shall be **detailed in the PCC** and the Contractor shall provide such insurances in compliance with the details given, at his own cost.   1. Other optional operational insurances   Other optional insurances required (if any) shall be **detailed in the PCC** and the Contractor shall provide such other insurances in compliance with the details given, at his own cost.  For those insurances required under this Sub-Clause to be in the joint names of the Parties, the Parties shall be jointly entitled to receive payments from the insurers, payments being held or allocated to the Party actually bearing the costs of rectifying the loss or damage. |
| **Claims, Disputes and Arbitration** | |
| **20.1 Contractor's Claims** | 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 Employer’s Representative, 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 Employer’s Representative. Without admitting the Employer’s liability, the Employer’s Representative 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 Employer’s Representative to inspect all these records, and shall (if instructed) submit copies to the Employer’s Representative.  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 Employer’s Representative, the Contractor shall send to the Employer’s Representative 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:   1. this fully detailed claim shall be considered as interim; 2. the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Employer’s Representative may reasonably require; and 3. 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 Employer’s Representative.   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 Employer’s Representative and approved by the Contractor, the Employer’s Representative 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 Employer’s Representative shall agree with the Contractor or estimate: (i) the extension (if any) of the Time for Completion of Design-Build (before or after its expiry) in accordance with GCC Clause 9.3, 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 does not agree on any matter relating to a claim, it may refer the matter to the Adjudicator pursuant to GCC 20 hereof. |
| **20.2 Employer's Claims** | If the Employer considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, the Employer or the Employer’s Representative shall give Notice and particulars to the Contractor.  The Notice shall be given as soon as practicable after the Employer becomes aware, or should have become aware, of the event or circumstances giving rise to the claim.  The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount to which the Employer considers himself to be entitled in connection with the Contract. The Employer’s Representative shall then proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the amount (if any) which the Employer is entitled to be paid by the Contractor.  If either Party is dissatisfied with the determination of the Employer’s Representative, either Party may, within 28 days after receiving the determination, issue to the Employer’s Representative and the other Party, a Notice of dissatisfaction, and thereafter refer the matter to Adjudicator pursuant to GCC 20 hereof. If no Notice of dissatisfaction is issued by either Party within the said 28 days, the determination of the Engineer’s Representative shall be deemed to have been accepted by both Parties.  The amount determined by the Adjudicator may be included as a deduction in the Contract Price and Payment Certificates. The Employer shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this Sub-Clause. |
| **20.3 Disputes and Arbitration** | (i) Appointment of the Adjudicator:The Adjudicator shall be appointed jointly by the Employer and the Contractor, at the time of the Employer’s issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority designated in the PCC, to appoint the Adjudicator within 14 days of receipt of such request. The Adjudicator should be in position before “notice to proceed with work” is issued to the Contractor and an agreement should be signed with the Adjudicator jointly by the Employer and the Contractor in the form attached – Appendix A. |
|  | (ii) Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the PCC** at the request of either party, within 14 days of receipt of such request. |
|  | (iii) If the Contractor believes that a decision taken by the Employer’s Representative was either outside the authority given to the Employer’s Representative by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the decision of the Employer’s Representative. |
|  | (iv) The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute. The Adjudicator shall be paid daily at the rate **specified in the PCC**, together with reimbursable expenses of the types **specified in the PCC**, and the cost shall be divided equally between the Employer and the Contractor. Whatever decision is reached by the Adjudicator, either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator’s written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator’s decision shall be final and binding. |
|  | (v) Arbitration The procedure for adhoc arbitration will be as follows:   1. In case of Dispute or difference arising between the Purchaser and a Contractor relating to any matter arising out of or connected with this contract, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The arbitral tribunal shall consist of 3 Arbitrators one each to be appointed by the Purchaser and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties and shall act as Presiding Arbitrator. In case of failure of the two Arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the Arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the\* International Chamber of Commerce India (ICC India)/ Indian Council of Arbitration/ President of the Institution of Engineers (India). 2. If one of the parties fails to appoint its Arbitrator in pursuance of sub-clause (a) above within 30 days after receipt of the notice of the appointment of its Arbitrator by the other party, then the \* International Chamber of Commerce India (ICC India)/ Indian Council of Arbitration/ President of the Institution of Engineers (India), both in cases of Foreign Contractor as well as Indian Contractor, shall appoint the Arbitrator. A certified copy of the order of the\* International Chamber of Commerce India (ICC India)/ Indian Council of Arbitration/ President of the Institution of Engineers (India), making such an appointment shall be furnished to each of the parties. 3. Arbitration proceedings shall be held at the place **specified in PCC**, India, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English. 4. The decision of the majority of Arbitrators shall be final and binding upon both parties. The cost and expenses of Arbitration proceedings will be paid as determined by the arbitral tribunal. However, the expenses incurred by each party in connection with the preparation, presentation, etc. of its proceedings as also the fees and expenses paid to the Arbitrator appointed by such party or on its behalf shall be borne by each party itself. 5. Where the value of the contract is Rs.50 million and below, the disputes or differences arising shall be referred to the Sole Arbitrator. The Sole Arbitrator should be appointed by agreement between the parties; failing such agreement, by the appointing authority, namely the \* International Chamber of Commerce India (ICC India)/ Indian Council of Arbitration/ President of the Institution of Engineers (India). 6. The Arbitrator should give final award within……… days of starting of the proceedings *[indicate the days (between 120-180) by which arbitrator should give award],* unless otherwise agreed to by the Parties*.* 7. Performance under the contract shall continue during the arbitration proceedings and payments due to the Contractor by the Purchaser shall not be withheld, unless they are the subject matter of the arbitration proceedings.   \* Choose *one alternative, or any other appropriate institution (depending on nature of the work).*  ***Alternatively***  *[Apart from the adhoc arbitration services obtained through mutually agreed Arbitrator(s) as above, Institutional arbitration services are also available in India. Institutional arbitration (and mediation) dispute resolution mechanisms can be gainfully used, preferably for relatively larger contracts. Following clause may be included, if it is decided to use Institutional Services for arbitration for resolution of disputes, and in such a case other clauses related to Arbitration/ Arbitrator would be deleted. In the sample clause below, substitute the reference to ‘Rules of Domestic Commercial Arbitration of the Indian Council of Arbitration’ by the specific institution that is sought to be engaged e.g. The International Chamber of Commerce (India), Centre for Alternative Dispute Resolution (ICADR), The Indian Institute of Arbitration and Mediation (IIAM), Indian Chamber’s Council of Arbitration, Delhi International Arbitration Centre (DAC), Council for National and International Commercial Arbitration, London Court of International Arbitration (India Centre) or the like.]*  "Any dispute or difference whatsoever arising between the parties out of or relating to the Work, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration in accordance with the Rules of Domestic Commercial Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties.  The arbitral tribunal shall consist of 3 Arbitrators, arbitration proceedings shall be held at the place specified in PCC, India, and the language of the arbitration proceedings and that of all documents and communications between the parties shall be English”. *[ICA rules provide for arbitration tribunal of 3 arbitrators if the value of claim is over Rs. 1 crore unless the parties have agreed otherwise for a sole arbitrator].* |

**APPENDIX A[[31]](#footnote-31)**

Appointment of Adjudicator

Suggested Draft of Letter of Appointment of Adjudicators in civil works contracts

Sub:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Name of the Contract)

**To**

Name and address of the Adjudicator

We hereby confirm your appointment as Adjudicator for the above contract to carry out the assignment specified in this Letter of Appointment.

For administrative purpose\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(*name of the officer representing the Employer*) has been assigned to administer the assignment and to provide the Adjudicator with all relevant information needed to carry out the assignment on behalf of both the employer and the contractor. The services will be required during the period of contract for the work of (Name of the Contract).\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

The Adjudicator shall visit the worksite with prior intimation to the Employer and the contractor, once in 3 (three) months till the completion of the contract indicated above or as agreed jointly between the Adjudicator, Employer, and the Contractor. The duration of each visit shall ordinarily be for one day only. These durations are approximate and (*Name of the employer and Name of the Contractor*) may find it necessary to postpone or cancel the assignment and/or shorten or extend the duration.

The appointment will become effective upon confirmation of letter by you. The appointment of Adjudicator shall be liable for termination under a 30 (thirty) days written notice from the date of issue of the notice, if both Employer and the Contractor so desire. Also the appointment shall automatically stand terminated 14 days after the defect notice / correction period as per Conditions of Contract is over.

The Adjudicator will be paid a fee of Rs.\_\_\_\_\_\_ (Rupees \_\_\_\_\_\_\_\_\_\_\_\_only) per each day of visit at the worksite. The actual expenses for boarding and traveling in connection with the assignment will be reimbursed to the Adjudicator. The Adjudicator will submit a pre-receipted bill in triplicate to the employer indicating the date of the visit, fees for the visit and a proof in support of the actual expenditure [only for items valued above Rs. 200 each] incurred by him against boarding, lodging and traveling expenses after performing the visit on each occasion. The Employer will make the admissible payment (both the Employer’s and the Contractor’s share) to the Adjudicator within 30 days of the receipt of the bill. The Contractor’s share on this account (half the paid amount) will be recovered by the Employer from the Contractor’s bills against the work.

In accepting this assignment, the Adjudicator should understand and agree that he is responsible for any liabilities and costs arising out of risks associated with travel to and from the place of emergency repatriation, loss or damage to personal/professional effects and property. The Adjudicator is advised to effect personal insurance cover in respect of such risks if he does not already have such cover in place. In this regard, the Adjudicator shall maintain appropriate medical, travel, accident and third-party liability insurance. The obligation under this paragraph will survive till termination of this appointment.

Procedures for resolution of disputes by the Adjudicator is described in the contract of \_\_\_\_\_\_\_\_\_\_\_\_\_ (name of the contract) between the employer and the contractor vide clause no.24 of the General Conditions of Contract. Your recommendation should be given in the format attached, within 28 days of receipt of a notification of dispute.

