



# Sectorial Standard Bidding Documents

## Design, Supply and Installation of Electromechanical Works

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Bid No. [  ]

Contracting Entity [  ]



# Introduction

These Sectorial Standard Bidding documents (SSBD) have been approved in the Design, Supply and Installation of Electromechanical works for the infrastructure projects when:

- The contract includes the design, hand-over, construction, installation and operation of factories and equipment that have been engineered in a special way, such as turbines, generators, boilers, switchyards, pumping stations, telecommunications, and treatment factories, the similar energy, water and sanitation projects and similar projects
- The value of the plant and equipment shall be the largest part of the estimated contract value, and
- The nature and degree of complexity of the factory and equipment imposes the need for thorough pre-commissioning and operation, and to follow acceptance procedures before the Employer takes over the facilities in a safe manner.

The Sectorial Standard Bidding documents for factories and electromechanical work consider the contractor responsible for every activity required to complete the facilities, including but not limited to, design, manufacture, delivery, construction, installation, testing, operation, training, take-over (acceptance) of the employer (contracting entity), maintenance, etc. .. However, these documents may be approved after being adapted according to the case, for single responsibility contracts and where some activities are carried out by third parties, as parts of the basic design or site preparation work.

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# Sectorial Standard Bidding Documents

## Design, Supply and Installation of Electromechanical Works

**Contracting entity:** [insert contracting entity contracting entity's name]

**Project name:** [insert project's name]

**Tender name:** [insert tender's name]

**Tender / Invitation No.:** [insert Tender / Invitation No].

**Project reference:** [insert the budget and classification as mentioned in the Federal Public Budget].

**Date of issuance of Bidding Document:** [insert date of Bidding documents issuance].

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## Advertisement Form of a Bid/Invitation

Insert country's name of the contacting entity/Employer

Insert name of the contracting entity / employer

Insert project's name and classification as been contained in the Iraqi federal budget

Issue:

Date:

To: [insert name of the bidder]

Sub.: [insert No. and name of the tender]

1. The [Insert name of the contracting entity (employer)] is pleased to invite eligible and experienced bidders to submit their bids for the specialized works [insert a brief description of the factory and / or electromechanical works]<sup>1,2</sup>.
2. The invitation for Bidding that is related to the announcement of the public tender for this project and which was published in the national newspapers [insert the names of newspapers, issues and dates] as well as the date of publication in (dg Market) and (UNDB online).
3. The tender will be subject to the mechanism approved for public international tenders that allows all bidders from eligible countries to participate in them as specified in the explanatory leaflet issued by the United Nations (on the definition of the eligible country).
4. Eligible bidders who desire to obtain additional information shall contact [insert the contracting entity's name and the name and email address of the contact employee] [insert the working hours] and as indicated in the Instructions to Bidders.
5. Required qualification requirements [insert a list of technical, financial, legal requirements, etc.]  
Are bids subject to giving preference to local bidders [enter yes or no] as well [enter the preference ratio for the bidder].
6. Interested Bidders may purchase the Bidding forms in [insert language of documents] after the submission of a written application to the set forth address at the instructions to bidders and upon payment of the sale price for the documents amounting [insert amount in dinars] or [enter the value in the other convertible currency]. The payment method will be through [enter the payment method] and the documents will be sent [enter the method of sending documents].
7. The bids are to be submitted to the following address [specify the address indicated in the Instructions to Bidders] on time] enter the time and date of submission [email submission] enter allowed or not allowed]. Late bids will be rejected and bids will be opened in the presence of the bidders or their representatives who wish to attend at the following address [insert the address specified in the Instructions to Bidders] in time and date [enter time and date]. All bids shall

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include a bid guarantee [insert a bank guarantee letter or a certified instrument] and with an amount [insert the amount in dinars] or in the equivalent convertible currency.

8. The aforementioned addresses are [insert the detailed address / addresses including the name of the contracting Entity (employer), the competent department, name of the person in charge, building No., alley No., district No., city, country, enter the electronic address if the bid is allowed to be submitted electronically].

Note: the contracting Entity may add further data, relevant to the nature of the tender provided that no contradiction shall be occurred to the legal regulations stipulated in the government Contracting in the state of Iraq .

### **Signature**

**Name of the Representative of Contracting Entity: (employer)**

**Title of the Representative of Contracting Entity: (employer)**

<sup>1</sup> { A brief description of the type(s) of Factory or Electromechanical Works, including quantities, location of Project, and any other information necessary to enable potential bidders to decide whether to respond or not respond to the Invitation. Bidding forms may require bidders to have specific experience or capabilities; such requirements shall also be included in this paragraph }

<sup>2</sup> { Insert: “the delivery/construction (completion) period is ; [insert no. of days/months/years or dates]” }

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## Section I: Instructions to Bidders (ITB)

### PART 1- Contracting procedures

This Section presents the relevant information to provide the Bidders with the details of the bids. It is also provided with the Information on the submission, opening, and evaluation of bids and on the award of Contracts by the Contracting Entity as per the Evaluation and Qualification Criteria stated in Section three . No amendments or additions are to be made to this Section, but in respect of any specific information or requirements, the Contracting Entity (only) shall incorporate such information and requirements in the Bid Data Sheet – Section II.