The Adjudicator will carry out the assignment in accordance with the highest standard of professional and ethical competence and integrity, having due regard to the nature and purpose of the assignment, and will conduct himself in a manner consistent herewith. After visiting the worksite, the Adjudicator will discuss the matter with the Employer and if necessary with the Contractor before arriving at any decision.

The Adjudicator will agree that all knowledge and information not within the public domain, which may be acquired while carrying out this service shall be all time and for all purpose, regarded as strictly confidential and held in confidence, and shall not be directly or indirectly disclosed to any party whatsoever, except with the permission of the employer and the contractor. The Adjudicator’s decision should be communicated in the form of a speaking order specifying the reasons.

The Adjudicator will agree that any manufacturing or construction firm with which he might be associated with, will not be eligible to participate in bidding for any goods or works resulting from or associated with the project of which this consulting assignment forms a part

Read and Agreed Name of Adjudicator

Signature

Place:

Date:

Name of Employer

Signature of authorized representative of Employer

Name of the Contractor

Signature of authorized representative of Contractor

Attachment: Copy of contract document between the employer and contractor and format for recommendation.

**SUMMARY OF AJUDICATIOR’S RESPONSIBILITIES**

The Adjudicator has the following principal responsibilities:

1. Visit the site periodically.
2. Keep abreast of job activities and developments.
3. Encourage the resolution of disputes by the parties.
4. When a dispute is referred to it, conduct a hearing (no legal presentation), complete its deliberations, and prepare a recommendations in a professional and timely manner (as per sample format)

Sample Format of Adjudicator’s Recommendation

**[Project Name]**

**Recommendation of Adjudicator**

Dispute No. XX [*NAME OF DISPUTE*]

Hearing Date:\_\_\_\_\_\_\_\_\_\_\_\_

**Dispute**

Description of dispute. A one or two sentence summation of the dispute.

**Contractor’s Position**

A short summation of the contractor’s position as understood by the Adjudicator.

**Employer’s Position**

A short summation of the Employer’s position as understood by the Adjudicator.

**Recommendation**

The Adjudicator’s specific recommendation for settlement of the dispute. (*The recommended course is consistent with the explanation*).

**Explanation**

(*This section could also be called Considerations, Rationale, Findings, Discussion, and so on.*)

The Adjudicator’s description of how each recommendation was reached.

Respectfully submitted,

Date : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX B**

**Fraud and Corruption**

***(Text in this Appendix shall not be modified)***

**Guidelines for Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers, dated January 2011:**

“**Fraud and Corruption:**

1.16 It is the Bank’s policy to require that Borrowers (including beneficiaries of Bank loans), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts.[[32]](#footnote-32) In pursuance of this policy, the Bank:

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

(i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;[[33]](#footnote-33);

(ii) “fraudulent practice” is 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;[[34]](#footnote-34)

(iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;[[35]](#footnote-35)

(iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;[[36]](#footnote-36)

(v) “obstructive practice” is

(aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

(bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under paragraph 1.16(e) below.

(b) will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

(c) will declare misprocurement and cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;

(d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank’s sanctions procedures,[[37]](#footnote-37) including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated[[38]](#footnote-38);

(e) will require that a clause be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers and contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Bank.”

**APPENDIX C**

**Environmental, Social, Health and Safety (ESHS)**

**Metrics for Progress Reports**

***[Note to Employer: the following metrics may be amended to reflect the Employer’s environmental, social, health and safety policies and/or the ESHS requirements of the project. The metrics that are required should be determined by the ESHS risks of the Works and not necessarily by the scale of the Works]***

*Metrics for regular reporting:*

1. *environmental incidents or non-compliances with contract requirements, including contamination, pollution or damage to ground or water supplies;*
2. *health and safety incidents, accidents, injuries and all fatalities that require treatment;*
3. *interactions with regulators: identify agency, dates, subjects, outcomes (report the negative if none);*
4. *status of all permits and agreements:*
5. work permits: number required, number received, actions taken for those not received;
6. status of permits and consents:

* *list areas/facilities with permits required (quarries, asphalt & batch plants), dates of application, dates issued (actions to follow up if not issued), dates submitted to resident engineer (or equivalent), status of area (waiting for permits, working, abandoned without reclamation, decommissioning plan being implemented, etc.);*
* *list areas with landowner agreements required (borrow and spoil areas, camp sites), dates of agreements, dates submitted to resident engineer (or equivalent);*
* *identify major activities undertaken in each area in the reporting period and highlights of environmental and social protection (land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation);*
* *for quarries: status of relocation and compensation (completed, or details of activities and current status in the reporting period).*

1. *health and safety supervision:*
2. safety officer: number days worked, number of full inspections & partial inspections, reports to construction/project management;
3. number of workers, work hours, metric of PPE use (percentage of workers with full personal protection equipment (PPE), partial, etc.), worker violations observed (by type of violation, PPE or otherwise), warnings given, repeat warnings given, follow-up actions taken (if any);
4. *worker accommodations:*
5. number of expats housed in accommodations, number of locals;
6. date of last inspection, and highlights of inspection including status of accommodations’ compliance with national and local law and good practice, including sanitation, space, etc.;
7. actions taken to recommend/require improved conditions, or to improve conditions.
8. *HIV/AIDS: provider of health services, information and/or training, location of clinic, number of non-safety disease or illness treatments and diagnoses (no names to be provided);*
9. *gender (for expats and locals separately): number of female workers, percentage of workforce, gender issues raised and dealt with (cross-reference grievances or other sections as needed);*
10. *training:*
11. number of new workers, number receiving induction training, dates of induction training;
12. number and dates of toolbox talks, number of workers receiving Occupational Health and Safety (OHS) environmental and social training;
13. number and dates of HIV/AIDS sensitization and/or training, no. workers receiving training (in this reporting period and in the past); same questions for gender sensitization, flag person training.
14. number and date of GBV /SEA sensitization and/or training, number of workers receiving training on code of conduct (in the reporting period and in the past), etc.
15. *environmental and social supervision:*
16. environmentalist: days worked, areas inspected and numbers of inspections of each (road section, work camp, accommodations, quarries, borrow areas, spoil areas, swamps, forest crossings, etc.), highlights of activities/findings (including violations of environmental and/or social best practices, actions taken), reports to environmental and/or social specialist/construction/site management;
17. sociologist: days worked, number of partial and full site inspections (by area: road section, work camp, accommodations, quarries, borrow areas, spoil areas, clinic, HIV/AIDS center, community centers, etc.), highlights of activities (including violations of environmental and/or social requirements observed, actions taken), reports to environmental and/or social specialist/construction/site management; and
18. community liaison person(s): days worked (hours community center open), number of people met, highlights of activities (issues raised, etc.), reports to environmental and/or social specialist /construction/site management.
19. *Grievances: list new grievances (e.g allegations of GBV / SEA) received in the reporting period and unresolved past grievances by date received, complainant, how received, to whom referred to for action, resolution and date (if completed), data resolution reported to complainant, any required follow-up (Cross-reference other sections as needed):*
20. Worker grievances;
21. Community grievances
22. *Traffic and vehicles/equipment:*
23. traffic accidents involving project vehicles & equipment: provide date, location, damage, cause, follow-up;
24. accidents involving non-project vehicles or property (also reported under immediate metrics): provide date, location, damage, cause, follow-up;
25. overall condition of vehicles/equipment (subjective judgment by environmentalist); non-routine repairs and maintenance needed to improve safety and/or environmental performance (to control smoke, etc.).
26. *Environmental mitigations and issues (what has been done):*
27. dust: number of working bowsers, number of waterings/day, number of complaints, warnings given by environmentalist, actions taken to resolve; highlights of quarry dust control (covers, sprays, operational status); % of rock /spoil lorries with covers, actions taken for uncovered vehicles;
28. erosion control: controls implemented by location, status of water crossings, environmentalist inspections and results, actions taken to resolve issues, emergency repairs needed to control erosion/sedimentation;
29. quarries, borrow areas, spoil areas, asphalt plants, batch plants: identify major activities undertaken in the reporting period at each, and highlights of environmental and social protection: land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation;
30. blasting: number of blasts (and locations), status of implementation of blasting plan (including notices, evacuations, etc.), incidents of off-site damage or complaints (cross-reference other sections as needed);
31. spill cleanups, if any: material spilled, location, amount, actions taken, material disposal (report all spills that result in water or soil contamination;
32. waste management: types and quantities generated and managed, including amount taken offsite (and by whom) or reused/recycled/disposed on-site;
33. details of tree plantings and other mitigations required undertaken in the reporting period;
34. details of water and swamp protection mitigations required undertaken in the reporting period.
35. *compliance:*
36. compliance status for conditions of all relevant consents/permits, for the Work, including quarries, etc.): statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance;
37. compliance status of C-ESMP/ESIP requirements: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
38. compliance status of GBV/SEA prevention and response action plan: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
39. compliance status of Health and Safety Management Plan re: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
40. other unresolved issues from previous reporting periods related to environmental and social: continued violations, continued failure of equipment, continued lack of vehicle covers, spills not dealt with, continued compensation or blasting issues, etc. Cross-reference other sections as needed.

Appendix D

## Salient Features of Labour & Environment Protection Laws[[39]](#footnote-39)

SALIENT FEATURES OF SOME MAJOR LABOUR LAWS

APPLICABLE TO ESTABLISHMENTS ENGAGED IN BUILDING AND OTHER CONSTRUCTION WORK [GCC 4.18 and 6.4 refer]

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| 1. Employees Compensation Act 1923: The Act provides for compensation in case of injury, disease or death arising out of and during the course of employment. 2. Payment of Gratuity Act 1972: gratuity is payable to an employee under the Act on satisfaction of certain conditions on separation if an employee has completed 5 years’ service or more or on death at the rate of 15 days wages for every completed year of service. The Act is applicable to all establishments employing 10 or more employees. 3. Employees P.F. and Miscellaneous Provision Act 1952 (*since amended*): The Act provides for monthly contribution by the employer plus workers @ 10% or 8.33%. The benefits payable under the Act are:   (i) Pension or family pension on retirement or death, as the case may be.  (ii) Deposit linked insurance on the death in harness of the worker.  (iii) Payment of P.F. accumulation on retirement/death etc.   1. Maternity Benefit Act 1961: The Act provides for leave and some other benefits to women employees in case of confinement or miscarriage etc. 2. Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013: This Act defines sexual harassment in the workplace, provides for an enquiry procedure in case of complaints and mandates the setting up of an Internal Complaints Committee or a Local Complaints Committee 3. Contract Labour (Regulation & Abolition) Act 1970: The Act provides for certain welfare measures to be provided by the Contractor to contract labour and in case the Contractor fails to provide, the same are required to be provided, by the Principal Employer by law. The Principal Employer is required to take Certificate of Registration and the Contractor is required to take license from the designated Officer. The Act is applicable to the establishments or Contractor of Principal Employer if they employ 20 or more contract labour. 4. Minimum Wages Act 1948: The Employer is supposed to pay not less than the Minimum Wages fixed by appropriate Government as per provisions of the Act if the employment is a scheduled employment. Construction of Buildings, Roads, Runways are scheduled employments. 5. Payment of Wages Act 1936: It lays down the mode, manner and by what date the wages are to be paid, what deductions can be made from the wages of the workers. 6. Equal Remuneration Act 1976: The Act provides for payment of equal wages for work of equal nature to male and female workers and for not making discrimination against Female employees in the matters of transfers, training and promotions etc. 7. Payment of Bonus Act 1965: The Act is applicable to all establishments employing 20 or more employees. Some of the State Governments have reduced this requirement from 20 to 10. The Act provides for payments of annual bonus subject to a minimum of 8.33% of the wages drawn in the relevant year. It applies to skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward to employees who draw a salary of Rs. 10,000/- per month or less. To be eligible for bonus, the employee should have worked in the establishment for not less than 30 working days in the relevant year. The Act does not apply to certain establishments. 8. Industrial Disputes Act 1947: the Act lays down the machinery and procedure for resolution of Industrial disputes, in what situations, a strike or lock-out becomes illegal and what are the requirements for laying off or retrenching the employees or closing down the establishment. 9. Trade Unions Act 1926: The Act lays down the procedure for registration of trade unions of workmen and employers. The Trade Unions registered under the Act have been given certain immunities from civil and criminal liabilities. 10. Child Labour (Prohibition & Regulation) Act 1986: The Act prohibits employment of children below 14 years of age in certain occupations and processes and provides for regulation of employment of children in all other occupations and processes. Employment of Child Labour is prohibited in the Building and Construction Industry. 11. Inter-State Migrant workmen’s (Regulation of Employment & Conditions of Service) Act 1979: The Act is applicable to an establishment which employs 5 or more inter-state migrant workmen through an intermediary (who has recruited workmen in one state for employment in the establishment situated in another state). The Inter-State migrant workmen, in an establishment to which this Act becomes applicable, are required to be provided certain facilities such as housing, medical aid, traveling expenses from home up to the establishment and back, etc. 12. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996 and the Building and Other Construction Workers Welfare Cess Act, 1996 (BOCWW Cess Act): All the establishments who carry on any building or other construction work and employ 10 or more workers are covered under these Acts. All such establishments are required to pay cess at the rate not exceeding 2% of the cost of construction as may be notified by the Government. The Employer of the establishment is required to provide safety measures at the building or construction work and other welfare measures, such as Canteens, First –Aid facilities, Ambulance, Housing accommodations for workers near the work place etc. The Employer to whom the Act applies has to obtain a registration certificate from the Registering Officer appointed by the Government. 13. Factories Act 1948: the Act lays down the procedure for approval of plans before setting up a factory engaged in manufacturing processes, health and safety provisions, welfare provisions, working hours, annual earned leave and rendering information regarding accidents or dangerous occurrences to designated authorities. It is applicable to premises employing 10 persons or more with aid of power or 20 or more persons without the aid of power. 14. Weekly Holidays Act -1942 15. Bonded Labour System (Abolition) Act, 1976: The Act provides for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of weaker sections of society. Bonded labour covers all forms of forced labour, including that arising out of a loan, debt or advance. 16. Employer’s Liability Act, 1938: This Act protects workmen who bring suits for damages against employers in case of injuries endured in the course of employment. Such injuries could be on account of negligence on the part of the employer or persons employed by them in maintenance of all machinery, equipment etc. in healthy and sound condition. 17. Employees State Insurance Act 1948: The Act provides for certain benefits to insured employees and their families in case of sickness, maternity and disablement arising out of an employment injury. The Act applies to all employees in factories (as defined) or establishments which may be so notified by the appropriate Government. The Act provides for the setting up of an Employees’ State Insurance Fund, which is to be administered by the Employees State Insurance Corporation. Contributions to the Fund are paid by the employer and the employee at rates as prescribed by the Central Government. The Act also provides for benefits to dependents of insured persons in case of death as a result of an employment injury. 18. The Personal Injuries (Compensation Insurance) Act, 1963: This Act provides for the employer’s liability and responsibility to pay compensation to employees where workmen sustain personal injuries in the course of employment. 19. Industrial Employment (Standing Order) Act 1946: It is applicable to all establishments employing 100 or more workmen (employment size reduced by some of the States and Central Government to 50). The Act provides for laying down rules governing the conditions of employment by the Employer on matters provided in the Act and get the same certified by the designated Authority. |

SALIENT FEATURES OF SOME OF THE MAJOR LAWS THAT ARE APPLICABLE FOR PROTECTION OF ENVIRONMENT.