#### Section II.: Bid Data Sheet (BDS)

This Section contains the particular provisions of the bid, supplementary to the information or requirements included in Section I, Instructions to Bidders. This section shall be prepared by the Contracting Entity.

#### Section III. Evaluation and Qualification Criteria

This section presents two options, either evaluation or qualification after pre-qualification completion or the qualification and evaluation option without pre-qualification. This Section contains the criteria relevant to determine the substantially responsive lowest evaluated bid and the qualifications of the winning Bidder to perform the contract.

#### Section IV: Bidding forms

This Section contains the documents which are to be completed by the Bidder in full and submitted as part of his Bid.

#### Section V. Eligible Countries

This Section contains information regarding eligible countries.

### PART 2 – Contract Requirements

#### Section VI. Contracting Entity’s Requirements

This Section contains the supplementary Specification, Drawings, and information that describe the Factory and/or Electromechanical works and Services to be submitted.

### PART 3 – Contract Conditions and Documents

#### Section VII. General Conditions of the Contract (GCC)

This Section includes the general conditions/clauses to be adopted in all contracts. No amendments or additions are to be made to this Section. The Contracting Entity (only) shall include the information and requirements related to this tender in section VIII- The General Conditions of the Contract.

#### Section VIII. Special Conditions of the Contract (SCC)

This section consists of: Part A - It contains the contract data, and Part B - It contains the special provisions and Clauses related to each contract. The contents of this section amend and supplement the General Conditions of the Contract; this section is prepared by the contracting entity.

#### Section IX: Contract Documents

This section includes: acceptance letter, contract agreement, attachments and other documents. With regard to the two forms of performance bond and a down payment guarantee, they shall be completed, when necessary, by the winning bidder after awarding the contract.

# PART 1- Contracting Procedures

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**Section I. Instructions to Bidders**

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## Section I. Instructions to Bidders

### A. General

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#### 1.Scope of Tender

- 1.1 With reference to the mentioned Invitation for Bidding in the Bid Data Sheet - BDS, the contracting Entity mentioned in the Bid Data Sheet (BDS) shall issue this bidding document to construct the factory and provide the services specified in Section VI - Contract Requirements. The name and reference No. of this public tender and the No. of lots / units (the contract(s) resulting) are stated in the bid data sheet.
- 1.2 Unless otherwise provided, definitions and interpretations shall be concluded, throughout this Bidding Document as stated in the General Conditions of the Contract, Section VII.

#### 2.Funding Source

- 2.1 The Funding Source for the contract(s), prepared for award shall be subject to awarded is the Federal Budget Adoptions of the Government of Iraq (GOI) or any other source(s) as srated in BDS.

#### 3.Practices of Corruption and unlawful acts

- 3.1 The contracting entity's policy requires bidders, suppliers, contractors, consultants and their employees to observe the highest standards of ethics during contracting processes and the implementation of contracts funded by the contracting entity. In order to achieve this policy.
  - a. The contracting Entity shall adopt the definition of "corruption and illegal actions" in accordance with the relevant and effective Iraqi laws. For the purpose of this Clause, the contracting Entity shall also be guided by the definition of terms as set forth below:
    1. "Corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
    2. "Fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
    3. "Coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
    4. "Collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
    5. "obstructive practice" is
      - 5.1 Deliberate destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Contracting Entity investigation into allegations of a corrupt, fraudulent, coercive or collusive practice

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as per the relevant applicable Iraqi Laws; 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

5.2 Acts aimed at impeding the point of contracting is clearly from the exercise of the right of inspection and audit under paragraph 3.1 (d) of instructions to the bidders listed below according to Iraqi laws in force.

- b. The contracting entity shall reject any proposal of award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
- c. The Contracting Entity will sanction any party or its successor in accordance with the relevant applicable Iraqi Laws, including declaring them as ineligible, either indefinitely or for a fixed period of time, to participate in Contracting Entity financed activities if at any time it is determined by the competent Iraqi authorities that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive, or obstructive practices in competing for, or in executing, a Contracting Entity financed contract;
- d. The contracting Entity will have the right to require that a provision be included in **Bidding** forms and in contracts financed by the Contracting Entity, requiring bidders, bidders, contractors and consultants to permit the competent authorities to inspect their accounts and records and other documents relating to the Bid submission and contract performance and to have them audited by auditors appointed by the competent authorities in accordance with the relevant applicable Iraq Laws.

3.2 Bidders shall be aware of the provision set forth in the General Conditions of the Contract (GCC ) 42.2.1(c).

### 4.Elegibility

- 4.1 The bidder can be either a private or a public company owned by the state and the public sector or any mixture of these entities in the form of a joint venture or association under a duly certified partnership contract unless the Contracting Entity requests the submission of this agreement after the tender is awarded, In the case of Joint Venture or Association:
- a. All partners shall be jointly and severally liable for the execution of the Contract per the Contract terms, and
  - b. One of the partners shall be authorized as a representative of the joint venture who is authorized to manage all actions on behalf of any and all of the partners in the joint venture during the bidding process, and during the execution of the contract if the contract is awarded to this joint venture.
- 4.2 This tender is open before bidders or partners in case the bidder is a joint venture, provided that their nationality is from any country, according to the definition contained under the (dissolved) interim joint venture Authority Order No. (87) of 2004 or any law that replaces it. According to the instructions for implementing the government contracts in force, a bidder is considered to be a holder of the nationality of a country if he is a citizen or resident or has been established, listed, or registered in that country and works according to its laws. This standard also applies to determining the nationality of proposed subcontractors and suppliers for any part of the contract and related services.

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- 4.3 The bidder shall not have any conflict of interest. Any bidder who is found to be in conflict of interest shall be excluded. the bidder shall be in a conflict of interest with one or more parties in this bidding process, if:
- a. they have a common controlling partner of their works either financially or administratively; or
  - b. they receive or have received any direct or indirect subsidy from any of them; or;
  - c. they have the same legal representative for purposes of this bid; or
  - d. they have a relationship directly or through a joint third party with each other, which enables them to obtain information about a bid, influence a bid, or influence the contracting entity's decisions about this bidding process; or
  - e. A bidder has submitted more than one bid in this tender, which will lead to the exclusion of all those bids, whether it is unilaterally or from a partnership or a joint venture, with the exception of the permitted alternative offers according to Clause 13 of the instructions to the bidders. However, this will not limit the bidder's participation as a secondary contractor in another bid or the participation of a company as a sub-contractor in more than one bid; or
  - f. The bidder, or one of his affiliated Firms, participated as a consultant in preparing designs or technical specifications for the factory and the services related to the subject of this bid document; or
  - g. Bidder has been hired (proposal of hiring) or any of its subsidiaries has been hired as Project Manager for the contract.
- 4.4 Any Firm that been sanctioned by the relevant authorities in accordance to ITB-3, shall be excluded. A list of ineligible bidders is available on the website specified in Bid Data Sheet.
- 4.5 Staff of the Government and Public Sector cannot participate directly or indirectly in the government Tenders
- 4.6 Based on any reasonable request from the Contracting Entity, bidders shall submit documents that demonstrate their continuing eligibility in an acceptable manner from the Contracting Entity .
- 4.7 Firms that do not have legal eligibility criteria will be excluded under Iraqi law. In the event that a prequalification has taken place prior to the bidding process, this tender is open only to bidders who have completed the prequalification.

### **5.Factory eligibility and services**

- 5.1 The country of origin of the factory and the related services to be provided in accordance with the contract shall be from the eligible countries as defined in paragraph 4.2 above, and all expenses resulting under the contract will be limited to this plant and related services.

## Section I. Instructions to Bidders

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5.2 For the purposes of Paragraph 5.1 of the Instructions to Bidders, “Origin” means the place in which extraction, development, production or manufacture the “factory” or the component parts of the factory, or the place where services related to the factory are provided. The production of factory components means the transformation, manufacture, or assembly of multiple inputs into a commercially distinct product or exit.

## B. Contents of Bidding Document

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### 6. Sections of Bidding Document

6.1 The **bidding** document contains three parts, each of which includes the sections specified below; it shall be read in conjunction with any Appendixes issued in accordance with Clause 8 of the Instructions to Bidders, and it is also expected to be read in conjunction with the definitions defined in Section Seven - General Conditions For the contract.

#### **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

#### **PART 2 Contract Requirements**

- Section VI. Technical Requirements

#### **PART 3 Contract Conditions and Forms**

- Section VII. General Conditions of the Contract (GCC)
- Section VIII. Special Conditions of the Contract (SCC)
- Section IX. Contract Forms

6.2 The Contracting Entity is not responsible for the Completion of the Bidding Document and its appendixes/amendments unless otherwise being obtained directly by the set forth source at the Bidding for Invitation.

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

## 7. Inquiries and Pre-Bidding Conference

7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Contracting Entity in writing or by cable (the term “cable” is deemed to include electronic mail, telex, or facsimile) at the Contracting Entity’s address as indicated in the Bid Data Sheet or raise his enquiries during the pre-bid conference if provided for in accordance with ITB 7.4. The Contracting Entity will respond to any request for clarification, provided that such request is received no later than fourteen (14) days prior to the deadline for submission of bids. The Contracting Entity’s response shall be in writing with copies

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to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. Shall the Contracting Entity 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 23.2.

- 7.2 The Bidder is advised to visit and examine the site where the factory is to be installed and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for the provision of Factory and Services. The costs of visiting the site shall be at the Bidder's own expense.
- 7.3 The Bidder and any of its personnel or agents will be granted permission by the Contracting Entity 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 Contracting Entity and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.4 The contracting entity invites the bidders or their representatives to a conference before the deadline for the submission of bids. The aim of this conference is to clarify matters and inquiries and answer questions on any topic that was discussed in a timely manner phase.
- 7.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Contracting Entity not later than one week before the conference.
- 7.6 Minutes of the pre-bidding conference, including the questions raised without identifying the source, and the responses given, together with any responses prepared after the conference, will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3. Any amendment to the Bidding Document that may become necessary as a result of the pre-bidding conference shall be made by the Contracting Entity exclusively through the issue of an Addendum pursuant to ITB 8 and not through the minutes of the pre-bidding conference`.
- 7.7 The failure of a bidder to attend a pre-bidding conference will not constitute a reason for excluding it.
- 7.8 In order to maintain the confidentiality of the procedures during the Bid advertisement period, information about the names and addresses of Bidders and their agents shall not be disclosed to any unconcerned party.