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| 1. The Environment (Protection) Act, 1986 and as amended: This provides for the protection and improvement of environment and for matters connected therewith, and the prevention of hazards to human beings, other living creatures, plants and property. ‘Environment’ includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property. 2. The Forest Conservation Act, 1980, as amended, and Forest (Conservation) Rules, 1981 as amended: These provides for protection of forests by restricting conversion of forested areas into non- forested areas and prevention of deforestation, and stipulates the procedures for cutting any trees that might be required by the applicable rules. Permissions under the Act also stipulates the norms and compliance requirements of the employer and any contractor on behalf of the employer. 3. State Tree Preservation Acts as may be in force: These provide for protection of trees of important species. Contractors will be required to obtain prior permission for full or partial cutting, uprooting, or pruning of any such trees. 4. The Wildlife (Protection) Act, 1972, and as amended: This provides for protection of wildlife through notifying National Parks and Sanctuaries and buffer areas around these zones; and to protect individuals of nationally important species listed in the Annex of the Act. 5. The Biological Diversity Act, 2002: This provides for conservation of biological diversity, sustainable use of components of biological diversity, and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto. 6. The Public Liability Insurance Act, 1991 as amended and The Public Liability Insurance Rules, 1991 as amended: These provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling hazardous substances and for mattes connected herewith or incidental thereto. Hazardous substance means any substance or preparation which is defined as hazardous substance under the Environment (Protection) Act 1986, and exceeding such quantity as may be specified by notification by the Central Government. 7. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 amended 2011, the National Monuments Authority Rules, 2011 and the similar State Acts: These provide for conservation of cultural and historical remains found in India. Accordingly, area within the radii of 100m and 300m from the “protected property” are designated as “protected area” and “controlled area” respectively. No development activity (including building, mining, excavating, blasting) is permitted in the “protected area” and development activities likely to damage the protected property is not permitted in the “controlled area” without prior permission of the Archaeological Survey of India (ASI) or the State Departments of Art and Culture or Archaeology as applicable. 8. The Environmental Impact Assessment Notification, 2006 and as amended: This provides for prior environmental clearance for new, modernization and expansion projects listed in Schedule 1 of the Notification. Contractors will be required to ensure that no work starts until applicable clearances under the Notification is not available. Contractors will be responsible for implementation of any environmental management plan stipulated as per the permission under this Notification; and will be required to prepare and submit to the employer and compliance report stipulated in the permission under the Notification. 9. The Water (Prevention and Control of Pollution) Act, 1974 as amended, and the Water (Prevention and Control of Pollution) Rules, 1975 as amended: These provide for the prevention and control of water pollution and the maintaining and restoring of wholesomeness of water. ‘Pollution’ means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water(whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms. Contractors will need to obtain consent for establishment and consent for operation of any item of work or installation of equipment that generates waste water, and observe the required standards of establishment and operation of these items of work or installations; as well as install and operate all required waste water treatment facilities. 10. The Water (Prevention and Control of Pollution) Cess Act, 1977 and The Water (Prevention and Control of Pollution) Cess Rules, 1978: These provide for the levy and collection of a cess on water consumed by persons carrying on certain industries and by local authorities, with a view to augment the resources of the Central Board and the State Boards for the prevention and control of water pollution under the Water (Prevention and Control of Pollution) Act, 1974. 11. The Air (Prevention and Control of Pollution) Act, 1981 as amended, and the Air (Prevention and Control of Pollution) Rules, 1982: These provides for prevention, control and abatement of air pollution. ‘Air Pollution’ means the presence in the atmosphere of any ‘air pollutant’, which means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment. Contractors will need to obtain consent for establishment and consent for operation of any item of work or installation of equipment that generates air pollution such as batching plants, hot mix plants, power generators, backup power generation, material handling processes, and observe the required standards of establishment and operation of these items of work or installations. 12. Noise Pollution (Control and Regulation) Rules, 2000, and as amended: This provides for standards for noise for day and night for various land uses and specifies special standards in and around sensitive receptors of noise such as schools and hospitals. Contractors will need to ensure compliance to the applicable standards, and install and operate all required noise control devices as may be required for all plants and work processes. 13. Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996: This provides for Requirement of preparation of on-site and off-site Disaster Management Plans for accident-prone areas. 14. The Explosives Act 1884 and the Explosives Rules, 2008: These provide for safe manufacture, possession, sale, use, transportation and import of explosive materials such as diesel, Oil and lubricants etc.; and also for regulating the use of any explosives used in blasting and/or demolition. All applicable provisions will need compliance by the contractors. 15. The Petroleum Rules, 2002: This provides for safe use and storage of petroleum products, and will need to be complied by the contractors. 16. The Gas Cylinder Rules 2004 and amendments: This provides for regulations related to storage of gas, and possession of gas cylinder more than the exempted quantity. Contractors should comply with all the requirements of this Rule. 17. Manufacture, Storage and Import of Hazardous Chemical Rules of 1989 and as amended: These provide for use and storage of hazardous material such as highly inflammable liquids like HSD/LPG. Contractors will need to ensure compliance to the Rules; and in the event where the storage quantity exceeds the regulated threshold limit, the contractors will be responsible for regular safety audits and other reporting requirements as prescribed in the Rules. 18. Hazardous & Other Wastes (Management and Transboundary Movement) Rules, 2016: These provide for protection of general public from improper handling storage and disposal of hazardous waste. The rules prescribe the management requirement of hazardous wastes from its generation to final disposal. Contractors will need to obtain permission from the State Pollution Control Boards and other designated authorities for storage and handling of any hazardous material; and will to ensure full compliance to these rules and any conditions imposed in the permit. 19. The Bio Medical Waste Management Rules, 2016: This provides for control, storage, transportation and disposal of bio-medical wastes. As and where the contractor has any first aid facility and dispensaries, established in either temporary or permanent manner, compliance to these Rules are mandatory. 20. Construction and Demolition Waste Management Rules, 2016: This provides for management of construction and demolition waste (such as building materials possible to be reused, rubble and debris or the like); and applies to all those waste resulting from construction, re-modelling, repair or demolition of any civil structure. Contractor will need to prepare a waste disposal plan and obtain required approval from local authorities, if waste generation is more than 20 tons in any day or 300 tons in any month during the contract period; and ensure full compliance to these rules and any conditions imposed in the regulatory approval. 21. The E-Waste (Management) Rules, 2016: This provides for management of E-wastes (but not covering lead acid batteries and radio-active wastes) aiming to enable the recovery and/or reuse of useful material from e-waste, thereby reducing the hazardous wastes destined for disposal and to ensure the environmentally sound management of all types of waste of electrical and electronic equipment. This Rule applies to every manufacturer, producer, consumer, bulk consumer, collection centers, dealers, e-retailer, refurbisher, dismantler and recycler involved in manufacture, sale, transfer, purchase, collection, storage and processing of e-waste or electrical and electronic equipment listed in Schedule I, including their components, consumables, parts and spares which make the product operational. 22. Plastic waste Management Rules, 2016: This provides for control and management of the plastic waste generated from any activity. Contractors will ensure compliance to this Rule. 23. The Batteries (Management and Handling) Rules 2001: This provides for ensuring safe disposal and recycling of discarded lead acid batteries likely to be used in any equipment during construction and operation stage. Rules require proper control and record keeping on the sale or import of lead acid batteries and recollection of the used batteries by registered recyclers to ensure environmentally sound recycling of used batteries. Contractors will ensure compliance to this Rule. 24. The Ozone Depleting Substances (Regulation and Control) Rules, 2000 and as amended: This provides for regulation of production and consumption of ozone depleting substances in the country, and specifically prohibits export to or import from countries not specified in the Rules, and prohibits unless specifically permitted, any use of ozone depleting substance. 25. The Coastal Regulation Zone Notifications, 1991 and as amended: This provides for regulation of development activities within the 500m of high tide line in coastal zone and 100m of stretches of rivers and estuaries influenced by tides. Contractors will be required to ensure that no work starts until applicable clearances under the Notification is not available. Contractors will be responsible for implementation of any plan stipulated as per the permission under this Notification; and will be required to prepare and submit to the employer and compliance report stipulated in the permission under the Notification. 26. The Motor Vehicle Act 1988 as amended (and State Motor Vehicle Acts as may be in force) and the Motor Vehicle Rules, 1989, and as amended (and State Motor Vehicle Rules as may be in force): To minimize the road accidents, penalizing the guilty, provision of compensation to victim and family and check vehicular air and noise pollution. Contractors will be required to ensure full compliance to these rules. 27. Easement Act, 1882: This provides for the rights of landowners on groundwater. Contractors will need to ensure that other landowners’ rights under the Act is not affected by any groundwater abstraction by the contractors. 28. State Groundwater Acts and Rules as may be in force and the Guidelines for Groundwater Abstraction for drinking and domestic purposes in Notified Areas and Industry/Infrastructure project proposals in Non-Notified areas, 2012: These provide for regulating extraction of ground water for construction/industrial and drinking and domestic purposes. Contractors will need to obtain permission from Central/State Groundwater Boards prior to groundwater abstraction through digging any bore well or through any other means; and will to ensure full compliance to these rules and any conditions imposed in the permit. 29. The Mines Act, 1952 as amended; the Minor Mineral and concession Rules as amended; and the State Mineral (Rights and Taxation) Acts as may be in force: These provide for for safe and sound mining activity. The contractors will procure aggregates and other building materials from quarries and borrow areas approved under such Acts. In the event the contractors open any new quarry and/or borrow areas, appropriate prior permission from the State Departments of Minerals and Geology will need to be obtained. Contractors will also need to ensure full compliance to these rules and any conditions imposed in the permit. 30. The Insecticides Act, 1968 and Insecticides Rules, 1971 and as amended: These provide for regulates the manufacture, sale, transport, distribution, export, import and use of pesticides to prevent risk to human beings or animals, and for matters connected therewith. No one should import or manufacture; sell, stock or exhibit foe sale; distribute, transport, use: (i) any misbranded insecticides, (ii) any insecticide the sale, distribution or use of which is for the time being prohibited under the Act; and (iii) any insecticide except in accordance with the condition on which it was registered under the Act. 31. National Building Codes of India, 2005 and as amended: This provides guidelines for regulating the building construction activities in India. The code mainly contains administrative regulations, development control rules and general building requirements; stipulations regarding materials, structural design and construction; and building and plumbing services. Contractors will be required to comply with all Bureau of Indian Standards Codes dealing with: (i) use and disposal of asbestos containing materials in construction; (ii) paints containing lead; (iii) permanent and temporary ventilations in workplace; (iv) safety, and hygiene at the workplace; (v) prevention of fire; (vi) prevention of accidents from faulty electrical gadgets, equipment and accessories; and all other such codes incidental to the Contract. |

Section IX – Particular Conditions of Contract(PCC)

The following particular conditions of Contract shall supplement the GCC. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

Section IX - Particular Conditions of Contract

*Except where otherwise specified, all Particular Conditions of Contract should be filled in by the Employer prior to issuance of the bidding document. Schedules and reports to be provided by the Employer should be annexed.*