### **8. Amendment of Bidding Document**

- 8.1 At any time prior to the deadline for submission of bids, the Contracting Entity may amend the Bidding Document by issuing appendixes.
- 8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Contracting Entity in accordance with ITB 6-3

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8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Contracting Entity may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 23.2

### C. Preparation of Bids

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#### 9. Cost of Bidding

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

#### 10. Language of Bid

10.1 The Bid, as well as all related correspondence and documents exchanged by the Bidder and the Contracting Entity, shall be written in the language specified in the Data Sheet. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by the relevant accurate translation into the language specified. For purposes of interpretation of the Bid, such translation shall govern

#### 11. Bid Document

11.1 The Bid submitted by the Bidder shall comprise the following:

- a. Bid Submission Form
- b. Completed schedules as required, including Price Schedules, in accordance with ITB 12 and 17;
- c. Bid Guarantee in accordance with ITB 20;
- d. alternative bids, if permissible, in accordance with ITB 13;
- e. written authorizing; confirming the authorization for bid signature and the bidder shall according ITB 21.2;
- f. documentary evidence established in accordance with ITB 14.1 that the Factory and Services offered by the Bidder in its bid or in any alternative bid, if permitted, are eligible;
- g. documentary evidence in accordance with ITB 15 establishing the Bidder's eligibility and qualifications to perform the contract if its Bid is accepted;
- h. documentary evidence established in accordance with ITB 16 that the Factory and Services offered by the Bidder conform to the Bidding Document;
- i. In addition to the documents referred to in paragraph (11-1), in case the bid is submitted by a joint venture, the bid submitted by the joint venture shall be accompanied by the joint venture incorporation agreement (a duly certified partnership contract) unless the contracting entity requests the presentation of this agreement After awarding the tender with specifying the parts of the factory that each partner will be responsible for implementing.
- j. List of subcontractors, in accordance with ITB 16; and
- k. In addition to the documents referred to in paragraph (11-1), in the event that the bid is submitted by a consortium of companies, the bid submitted by the joint venture shall be accompanied by the joint venture incorporation agreement (a duly certified partnership contract) unless the contracting entity requests the presentation of this agreement After awarding the tender with specifying the parts of the factory that each partner will be responsible for implementing.
- l. List of Sub-contractors in accordance with ITB 16-2;

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m. Bidder's voucher of purchasing the Bidding Document.

Any other required document shall be specified in the Bid Data Sheet.

### **12. Bid Submission Form and Price Schedules**

12.1 The Bidder shall complete the Bid Submission Form, including the appropriate Price Schedules, using the relevant forms submitted in Section IV, Bidding Forms. The forms shall be completed as instructed in each form.

### **13. Alternative Bids**

13.1 The Bid Data Sheet indicates whether alternative bids are allowed. If they are allowed, the BDS will also indicate whether they are permitted in accordance with ITB 13.3, or invited in accordance with ITB 13.2 and/or ITB 13.4.

13.2 When alternatives to the Time Schedule are explicitly invited, a statement to that effect will be included in the Bid Data Sheet, The method for evaluating the various schedules shall also be defined in Section Three – qualification and evaluation criteria .

13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the Contracting Entity's requirements as described in the bidding document shall also provide: (i) a price at which they are prepared to offer a factory conference the Contracting Entity's requirements; and (ii) all information necessary for a complete evaluation of the alternatives by the Contracting Entity, including drawings, design calculations, technical specifications, breakdown of prices, and proposed installation methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Contracting Entity.

13.4 When bidders are invited in the Bid Data Sheet to submit alternative technical solutions for specified parts of the facilities, such parts shall be described in Section VI, Contracting Entity's Requirements. Technical alternatives that comply with the performance and technical criteria specified for the Factory and Services shall be considered by the Contracting Entity on their own merits, pursuant to ITB 35.

### **14. Documents Establishing the Eligibility of the Factory and related Services**

14.1 To establish the eligibility of the Factory and Services in accordance with ITB Clause 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV, Bidding Forms.

### **15. Documents Establishing the Eligibility and Qualifications of the Bidder**

15.1 To establish its eligibility and qualifications to perform the Contract in accordance with Section III, Evaluation and Qualification Criteria, the Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Bidding Forms.

15.2 Domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all

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## Section I. Instructions to Bidders

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information required to meet the criteria for eligibility as described in ITB 34

### **16. Documents establishing conformity of the Factory and related services with the bidding document**

16.1 The Bidder shall submit the information stipulated in Section IV, in sufficient detail to demonstrate substantial responsiveness of the Bidders' proposal to the work requirements and the execution required time.

16.2 For major items of Factory and Services as listed by the Contracting Entity in Section III, Evaluation and Qualification Criteria, which the Bidder intends to purchase or subcontract, the Bidder shall give details of the name and nationality of the proposed Subcontractors, including factories, for each of those items. In addition, the Bidder shall include in its bid information establishing compliance with the requirements specified by the Contracting Entity for these items. Quoted rates and prices will be deemed to apply to whichever Subcontractor is appointed, and no amendment of the rates and prices will be permitted.

16.3 The Bidder shall be responsible for ensuring that any Subcontractor proposed complies with the requirements of ITB 4, and that any factory, or services to be provided by the Subcontractor comply with the requirements of ITB 5 and ITB 15.1

### **17. Bid prices and deductions**

17.1 Unless otherwise specified in the Bid Data Sheet, bidders shall quote for the entire Factory and Services on a "single responsibility" basis such that the total bid price covers all the Contractor's obligations mentioned in or to be reasonably inferred from the bidding document in respect of the design, manufacture, including Contracting and subcontracting (if any), delivery, construction, installation and completion of the factory. This includes all requirements under the Contractor's Liabilities for testing, pre-commissioning and commissioning of the factory 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. Items against which no price is entered by the Bidder will not be paid for by the Contracting Entity when executed and shall be deemed to be covered by the prices for other items.

17.2 Bidders are required to quote the price for the commercial, contractual and technical obligations outlined in the bidding document. If a Bidder wishes to make a deviation, such deviation shall be listed in the relevant form in Section 4 (Bidding Forms). The Bidder shall also provide the additional price if any, for withdrawal of the deviation.

17.3 Bidders shall give a breakdown of the prices in the manner and detail called for in the Price Schedules included in Section IV, Bidding Forms.

17.4 Depending on the scope of the Project, the Price Schedules may comprise up to the six (6) schedules listed below. Separate Numbered Schedules included in Section IV, Bidding Forms, from those No. 1-4 below, shall be used for each of the elements of the Factory and Services. The total amount from each Schedule corresponding to an element of the Factory and Services shall be summarized in the schedule

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## Section I. Instructions to Bidders

titled Grand Summary, (Schedule 5), giving the total bid price(s) to be entered in the Bid Submission Form.

Schedule No. 1 Factory (including Mandatory Spare Parts) Supplied from outside Iraq

Schedule No. 2 Factory (including Mandatory Spare Parts) Supplied from inside Iraq .

Schedule No. 3 Design Services

Schedule No. 4 Civil Works, Installation, and Other Services

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

Schedule No. 6 Recommended Spare Parts

Bidders shall note that the factory and equipment included in Schedule Nos. 1 and 2 above **exclude** materials used for civil, building and other construction works. All such materials shall be included and priced under Schedule No. 4, Civil Works, Installation and Other Services.

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

a. Factory (and Mandatory spare parts) to be supplied from outside Iraq (Schedule No. 1):

The price of the factory shall be quoted on CIP-named place of destination basis as specified in **the Bid Data Sheet**

b. Factory (and Mandatory spare parts) to be supplied from inside Iraq (Schedule No. 2):

1. The price of the factory shall be quoted on an EXW INCOTERMS basis (such as “ex-works,” “ex-factory,” “ex-warehouse” or “off-the-shelf,” as applicable),

2. Sales tax and all other taxes payable in the Contracting Entity’s country on the factory if the contract is awarded to the Bidder, and

3. The total cost for each item.

c. Design Services (Schedule No. 3).

d. Civil Works, Installation, and Other Services shall be quoted separately (Schedule No. 4) and shall include:

– The rates or prices for local transportation to the set forth final take-over at **the Bid Data Sheet** (BDS).

– Insurance and other incidental services necessary to complete the factory,

– All labour costs, contractor’s equipment, temporary works, materials, consumables and all matters and things of whatsoever nature, including operations and maintenance services, the provision of

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operations and maintenance manuals, training, etc., where identified in the Bidding Document, as necessary for the proper execution of the installation of the factory and other related services

- Prices shall also include all taxes, duties, levies and charges payable in the Contracting Entity's country as of twenty-eight (28) days prior to the deadline for submission of bids, and as specified in the Bid Data Sheet and according to the applicable regulations.

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

17.6 The current edition of INCOTERMS, published by the International Chamber of Commerce shall govern.

17.7 The prices shall be either fixed or adjustable as specified in the Bid Data Sheet.

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

17.9 In the case of Adjustable Price, prices quoted by the Bidder shall be subject to amendment during performance of the contract to reflect changes in the cost elements such as labour, material, transport and contractor's equipment in accordance with the specific procedures and regulations issued by the Ministry of Planning and Economic Development and as specified in the corresponding Appendix to the Contract Agreement. A bid submitted with a fixed price quotation will not be rejected, but the price amendment will be treated as zero. Bidders are required to indicate the source of labour and material indices in the corresponding Form in Section IV, Bidding Forms.

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

17.11 Bidders wishing to offer any unconditional discount shall specify in their Bid Submission Form the offered discounts and the manner in which price discounts will apply. The discount shall be offered on or before the deadline for submission of Bids. Any Bid holding a conditional discount based on others Bids shall be considered as non-responsive and shall be rejected.

### 18. Bid Currencies and Payment

18.1 The currency (ies) of the bid shall be, as specified in the Bid Data Sheet.

18.2 The contracting entity may ask the bidders to provide an explanation and justification for how to submit their prices in foreign currencies and the Iraqi dinar, in order to be satisfied with this justification.

### 19. Bid Validity Term

19.1 Bids shall remain valid for the period specified in the BDS after the bid submission deadline date prescribed by the Contracting Entity. A bid valid for a shorter period shall be rejected by the Contracting Entity as non-responsive.

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19.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Contracting Entity may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a Bid Guarantee is requested in accordance with ITB 20, the Bidder granting the request for extension shall also extend the Bid Guarantee for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its Bid Guarantee. A Bidder granting the request shall not be required or permitted to amend its bid, except as provided in ITB 19.3.