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| **A. General Provisions** | |
| **GCC 1.1.4** | The financing institution is: The World Bank |
| **GCC 1.1.5** | The Borrower is: \_\_\_\_\_\_\_\_\_ *[insert Borrower’s name. This should be consistent with that indicated in the BDS for ITB 2.1]* |
| **GCC 1.1.24** | The percentage profit to be added to the Cost where the Contract allows for Cost Plus Profit is:\_\_\_\_\_ *[insert the %, it would normally be around 5%]* |
| **GCC 1.1.26** | Cut-Off Date: \_\_\_\_\_\_*[insert number of days after the Time for Completion of Design-Build)*  *[Note: if this date is not given, then a default period of 182 days after the Time for Completion of Design-Build will apply as per GCC 15.2 (i)].* |
| **GCC 1.1.33** | The Employer is *[insert name, address, and name of authorized representative]*. |
| **GCC 1.1.36** | Employer’s Representative’s name and address is:  For the Design Build Period: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  For the Operation Service Period: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **GCC 1.1.74** | *If Sections are to be used, refer to Table: Summary of Sections below* |
| **GCC 1.1.82** | Time for Completion of Design-Build is: \_\_\_\_\_\_ [*insert number of days for completion of Design Build*]  For Section 1 ---- days  For Section 2 ---- days  For Section 3 ---- day  *[insert the time of completion of the whole of the Works and also the time for completion of sections, if applicable. If time (or dates) are to be specified for completion of the Works by section (“sectional completion” or milestones), these dates should also be listed]* |
| **GCC 1.3** | Agreed methods of electronic transmission are: \_\_\_\_\_\_  *[Insert electronic transmission systems like email address, fax number, and any other method as applicable]* |
|  | Address of Employer for communications: *[insert the corresponding information as required below]*  Attention: ***[insert full name of person, if applicable****]*  Address: *[****insert street address and number****]*  Floor/ Room number*: [****insert floor and room number, if applicable****]*  City: *[****insert name of city or town****]*  PIN Code: *[****insert postal (PIN) code, if applicable****]*  Country: INDIA  Telephone: *[****insert telephone number, including country and city codes****]*  Facsimile number: *[****insert fax number, including country and city code****s]*  Electronic mail address: *[****insert email address, if applicable****]* |
|  | Address of Employer’s Representative for communications:  For the Design Build Period: *[insert complete address with full details as above]*  For the Operation Service Period: *[insert complete address with full details as above]* |
|  | Address of Contractor for communications: *[insert the corresponding information as required below]*  Attention: ***[insert full name of person, if applicable****]*  Address: *[****insert street address and number****]*  Floor/ Room number*: [****insert floor and room number, if applicable****]*  City: *[****insert name of city or town****]*  PIN Code: *[****insert postal (PIN) code, if applicable****]*  Country: INDIA  Telephone: *[****insert telephone number, including country and city codes****]*  Facsimile number: *[****insert fax number, including country and city code****s]*  Electronic mail address: *[****insert email address, if applicable****]* |
| **GCC 1.8** | Name of agency to which the Contract may be assigned (if any): \_\_\_\_\_\_\_\_\_\_\_  *[insert the name of the agency. If there is no such agency, this PCC entry may be omitted]* |
| **GCC 1.15.2** | If JV is permitted to form an SPV, the original bidder shall be bound to maintain its share capital at a minimum level of ….. *[insert percentage]* of the total paid up share capital of the SPV and not less than …. % *[insert percentage]*of the project cost.  *[Note 1: in case of an SPV, may consider specifying in the above e.g. (i) 51% or above and the Contractor holding paid up share capital of not less than 20% of the project cost.*  *Note 2: In case of a JV, may consider specifying e.g. that the Lead Member shall hold at least fifty-one percent (51%) of the subscribed and paid up equity of the Contractor at the Commencement Date, shall continue holding at least fifty-one percent (51%) of the subscribed and paid up equity of the Contractor for a period up to the second anniversary of the date of the Commissioning Certificate, and at least twenty-six percent (26%) thereafter, subject to the transferee having similar experience to the Lead Member and the approval of the Employer.*  *The other Members who hold less than forty-nine percent (49%) of the subscribed and paid up equity of the Contractor at the Commencement Date shall continue holding the same percentage of the subscribed and paid up equity of the Concessionaire up to the second anniversary of the date of the Commissioning Certificate. The individual holding of each of these members may be diluted thereafter with the approval of the Employer, subject to the condition that the paid up share capital of each member of SPV shall not be less than 20% of the total project cost, and that total holding of paid up share capital together of all JV members shall not be reduced.*  *Note 3: conditions stipulated shall be consistent with those stated in BDS for ITB 4.1]* |
| **GCC 2.1** | The Employer shall give the Contractor access to the Site: no later than 15 days after the Commencement Date, except for the following parts (if applicable, with detailed description of the parts concerned: \_\_\_ days after Commencement Date.  *[Note: modify as appropriate if the site cannot be handed over in 15 days]* |
| **GCC 3.1 (b) (ii)** | Employer approval not required for variations less than: \_\_\_% of Accepted Contract Amount  [*Note as a Sample: Variations resulting in an increase of the Accepted Contract Amount in excess of one percent of the contract amount in each case at a time and all variations in excess of gross total value of 10 (Ten) percent of the contract amount in aggregate, shall require prior approval of the Employer*] |
| **GCC 4.2** | ESHS Performance Security is Required.  The Performance Security and ESHS Performance Security will be in the form of demand guarantee(s) from Nationalized or Scheduled bank(s) in India, in the Performance Security and ESHS Performance Security Forms included in Section X, Contract Forms.  The Performance Security amount is \_\_\_\_\_\_\_ [*insert related figure 5 to 10%*] percent of the Contract Amount for Design Build, plus additional security of \_\_\_\_\_\_ for unbalanced bids determined in accordance with Cl. 38 of ITB; and the Environmental, Social, Safety and Health (ESHS) Performance Security amount is \_\_\_\_\_ *[insert related figure between 1% to 3%]* percent of the Contract Amount for Design Build*.*  The performance security of a Joint Venture shall be in the name of the Joint Venture.  *[Note: the sum of the Performance Security including ESHS Performance Security shall normally not exceed 10% of the Accepted Contract Amount for Design Build.*  *Throughout this bidding document the term ’performance security’, unless the context clearly indicates otherwise, means and includes both ‘the performance security and the ESHS performance security’ to be submitted by the successful bidder in the amounts specified above.* |
| **GCC 4.2** | The Performance Security shall be reduced at the end of the Retention Period: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[insert suitably whether Performance Security shall be reduced at the end of this Period. If the performance security is not proposed to be reduced at the end of the Retention Period, insert ‘Not Applicable’]*  The Performance Security shall be further reduced following five consecutive years of Operation Service during which the Contractor has achieved full compliance with the standards specified in the Schedule of Performance Standards: \_\_\_\_\_\_\_\_\_ *[insert suitably whether Performance Security shall be further reduced at the end of this Period]* |
| **GCC 4.3** | The Contractor's Representative is \_\_\_\_\_\_\_\_\_ [*insert the name of the Contractor’s Representative agreed by the Employer prior to Contract signature The representative should be conversant in ………….. language, being the spoken language of the region*] |
| **GCC 4.4** | Subcontracting should not exceed 25% of the accepted contract value. |
| **GCC 4.18** | Provisional sum for costs of complying with the EMP if not covered within the Contractor’s price is: \_\_\_\_\_\_\_\_\_ [*insert amount if applicable, else state “Not Applicable, the Contract Price is deemed to include all things necessary to meet the requirements of the EMP”*] |
| **GCC 5.1** | Period for notification of errors, faults and other defects: \_\_\_\_\_\_\_ days after the Commencement Date [*insert number of days*] |
| **GCC 5.2** | The Contractor's Documents which require approval from the Employer's Representative are: *[List the documents that are required to be submitted by the Contractor, for the Employer’s review and/or for approval. The list shall be consistent with the Contractor’s Document listed in Section VII - Employer’s Requirements with reference to Sub-Clause 5.2]*  In addition to hard copies of the documents, the contractor shall furnish to the Employer’s Representative, soft copies duly digitized in a Compact Disk, as detailed below………………………….. (*State the requirement)* |
| **GCC 6.5** | The normal working hours are \_\_\_\_\_\_\_\_\_ [i*nsert the normal working hours*] |
| **GCC 6.9** | *\_\_\_\_\_\_\_\_\_\_\_*  *[insert the name of each of the Contractor’s Key Personnel to the extent agreed by the Employer prior to Contract signature]* |
| **GCC 7.8** | Royalties shall be paid by the contractor and should be included in the unit rates of various items. |
| **GCC 8.1(c)** | [*Note: specify site possession dates or any other precedent conditions as may be necessary. If there are no conditions, state ‘Not Applicable’]*. |
| **GCC 8.2** | The Contractor shall provide the Operation Service for the period of: \_\_\_\_ months. [*insert period in months*] |
| **GCC 9.2** | Time for Completion of Design-Build of the Works is: \_\_\_\_\_  Time for Completion of Design-Build of each Section is: \_\_\_\_\_\_\_  [*Note: insert period for the whole of the work and for each section, if applicable*] |
| **GCC 9.6** | The delay (liquidated) damages for the whole of the Works are *[insert percentage]* per day. The maximum amount of liquidated damages for the whole of the Works is [*insert percentage]* of the final Contract Amount for Design Build.  For milestone 1 Rs. \_\_\_\_\_\_\_\_\_\_\_\_per day  For milestone 2 Rs. \_\_\_\_\_\_\_\_\_\_\_\_per day  All works Rs. \_\_\_\_\_\_\_\_\_\_\_\_per day  *[Note 1: usually liquidated damages are set between 0.05 percent and 0.20 percent per day of Contract Amount for Design Build, and the maximum amount is not to exceed 10 percent of the Contract Amount for Design Build. If Sectional Completion and Liquidated Damages per Section are required, the latter should be specified here.*  *Note 2: percentage per day shall normally be such that the maximum amount of delay damages is attained as a result of a delay of about one third of the Time of completion of design build of the Works]* |
| **GCC 10.2** | Commencement date shall be: [*insert number*] days following the date of issuance of the Commissioning Certificate.  [*Note: insert the number of days if different from those in GCC 10.2, else omit this PCC entry*] |
| **GCC 10.4 and 10.5** | Maximum amount of Performance Damages payable by the Contractor (Operation Service): \_\_\_\_\_\_  Maximum amount of performance damages payable by the Contractor in any contract year during the Operation Service Period: \_\_\_\_ |
| **GCC 10.4 (b)** | Maximum amount of compensation payable by Employer (Operation Service): \_\_\_\_\_\_\_\_ |
| **GCC 10.5** | Rights of the Employer if the failure continues for more than 84 days: \_\_\_\_  [*insert provisions, if different from those in GCC 10.2, else omit this PCC entry*] |
| **GCC 10.7** | [*insert as applicable, if the production output and revenue is not the exclusive property of the Employer, else omit this PCC entry*] |
| **GCC 11.1** | Tests on Completion of Design-Build shall be carried out in the following sequence: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [*insert if the Tests on Completion of Design-Build are to be carried out in a sequence different from the sequence provided in the GCC, else omit this PCC entry*] |
| **GCC 13.5** | Percentage rate to be applied to Provisional Sums is: \_\_\_ [*insert %, it would normally be around 5%, and in line with the % specified in PCC 1.1.24. This PCC entry shall be omitted, if the % is stated in the contract in the appropriate schedule*] |
| **GCC 13.8** | Contract Price and Rates and Prices to be adjusted for changes in cost as further detailed in the Schedule of Cost Indexation;  a) Design-Build: Yes/No  b) Operation Service: Yes/No |
| **GCC 13.9** | Price adjustment in Accepted Contract Amount for Operation Service to account for long term variations in Influent quality relative the Influent Baseline [*shall/ shall not*] be permitted.  *[Note: if price adjustment is permitted then the Employer must include an Influent Baseline in the Employer’s Requirements]* |
| **GCC 14.2** | The Advance Payments shall be: [*insert amount(s) not exceeding 10%*] *%* of Accepted Contract Amount for the Design Build, payable on submission of unconditional Bank Guarantee in the format given in section X from a Nationalized or Scheduled Bank in India. Advance Payment shall be drawn before end of 20% of Contract design-build period.  *[If it is proposed to be given in installments insert percentage, number and timing of installments]* |
| **GCC 14.2 (b)** | Percentage deductions for the repayment of the Advance Payment is: \_\_\_  [*Note: Stipulate appropriately, namely 30% for 20% advance, 25% for 15% advance, 15% for 10% advance and 7.5% for 5% advance respectively]* |
| **GCC 14.3** | Requirements for submission of Statements if different from the GCC and PCC is: \_\_\_\_\_\_\_\_\_\_\_\_\_  *[Note: delete this PCC entry if the requirement is not different from that in GCC and PCC]* |
| **GCC 14.3 (c)** | The proportion of payments retained is: \_\_ *[insert percentage of retention, usually 6%, but not exceeding10%]*  Limit of Retention money is: \_\_\_ *[insert percentage, normally 5 % of the Accepted Design Build Contract Amount]* |
| **GCC 14.5 (b)(i)** | Plant and Materials (to be incorporated in works) for payment when delivered to the Site:\_\_\_*[list]*  *[Note: Advance is payable only for non-perishable materials. No advance for sand, cement etc.]* |
| **GCC 14.6** | Minimum Amount of Interim Payment Certificate applicable for the Design-Build: \_\_\_\_  Minimum Amount of Interim Payment Certificate applicable for the Operation Service: \_\_\_\_  *[Note: Insert percentage, which may depend on the contract amount and time for completion; a minimum of about one fifth the average expected value of Interim Payment Certificate (not less than 1% of the accepted contract amount) would be reasonable]* |
| **GCC 14.8** | Financing charges for delayed payment are: …… % per annum  [*insert a % corresponding to the prime lending rate of SBI or another Nationalized Bank in India.*] |
| **GCC 14.9** | Retention Money: Substitution of retention money should be in installments of not less than 1% of the accepted design build contract amount. |
| **GCC 14.17** | Amount of Maintenance Retention Fund is: \_\_\_\_\_  *[Note: normally 5% of the Accepted Operation Service Period Contract Amount]* |
| **GCC 17.1 (b) (iii)** | Operation of forces of nature: \_\_\_\_\_ |
| **GCC 17.8** | Maximum total liability of the Contractor shall not exceed: \_\_\_\_ |
| **GCC 18.1 (g)** | Exceptional risks would include events of high Influent turbidity in which the suspended solids exceed: \_\_\_\_\_\_\_\_\_ |
| **GCC 19.2 (a)(i)** | Maximum permitted deductible limits for Works, together with Materials and Plant for incorporation therein: \_\_\_\_\_ *[Insert maximum amount of deductible, which would be reasonable-after due consultation with Insurance Companies]* |
| **GCC 19.2 (a)(ii)** | Additional sum to be insured to cover any additional costs: \_\_\_\_  [*Note: insert a % of replacement value, if it is other than 15%*  *OR*  *Omit this PCC entry if it is proposed to be 15%*] |
| **GCC 19.2 (a)(4)** | Employer’s Risks to be insured if different to Sub-Clause 17.1: \_\_\_\_ |
| **GCC 19.2 (a)(5)** | Exceptional Risks to be insured if different to Sub-Clause 18.1: \_\_\_\_ |
| **GCC 19.2(b)** | Insurance of Contractor’s Equipment (minimum amount required): \_\_\_\_*[insert amount of insurance]* |
| **GCC 19.2(c)** | Minimum amount of insurance required for injury to persons and damage to property: \_\_\_\_*[insert amount of insurance]*  *[Note: this minimum amount per occurrence should be commensurate with the risk of damage specific to the Contract* |
| **GCC 19.2(e)** | Other insurances required from the Contractor (give details): \_\_\_\_ |
| **GCC 19.3(a)** | Minimum amount of fire extended cover insurance required: \_\_\_\_ *[insert amount of insurance]* |
| **GCC 19.3(b)** | Minimum amount of insurance required to cover injury to any person and damage to property: \_\_\_\_ *[insert amount of insurance]*  *[Note: this minimum amount per occurrence should be commensurate with the risk of damage specific to the Contract]* |
| **GCC 19.3(d)** | Other insurances required by law from the Contractor (give details): \_\_\_\_ |
| **GCC 19.3(e)** | Other optional insurances required from the Contractor (give details): \_\_\_\_ |
| **GCC 20.3 (i)** | Name of the agreed Adjudicator: \_\_\_\_\_\_\_\_\_\_ |
| **GCC 20.3 (i) and (ii)** | Appointing Authority for the Adjudicator: \_\_\_\_\_\_\_\_  *[Note: if ITB 44 provides for an Adjudicator from list provided by an Institution, insert the name of the same institution as the appointing authority]* |
| **GCC 20.3 (iv)** | Daily rate and types of reimbursable expenses to be paid to the Adjudicator: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *[Note: insert daily fees - not less than Rs. 10,000 per day, and reimbursable expenses – boarding/ lodging/ travel etc.]*. |
| **GCC 20.3 (v)(d)** | Arbitration proceedings shall be held at: \_\_\_\_\_\_\_\_\_\_\_\_  *[Note: insert name of the city in India]* |