### 20. Bid Guarantee

20.1 The Bidder shall submit as part of its bid, a bid Guarantee as specified in the Bid Data Sheet, in original form and in the amount specified in the Bid Data Sheet.

20.2 If a bid Guarantee is specified pursuant to ITB 20.1, it shall be in any of the following forms at the Bidder's option:

- a. a bank guarantee
- b. an irrevocable letter of credit; or
- c. a cashier's or certified check;

The Bid Guarantee shall be payable upon demand and unconditional guarantee issued by an accredited bank in Iraq as per the official publication of the Iraqi Central Bank. If the Bid Guarantee is issued by a Bank located outside the Contracting Entity's country, the issuer shall have a correspondent accredited financial institution located in the Contracting Entity's Country to make it enforceable. In the case of a bank guarantee, the Bid Guarantee shall be submitted either using the Bid Guarantee Form included in Section IV (Bidding Forms) or in another substantially similar format approved by the Contracting Entity prior to bid submission. In either case, the form shall include the complete name of the Bidder. The Bid Guarantee shall be addressed to the Contracting Entity stating the No. and title of this Tender and to be valid for twenty-eight days (28) beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 19.2.

20.3 If a Bid Guarantee is specified pursuant to ITB 20.1, any bid not accompanied by a substantially responsive Bid Guarantee shall be rejected by the Contracting Entity as non-responsive.

20.4 If a Bid Guarantee is specified pursuant to ITB 20.1, the Bid Guarantee of unwinning Bidders shall be returned as promptly as possible upon the winning Bidder's submitting of the Good performance guarantee pursuant to ITB 43. Nevertheless and upon the approval of the Contracting entity Contracting entity, the Contracting Entity has the right to release the Bid Guarantees of the unwinning Bidders that are unlikely to be awarded the Tender before the end of the Bid Validity and after the referral recommendation has been made. In such a case, the Bid Guarantees of the first three (3) candidates Bidders shall be maintained for referral.

20.5 The Bid Guarantee of the winning Bidder shall be returned as promptly as possible once the winning Bidder has signed the Contract and submitted the required Good performance guarantee.

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20.6 The Bid Guarantee may be forfeited:

- a. if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Form, or
- b. if the winning Bidder fails to:
  - i. sign the Contract in accordance with ITB Clause 41 of Instructions to Bidders or
  - ii. submit a Good performance guarantee in accordance with ITB 43 from Instructions to Bidders.

(5) In the case, the unwinning Bidder's complain or appeal, as per ITB 41, is found by the Administrative Court to have caused damages resulting from delaying the contract signature for false or unjustified reasons.

20.7 The Bid Guarantee 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 Guarantee shall be in the names of all future partners as named in the letter of intent referred to in ITB 4.1.

20.8

- a. If the Bid Guarantee is not provided by some Bidders, due to exemption provided by the Iraqi applicable laws, as in the case of Public Firms or others as specified in Bid Data Sheet 20.1, and
- b. if such a Bidder is nominated as a winning Bidder and fails to: sign the Contract in accordance with ITB 42; or submit a good performance guarantee in accordance with ITB 43; In this case, the contracting entity may, in the event that the bid data sheet stipulates that, announce this bidder negligent and ineligible to award the contract to it, and proceed to apply the administrative procedures stipulated in the bid data sheet.

### 21. Bid Form and Signature

21.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it "ORIGINAL." Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE". In addition, the Bidder shall submit copies of the bid, in the No. specified in the BDS and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

21.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the Bid Data Sheet and shall be attached to the bid. The name and position held by each person signing the authorization shall be typed or printed below the signature. The Bidder has to ensure the signature of the Bid Submission Form and of every page of the Price Schedules and the attached documents to the Bid by the person signing the Bid. Noting that all pages of the bid where entries or corrections have been made by the Bidder shall be signed or initialled by the person signing the bid. Prices shall be incorporated by the Bidder in words and figures as required in the Price Schedules. Any other requirement is specified in the Bid Data Sheet.

21.3 A bid submitted by a JV shall comply

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with the following requirements:

- a. Unless not required in accordance with ITB 4.1 (a), be signed so as to be legally binding on all partners and
  - b. Include the Representative's authorization referred to in ITB 4.1 (b), consisting of a power of attorney signed by those legally authorized to sign on behalf of the JV.
- 21.4 The bid shall contain no interlineations, erasures, overwriting, or amendment to any clause of the Bidding forms, except to correct errors made by the Bidder, in which case such corrections shall be signed and initialed by the person or persons signing the bid.

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### D. Submission of Bids

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#### 22. Sealing, Marking and Submission of Bids

22.1 Bidders may always submit their bids by mail (mail or express courier), or by hand. Procedures for submission, sealing and marking are as follows:

- a. Bidders submitting bids by mail or by hand shall enclose the original and each copy of the Bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "Original," "Alternative" and "Copy." These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB sub-Clauses 22.2 and 22.3.

22.2 The inner and outer envelopes shall:

- a. bear the name and address of the Bidder, the name of the person authorized to sign the Bid on behalf of the Bidder ,
- b. be addressed to the Contracting Entity in accordance with ITB 24.1;
- c. bear the specific identification of this bidding process indicated in accordance with ITB 1.1; and
- d. bear a warning not to open before the time and date for bid opening.

22.3 If all envelopes are not sealed, stamped, and marked as required, the Contracting Entity will assume no responsibility for the misplacement or premature opening of the bid.

#### 23. Deadline for Submission of Bids

23.1 Bids shall be received by the Contracting Entity at the address and no later than the date and time indicated in the Bid Data Sheet. An Acceptance will be provided by the Contracting Entity against each Bid submitted. One copy of the Acceptance will be for the Bidder, and the second copy will be kept by the Contracting Entity for a further reference.

23.2 The Contracting Entity may, at its discretion and before the deadline, extend the deadline for the submission of bids by amending the Bidding Document in accordance with ITB 8, in which case all rights

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and obligations of the Contracting Entity and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended. When extension is applicable, the Contracting Entity shall advertise the extension as done for the Short Contracting Notice of this tender.

### 24.Late Bids

24.1 The Contracting Entity shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 23. Any bid received by the Contracting Entity after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

### 25.Withdrawal, Replacement, and Amendment of Bids

25.1 A Bidder may withdraw, substitute, or amend its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 21.2, (except that withdrawal notices do not require copies). The corresponding Replacement or amendment of the bid shall accompany the respective written notice. All notices shall be:

- a. The bidder shall provide any amendment or replacement of his bid in accordance with ITB 21 and 22 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked "Withdrawal," "Replacement," "Amendment;" and
- b. the notice shall be received by the Contracting Entity prior to the deadline prescribed for submission of bids, in accordance with ITB 23.

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

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

## E. Opening, Evaluation, and Comparison of Bids

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### 26.Opening of Bids

26.1 The Contracting Entity shall conduct the bid opening in public, in the presence of Bidders` or their designated representatives and at the address, date and time specified in the Bid Data Sheet.

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

Next, envelopes marked "Replacement" shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid Replacement shall be permitted unless the corresponding Replacement notice contains a valid authorization to request the Replacement and is read out at bid opening.

Envelopes marked "Amendment" shall be opened and read out with the corresponding bid. No bid amendment shall be permitted unless the corresponding amendment notice contains a valid authorization to request the amendment and is read out at bid opening.

Only bids that are opened and read out at bid opening shall be

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considered further.

- 26.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and the Bid Price (of each item, and per lot if applicable), including any discounts and alternative bids, and indicating whether there is an amendment; the presence or absence of a Bid Guarantee; the presence or absence of a power of attorney; and any other details as the Contracting Entity may consider appropriate. Only discounts and alternative bids read out at bid opening shall be considered for evaluation. No bid shall be rejected at bid opening except for late bids, in accordance with ITB 24.1. All pages of the original of each Bid shall be stamped with the bid opening committee stamp and the bid opening committee members shall sign on all pages of the price schedules of the original of each Bid.
- 26.4 The Contracting Entity shall prepare a record of the bid opening that shall include, as a minimum the information stated above in ITB 26.1, 26.2, and 26.3 in addition to: sealing and stamping of the envelopes; conditional pricing or discounts based on other Bids; marking (with the signature of the Chairman of Bids Opening Committee and the members) of any alteration, erasure, correction made by the Bidder on the prices schedules (while slashing un-priced items with horizontal lines); Bidder's signature of the Bid Submission Form and other attached Bid Forms and of every page of the price schedules; No. of pages of each Bid; any other relevant remarks and reservations made by the Bidder on the Bid; any other remarks and general description and highlights to be made by the Committee on any attachments to the Bid. All Bid's content and attachments will be initialled by the Bids Opening Committee stamp. The Bidders' representatives who are present shall be requested to sign the record with the right to add any comment on the performance of the Committee. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders requesting it.
- 26.5 All Bids' prices, technical specifications, and implementation periods will be officially placed on the Contracting entity Contracting entity's bill board while stating that these are to be analysed and verified further.
- 26.6 The Bids will be referred by an official report to the Bids Evaluation Committee for a further analysis and verification. The Contracting Entity will be notified accordingly and will maintain the original Bids at its premises.

### **27. Procedures Confidentiality**

- 27.1 Information relating to the evaluation of bids and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.
- 27.2 Any attempt by a Bidder to influence the Contracting Entity in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.
- 27.3 Notwithstanding ITB 27.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Contracting Entity on any matter related to the bidding process, it shall do so in writing.

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### **28. Clarification of Bids**

- 28.1 In order to assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Contracting Entity may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the Contracting Entity shall not be considered. The Contracting Entity's request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of calculation errors discovered by the Contracting Entity in the evaluation of the bids, in accordance with ITB 32.
- 28.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Contracting Entity's request for clarification, its bid may be rejected.

### **29. Deviations, Reservations, and Omissions**

- 29.1 During the evaluation of bids, the following definitions apply:
- a. "Deviation" is a departure from the requirements specified in the Bidding Document;
  - b. "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
  - c. "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.