**Table: Summary of Sections**

|  |  |  |
| --- | --- | --- |
| **Section Name/Description**  **(Sub-Clause 1.1.74)** | **Time for Completion of Design Build**  **(Sub-Clause 1.1.82)** | **Damages for Delay**  **(Sub-Clause 9.6)** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

Section X. – Contract Forms

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

Notification of Award - Letter of Acceptance

*[letterhead paper of the Employer]*

*[The Letter of Acceptance shall be the basis for formation of the Contract as described in ITB Clause 41. This Standard Form of Letter of Acceptance shall be filled in and sent to the successful Bidder only after evaluation of bids has been completed, subject to any review by the World Bank required under the Loan Agreement]*

*[date]*

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

This is to notify you that your Bid dated *[date]* for execution of the *[name of the Contract and identification number, as given in the PCC]* for the Accepted Contract Amount *[amount in Rs in numbers and words]*, as corrected and modified[[40]](#footnote-40) in accordance with the Instructions to Bidders, is hereby accepted by our Agency.

The amount is made up of the following components:

|  |  |
| --- | --- |
| The Accepted Contract Amount for the Design-Build of: | ………………………………………  *(amount in Rs in figures)* |
| The Accepted Contract Amount for the Operation Service of: | ………………………………………  *(amount in Rs in figures)* |

You are requested to furnish the Performance Security and an Environmental, Social, Health and Safety Performance Security ***[Delete ESHS Performance Security if it is not required under the contract]*** within 21 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security and an Environmental, Social, Health and Safety Performance Security ***[Delete ESHS Performance Security if it is not required under the contract*** Forms included in Section X, Contract Forms, of the bidding document. The securities shall be valid up to 28 days from the date of completion i.e. up to ………….

***[Choose one of the following statements:]***

We accept that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***[insert the name of Adjudicator proposed by the Bidder]*** be appointed as the Adjudicator[[41]](#footnote-41).

***[or]***

We do not accept that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***[insert the name of the Adjudicator proposed by the Bidder]*** be appointed as the Adjudicator, and by sending a copy of this Letter of Acceptance to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***[insert name of the Appointing Authority]***, the Appointing Authority, we are hereby requesting such Authority to appoint the Adjudicator in accordance with ITB 44.1 and GCC 20.3[[42]](#footnote-42).

We note that as per your bid, you do not intend to subcontract any component of work.

[OR]

We note that as per your bid, you propose to employ M/s. ………………… as sub-contractor for executing ……………………..

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

**Attachment: Contract Agreement**

Contract Agreement

THIS AGREEMENT made the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “the Employer”), of the one part, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ should be designed, executed and operated by the Contractor, and has accepted a Bid by the Contractor for the design, execution, completion and operation and maintenance of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.

1. the Letter of Acceptance
2. the Letter of Bid
3. the addenda Nos \_\_\_\_\_\_\_(if any)
4. the Particular Conditions of Contract
5. the General Conditions of Contract
6. the Employer’s Requirements
7. the completed Schedules,
8. The Operating License, and
9. The Contractor’s Bid and any other documents forming part of the Contract
10. Joint Venture Agreement [for JVs only].

3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to design, execute, complete, operate and maintain the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract and Operating License.

4. The Employer hereby covenants to pay the Contractor in consideration of the design, execution, completion operation and maintenance of the Works and the remedying of defects therein, the Contract Price, or such other sum as may become payable under the provisions of the Contract, at the times and in the manner prescribed by the Contract and to grant the Contractor (or cause the Contractor to be granted) a royalty-free license to enable him to operate and maintain the Works during the Operation Service Period

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on the day, month and year specified above.

Signed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(for the Employer)

In the presence of (witness, name, signature, address, date

Signed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (for the Contractor)

In the presence of (witness, name, signature, address, date

**Appendices to the Contract Agreement:**

Appendix 1: Schedule of Payments

Appendix 2: Schedule of Cost Indexation

Appendix 3: Schedule of Performance Standards

Appendix 4: Schedule of Performance Damages

Appendix 1 – Schedule of Payments

1. **Procedures for payment of the Design-Build**

*[If payment for the Design-Build are to be made in instalments pursuant to GCC Sub-Clause 14.4 then the Employer shall include a table of instalments here. If not already stated in the PCC, this section should include:*

* *Table of Instalments*
* *Currencies of payment – Indian Rs,*
* *Payment of taxes and duties,*
* *Procedures for certification of amounts due*
* *Documentation to be provided*
* *]*

1. **Procedures for the payment of the Operation Service**

*[the Employer shall set out the terms and procedures for payment during the Operation Service Period. Unless already stated in the PCC, this section should include:*

* *Frequency of payment (normally Monthly in arrears)*
* *Currencies of payment – Indian Rs*
* *Treatment of GST and other taxes and duties*
* *Formulae and procedures for calculating and validating variable payments*
* *Arrangements for payment of electricity costs (where applicable)*
* *Deductions and adjustments (e.g. for use of standby generation)*
* *Documentation to be provided*
* *]*

Appendix 2 – Schedule of Cost Indexation[[43]](#footnote-43)

**1. General requirements**

To the extent that the PCC allows for price adjustment, the amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labour, goods and other inputs to the Works or Operation Service by the addition or deduction of the amounts determined by the formulae prescribed in this Appendix. To the extent that full compensation for any rise or fall in costs is not covered by the provisions of this or other Clauses, the Accepted Contract Amount shall be deemed to have included amounts to cover the contingency of other rises and falls in costs.

The adjustment to be applied to the amount otherwise payable to the Contractor, as valued in accordance with the appropriate Schedule and certified in Payment Certificates, shall be determined from formulae given hereunder. No adjustment is to be applied to work valued on the basis of Cost or current prices.

**2. Adjustment of Design-Build Prices**

If the PCC allows for price adjustment of design-build amounts, the formulae shall be of the following general type:

**Pn= a + b Ln / Lo + c En/ Eo + d Mn/Mo + ........**

*where:*

“Pn” is the adjustment multiplier to be applied to the estimated contract value of the work carried out in period “n”, this period being a month unless otherwise stated in the Appendix to Bid;

“a” is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments;

“b”, “c”, “d”, ... are coefficients representing the estimated proportion of each cost element related to the execution of the Works as stated in the relevant table of adjustment data; such tabulated cost elements may be indicative of resources such as labour, equipment and materials;

“Ln”, “En”, “Mn”, ... are the current cost indices or reference prices for period “n”, expressed in Indian Rs, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period (to which the particular Payment Certificate relates); and

“Lo”, “Eo”, “Mo”, ... are the base cost indices or reference prices, expressed in Indian Rs, each of which is applicable to the relevant tabulated cost element on the Base Date.

The cost indices or reference prices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Employer’s Representative. For this purpose, reference shall be made to the values of the indices at stated dates (quoted in the fourth column of the table) for the purposes of clarification of the source; although these dates (and thus these values) may not correspond to the base cost indices.

Until such time as each current cost index is available, the Employer’s Representative shall determine a provisional index for the Issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.

If the Contractor fails to complete the within the Time for Completion, adjustment of prices thereafter shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price: whichever is more favourable to the Employer.

**3. Adjustment of Operation Service amounts**

*[Separate indexation provisions may be required for each component of the operation service fee.]*

If the PCC allows for price adjustment of Operation Service amounts, the formulae shall be of the following general type:

**Pn= b Ln/lo + c En/Eo + d Mn/Mo + ......**

*where:*

“Pn” is the adjustment multiplier to be applied to the amount in period “n”, this period being a month unless otherwise stated in the Appendix to Bid;

“b”, “c”, “d”, ... are coefficients representing the estimated proportion of each cost element in the relevant table of adjustment data; such tabulated cost elements may be indicative of resources such as labour, equipment and materials;

“Ln”, “En”, “Mn”, ... are the current cost indices or reference prices for period “n”, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period to which the particular Payment Certificate relates;

“Lo”, “Eo”, “Mo”, ... are the base cost indices or reference prices, each of which is applicable to the relevant tabulated cost element on the Base Date.

Appendix 3 - Schedule of Performance Standards

***Examples:***

**1. Capacity Standard (s)**

|  |  |  |  |
| --- | --- | --- | --- |
| **No** | **Item** | **Unit** | **Minimum Capacity** |
|  |  |  |  |
|  |  |  |  |

Allowable Exclusions (if any):

1. *[list]*

**2. Reliability Standards (unscheduled interruptions/downtime)**

|  |  |  |  |
| --- | --- | --- | --- |
| **No** | **Item** | **Unit** | **Value** |
|  |  |  |  |
|  |  |  |  |

Allowable Exclusions (if any):

1. *[list – e.g. interruptions caused by third parties]*

**3. Water Quality / Effluent Discharge Standards** (delete as applicable)

|  |  |  |  |
| --- | --- | --- | --- |
| **No** | **Parameter** | **Unit** | **Maximum Concentration or Limit** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

Allowable Exclusions (if any):

1. *[list – e.g. [x%] failure rate permitted per Month]*

**4. Sludge standards**

|  |  |  |  |
| --- | --- | --- | --- |
| **No** | **Parameter** | **Unit** | **Value / Limit** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

Allowable Exclusions (if any):

1. *[list- e.g. up to [ ] percent failure permitted per Month]*

**5. Smell and Noise Standards**

|  |  |  |  |
| --- | --- | --- | --- |
| **No** | **Item** | **Unit** | **Limit** |
|  |  |  |  |
|  |  |  |  |

Allowable Exclusions (if any):

1. *[list]*

**6. Monitoring and testing standards**

|  |  |  |  |
| --- | --- | --- | --- |
| **No** | **Parameter** | **Type of test** | **Frequency of testing** |
|  |  |  |  |
|  |  |  |  |

Allowable exclusions (if any):

1. *[list]*

**7. Energy efficiency standards** (required for short and medium term DBOs)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No** | **Efficiency item** | **Unit** | **Limit Value  (maximum permitted average energy use during evaluation period)** | **Efficiency evaluation period** |
|  | *[consider providing multiple efficiency standards for various conditions – e.g. high/low flow, high/low turbidity etc.]* | *[e.g. KwHr per M3 produced]* |  | *[state whether:*   * *years of Operation Service Period,* * *calendar years, or* * *calendar Months]* |

*(required for shorter term DBOs)*

Allowable exclusions (if any):

1. *[list]*

**8. Chemical efficiency standards** (required for short and medium term DBOs)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No** | **Efficiency item** | **Unit** | **Limit Value (maximum permitted average chemical use during evaluation period)** | **Efficiency evaluation period** |
|  | *[Specify chemical and consider providing multiple efficiency standards for various conditions – e.g. high/low flow, high/low turbidity etc.]* | *[e.g. Kg per M3 produced]* |  | *[state whether:*   * *years of Operation Service Period,* * *calendar years, or* * *Calendar Months]* |

*(required for shorter term DBOs)*

Allowable exclusions (if any):

1. *[list]*

Appendix 4 - Schedule of Performance Damages

The Contractor shall pay to the Employer performance damages in accordance with GCC Sub-Clauses 10.4 and 10.5 in the amounts specified below.

**Performance Damages for Delay and Interruptions**

|  |  |  |  |
| --- | --- | --- | --- |
| **Ref:** | **Item** | **Unit**  *[e.g. amount per day, per incident etc.]* | **Insert amount**  ***[****either as an amount in Rs or as percentage of Accepted Contract Amount for Design-Build****]*** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Performance Damages for failure to meet Performance Standards**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Ref:** | **Item** | **Unit**  *[e.g. amount per day, per incident, per cubic meter, etc.]* | **Insert amount**  ***[****either as an amount in Rs or as percentage of Accepted Contract Amount for Design-Build****]*** | **Exclusions**  **(if any)** |
|  |  |  |  | *[e.g. first failure in Calendar Month]* |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

The performance damages listed above shall be payable in Indian Rs.

The performance damages above shall be in addition to any fines that may be imposed on the Contractor by the courts in respect of pollution of the environment and/or breach of the terms of the applicable permits, licenses or consents.

Issue of Notice to proceed with the work

(letterhead of the Employer)

\_\_\_\_\_\_\_\_\_ (*date*)

To

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(*name and address of the Contractor)*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dear Sirs:

Pursuant to your furnishing the requisite securities as stipulated in ITB clause 43.1, insurance policy as per GCC 19, as stated in letter of acceptance and signing of the contract agreement for the construction of\_\_\_\_\_\_\_\_\_\_\_\_\_\_@ a Bid Price of Rs.\_\_\_\_\_\_\_\_\_\_\_, you are hereby instructed to proceed with the execution of the said works in accordance with the contract documents.

Yours faithfully,

(Signature, name and title of signatory authorized to sign on behalf of Employer)

Performance Security: Demand Guarantee

[including Additional Performance Security for unbalanced bids]

*[Guarantor letterhead or SWIFT identifier code]*

Performance Guarantee No ……………………. *[insert guarantee reference number]*

Date…………………………. *[insert date of issue of the guarantee]*

To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of Employer]*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[address of Employer]*

WHEREAS \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name and address of Contractor[[44]](#footnote-44)]* (hereinafter called "the Applicant") has undertaken, in pursuance of Contract No. \_\_\_\_\_ dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to execute \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of Contract and brief description of Works]* (hereinafter called "the Contract");

AND WHEREAS it has been stipulated by you in the said Contract that the Applicant shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Applicant such a Bank Guarantee;

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Applicant, up to a total of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[amount of guarantee**[[45]](#footnote-45)]* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[in words]*, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[amount of guarantee]* as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Applicant before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between you and the Applicant shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

This guarantee shall be valid until ……… (i.e.)[[46]](#footnote-46) 28 days after the date of issue of the Contract Completion Certificate, and any demand for payment under it must be received by us at this office on or before that date.

Signature and seal of the guarantor \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Bank \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

Environmental, Social, Health and Safety (ESHS) Performance Security

ESHS Demand Guarantee

*[Guarantor letterhead or SWIFT identifier code]*

**ESHS Performance Guarantee No.:** *[Insert guarantee reference number]*

Date …………………………. *[insert date of issue of the guarantee]*

To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of Employer]*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[address of Employer]*

WHEREAS \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name and address of Contractor[[47]](#footnote-47)]* (hereinafter called "the Applicant") has undertaken, in pursuance of Contract No. \_\_\_\_\_ dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to execute \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of Contract and brief description of Works]* (hereinafter called "the Contract");

AND WHEREAS it has been stipulated by you in the said Contract that the Applicant shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his Environmental, Social, Health and/or Safety (ESHS) obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Applicant such a Bank Guarantee;

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Applicant, up to a total of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[amount of guarantee[[48]](#footnote-48)]* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[in words]*, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[amount of guarantee]* as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Applicant before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between you and the Applicant shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

This guarantee shall be valid until ……… (i.e.)[[49]](#footnote-49) 28 days after the date of issue of the Contract Completion Certificate, and any demand for payment under it must be received by us at this office on or before that date.

Signature and seal of the guarantor \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Bank \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

Advance Payment Security

Demand Guarantee

*[Guarantor letterhead or SWIFT identifier code]*

Advance Payment Guarantee No ……………………. *[insert guarantee reference number]*

Date…………………………. *[insert date of issue of the guarantee]*

To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of Employer]*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[address of Employer]*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[name of Contract]*

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Subclause 14.2 ("Advance Payment") of the above-mentioned Contract, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name and address of Contractor[[50]](#footnote-50)]* (hereinafter called "the Applicant") shall deposit with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_­\_\_\_\_\_\_ *[name of Employer]* a bank guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of \_\_\_\_\_\_\_\_\_\_\_\_\_ *[amount of guarantee**[[51]](#footnote-51)]* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[in words]*.

We, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[bank or financial institution]*, as instructed by the Applicant, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of Employer]* on his first demand without whatsoever right of objection on our part and without his first claim to the Applicant, in the amount not exceeding \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [amount of guarantee] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[in words]*.

We further agree that no change or addition to or other modification of the terms of the Contract or of Works to be performed thereunder or of any of the Contract documents which may be made between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of Employer]* and the Applicant, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

This guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of Employer]* receives full repayment of the same amount from the Applicant. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

Yours truly,

Signature and seal: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Bank: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

Retention Money Security

Demand Guarantee

*[Guarantor letterhead or SWIFT identifier code]*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[Bank’s name and address of issuing branch or office]*

**Beneficiary: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** *[Name and Address of Employer]*

***Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

**RETENTION MONEY GUARANTEE NO.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

We have been informed that \_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of contractor[[52]](#footnote-52)]* (hereinafter called “the Applicant”) has entered into Contract No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[reference number of the contract]* dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with you, for the execution of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of contract and brief description of Works]* (hereinafter called “the Contract”).

Furthermore, we understand that, according to the conditions of the Contract, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment, payment of \_\_\_\_\_\_\_\_\_\_\_ *[insert* the second half of the Retention Money*]* is to be made against a Retention Money guarantee.

At the request of the Applicant, we \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[name of Bank]* hereby irrevocably undertake to pay you the sum or sums not exceeding in total an amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[amount in Rupees]* (\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) *[amount in words[[53]](#footnote-53)]* upon receipt by us of your first demand in writing accompanied by a written statement stating that the Applicant is in breach of its obligation under the Contract without cavil or argument.

It is a condition for any claim and payment under this guarantee to be made that the payment of the second half of the Retention Money referred to above must have been received by the Applicant on its account number \_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_ *[name and address of Bank].*

This guarantee shall expire, at the latest, 21 days after the date of issue of the Contract Completion Certificate, and any demand for payment under this guarantee must be received by us at this office on or before that date.

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

*[Signature(s) and seal of the guarantor]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

1. Delete, if a pre-bid meeting is not scheduled for this procurement. [↑](#footnote-ref-1)
2. Substitute “contracts” where Bids are called concurrently for multiple contracts. Add a new para. 5 as follows: “Bidders may submit Bid for one or several contracts, as further defined in the Bidding Document*.* Bidders wishing to offer discounts in case they are awarded more than one contract will be allowed to do so, provided those discounts are included in the Letter of Bid.” and renumber paras 5 – 12. [↑](#footnote-ref-2)
3. Daywork is work carried out following instructions of the Employer and paid for on the basis of time spent by workers, and the use of materials and the Contractor’s equipment, at the rates quoted in the Bid. For Daywork to be priced competitively for Bid evaluation purposes, the Employer must list tentative quantities for individual items to be costed against Daywork (e.g., a specific number of tractor driver staff-days, or a specific tonnage of Portland cement), to be multiplied by the Bidders’ quoted rates and included in the total Bid price. [↑](#footnote-ref-3)
4. Nonperformance, as decided by the Employer, shall include all contracts where (a) nonperformance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Nonperformance shall not include contracts where Employers decision was overruled by the dispute resolution mechanism. Nonperformance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted. [↑](#footnote-ref-4)
5. This requirement also applies to contracts executed by the Bidder as JV member. [↑](#footnote-ref-5)
6. The Bidder shall provide accurate information on the Letter of Bid about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of court/arbitral awards against the Bidder or any member of a joint venture may result in disqualifying the Bidder. [↑](#footnote-ref-6)
7. The Employer may use this information to seek further information or clarifications in carrying out its due diligence. [↑](#footnote-ref-7)
8. For contracts under which the Bidder participated as a joint venture member or sub-contractor, only the Bidder’s share, by value, shall be considered to meet this requirement. [↑](#footnote-ref-8)
9. In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated. [↑](#footnote-ref-9)
10. This row (4.2 A for Specific Construction Experience) should be retained only if experience in certain key activities is essentially required, else delete this row. [↑](#footnote-ref-10)
11. Key activities listed here are only illustrative, and should be modified to suit the requirements of a specific procurement. [↑](#footnote-ref-11)
12. In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated. [↑](#footnote-ref-12)
13. Use one of the two options as appropriate [↑](#footnote-ref-13)
14. In case appointment of Adjudicator was proposed from the list provided by an Institution in ITB 44, the replacement should also be proposed from the list of same institution. [↑](#footnote-ref-14)
15. If the most recent set of financial statements is for a period earlier than 12 months from the date of bid, the reason for this should be justified. [↑](#footnote-ref-15)
16. This Form 4.2 A for Specific Construction Experience should be retained only if Specific Construction Experience is specified in Section III Evaluation and Qualification Criteria. [↑](#footnote-ref-16)
17. Modify the sample list of items given in the following rows. [↑](#footnote-ref-17)
18. *Insert name of the Bidder, which in the case of a joint venture shall be (a) the name of the joint venture that submits the bid if the JV has been constituted into a legally enforceable JV, or (b) the names of all future members of the JV as named in the letter of intent to execute the JV Agreement submitted by the bidder along with its bid.*  [↑](#footnote-ref-18)
19. *The Applicant should insert the amount of the guarantee in words and figures denominated in Indian Rupees. This figure should be the same as shown in Clause 19.1 of the Instructions to Bidders.* [↑](#footnote-ref-19)
20. *45 days after the end of the validity period of the Bid.* [↑](#footnote-ref-20)
21. In this context, any action to influence the procurement process or contract execution for undue advantage is improper. [↑](#footnote-ref-21)
22. For the purpose of this sub-paragraph, “*another party*” refers to a public official acting in relation to the procurement process or contract execution. In this context, “*public official*” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions. [↑](#footnote-ref-22)
23. For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution. [↑](#footnote-ref-23)
24. For the purpose of this sub-paragraph, “parties” refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions. [↑](#footnote-ref-24)
25. For the purpose of this sub-paragraph, “party” refers to a participant in the procurement process or contract execution. [↑](#footnote-ref-25)
26. A firm or individual may be declared ineligible to be awarded a Bank financed contract upon: (i) completion of the Bank’s sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, and through the application the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding. See footnote 14 and paragraph 8 of Appendix 1 of these Guidelines. [↑](#footnote-ref-26)
27. A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has either been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. [↑](#footnote-ref-27)
28. This depends on the project [↑](#footnote-ref-28)
29. If permitted by Employer – typically for DBOs of longer contract duration [↑](#footnote-ref-29)
30. Whether ESHS Performance Security would be applicable and appropriate and whether it would need to be extended beyond Design Build Period should be discussed with World Bank task team leader and the ESHS specialist assigned to the Project. If separate ESHS Performance Security is appropriate, then the sum of the ESHS Performance Security and Performance Security should fall within the overall World Bank guidance of 10% of Contract Amount during the Design Build Period, and reduce over the Operation Services period. [↑](#footnote-ref-30)
31. If ITB 44 makes provision of an Adjudicator from list provided by an institution, kindly modify Appendix A to state that the fee and reimbursable payable to the adjudicator shall be as per the rules of the Institution. [↑](#footnote-ref-31)
32. In this context, any action to influence the procurement process or contract execution for undue advantage is improper. [↑](#footnote-ref-32)
33. For the purpose of this sub-paragraph, “*another party*” refers to a public official acting in relation to the procurement process or contract execution. In this context, “*public official*” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions. [↑](#footnote-ref-33)
34. For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution. [↑](#footnote-ref-34)
35. For the purpose of this sub-paragraph, “parties” refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions. [↑](#footnote-ref-35)
36. For the purpose of this sub-paragraph, “party” refers to a participant in the procurement process or contract execution. [↑](#footnote-ref-36)
37. A firm or individual may be declared ineligible to be awarded a Bank financed contract upon: (i) completion of the Bank’s sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, and through the application the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding. See footnote 14 and paragraph 8 of Appendix 1 of these Guidelines. [↑](#footnote-ref-37)
38. A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has either been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. [↑](#footnote-ref-38)
39. This list is only illustrative and not exhaustive. Bidders and Contractors are responsible for checking the correctness and completeness of the list. The law as current on the date of bid opening will apply. [↑](#footnote-ref-39)
40. *Delete “corrected and” or “and modified” if not applicable* [↑](#footnote-ref-40)
41. *To be used only if the Contractor disagrees in the Bid with the Adjudicator proposed by the Employer in the Instructions to Bidders, and has accordingly offered another candidate.*  [↑](#footnote-ref-41)
42. *To be used only if the Contractor disagrees in the Bid with the Adjudicator proposed by the Employer in the ITB, has accordingly offered another candidate, and the Employer does not accept the counterproposal.* [↑](#footnote-ref-42)
43. Entries in this Appendix should be consistent with the entries in the Schedule of Adjustment Data – Table A and Table D. [↑](#footnote-ref-43)
44. *In the case of a JV, insert the name of the Joint Venture* [↑](#footnote-ref-44)
45. *An amount shall be inserted by the Guarantor, representing the percentage of the Contract Price specified in the Contract less provisional sums, if any, and denominated in Indian Rupees.* [↑](#footnote-ref-45)
46. Insert the date twenty-eight days after the expected completion date as described in GCC Clause 8.3. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Employer’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee [↑](#footnote-ref-46)
47. *In the case of a JV, insert the name of the Joint Venture* [↑](#footnote-ref-47)
48. *An amount shall be inserted by the Guarantor, representing the percentage of the Contract Price specified in the Contract less provisional sums, if any, and denominated in Indian Rupees.* [↑](#footnote-ref-48)
49. Insert the date twenty-eight days after the expected completion date as described in GCC Clause 8.3. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Employer’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee [↑](#footnote-ref-49)
50. In the case of a JV, insert the name of the Joint Venture [↑](#footnote-ref-50)
51. An amount shall be inserted by the bank representing the amount of the Advance Payment, and denominated in Indian Rupees. [↑](#footnote-ref-51)
52. *In the case of a JV, insert the name of the Joint Venture* [↑](#footnote-ref-52)
53. *The Guarantor shall insert an amount representing the amount of the second half of the Retention Money.* [↑](#footnote-ref-53)