### **30. Determination of Responsiveness**

- 30.1 The Contracting Entity's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB11.
- 30.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,
- a. if accepted, would:
    1. affect in any substantial way the scope, quality, or performance of the Factory and Services specified in the Contract; or
    2. limit in any substantial way, inconsistent with the Bidding Document, the Contracting Entity's rights or the Bidder's obligations under the proposed Contract; or
  - b. if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.
- 30.3 The Contracting Entity shall examine the technical aspects of the bid in particular, to confirm that all requirements of Section VI, Contracting Entity's Requirements have been met without any material deviation, reservation, or omission.
- 30.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Contracting Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

### **31. Non-material Non-Conformity**

- 31.1 Provided that the bid fulfills the conditions in a fundamental way, the contracting entity can accept any

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inconsistency in the bid if it does not constitute a fundamental deviation, reservation or omission.

- 31.2 Provided that a bid is substantially responsive, the Contracting Entity may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.
- 31.3 That a bid is substantially responsive, the Contracting Entity shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The amendment shall be made using the method indicated in Section III, Evaluation and Qualification Criteria.

### 32. Correction of Mathematical Errors

- 32.1 Provided that the bid is substantially responsive, the Contracting Entity shall correct mathematical errors on the following basis:
- where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly;
  - where there are contradictions between the total of the amounts of Schedule Nos. 1 to 4 and the amount given in Schedule No. 5 (Grand Summary Table), the former shall prevail and the latter will be corrected accordingly; and
  - 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 mathematical error, in which case the amount in figures shall prevail subject to (a) and (b) above.
- 32.2 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its bid shall be declared non-responsive.

### 33. Conversion to Single Currency

- 33.1 For evaluation and comparison purposes, the currency (ies) of the bid shall be converted into a single currency as specified in the Bid Data Sheet.

### 34. Preference Margin

- 34.1 Unless otherwise specified in the Bid Data Sheet, a margin of preference shall apply for domestic bidders. The amount of it as specified in the BDS.

### 35. Evaluation of Bids

- 35.1 The Contracting Entity shall use the criteria and methodologies indicated in this Clause. No other evaluation criteria or methodologies shall be permitted.

#### Technical Evaluation:

- 35.2 The Contracting Entity will carry out a detailed technical evaluation of the bids not

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previously rejected to determine whether the technical aspects are in compliance with the Bidding Document. The bid that does not meet minimum acceptable standards of Completion, consistency and detail, and the specified minimum (or maximum, as the case may be) requirements for specified functional guarantees, will be rejected for non-responsiveness. In order to reach its determination, the Contracting Entity will examine and compare the technical aspects of the bids on the basis of the information supplied by the bidders, taking into account the following:

- a. overall Completion and compliance with the Contracting Entity's Requirements; conformity of the Factory and Services offered with specified performance criteria, including conformity with the specified minimum (or maximum, as the case may be) requirement corresponding to each functional guarantee, as indicated in the Specification and in Section III Evaluation and Qualification Criteria; suitability of the Factory and Services offered in relation to the environmental and climatic conditions prevailing at the site; and quality, function and operation of any process control concept included in the bid;
- b. type, quantity and long-term availability of mandatory and recommended spare parts and maintenance services; and
- c. Other relevant factors, if any, listed in Section III, Evaluation and Qualification Criteria.

35.3 Where alternative technical solutions have been allowed in accordance with ITB 13, and offered by the Bidder, the Contracting Entity will make a similar evaluation of the alternatives. Where alternatives have not been allowed but have been offered, they shall be ignored.

### Financial Evaluation

35.4 To evaluate a bid, the Contracting Entity shall consider the following:

- a. the bid price, excluding provisional sums and the provision, if any, for contingencies in the Price Schedules;
- b. price amendment for correction of mathematical errors in accordance with ITB 32.1;
- c. price amendment due to discounts offered in accordance with ITB 17.10 or ITB 17.11;
- d. price amendment due to quantifiable non-material non-conformities in accordance with ITB 31.3;
- e. converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 33; and
- f. the evaluation factors indicated in Section III, Evaluation and Qualification Criteria.

35.5 Price amendment is allowed in accordance with ITB 17.7, the estimated effect of the price amendment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.

35.6 If this Bidding Document allows Bidders to quote separate prices for different lots (contracts), and the award to a single Bidder of multiple lots (contracts), the methodology to determine the lowest evaluated price

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of the lot (contract) combinations, including any discounts offered in the Bid Submission Form, is specified in Section III, Evaluation and Qualification Criteria.

35.7 If the bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Contracting Entity, the Contracting Entity may require the Bidder to produce detailed price analyses for any or all items of the Price Schedules, to demonstrate the internal consistency of those prices with the methods and time schedule proposed. After evaluation of the price analyses, taking into consideration the Payment Terms, the Contracting Entity may require that the amount of the good performance guarantee be increased at the expense of the Bidder to a level sufficient to protect the Contracting Entity against financial loss in the event of default of the winning Bidder under the Contract.

### **36. Comparison of Bids**

36.1 The Contracting Entity shall compare all substantially responsive bids in accordance with ITB 35.4 to determine the lowest evaluated bid.

### **37. Bidder's Eligibility and Qualifications**

37.1 The contracting entity will determine, to its satisfaction, whether the bidder chosen as the bidder with the lowest cost evaluation (Lowest Evaluated Bid) was among the tenders that are substantially responsive to the conditions, legally qualified and meets the eligibility criteria specified in Section III - evaluation and qualification criteria.

37.2 The contracting entity will determine this based on the study and evaluation of the documented evidence submitted by the bidder in accordance with ITB 15.

37.3 A successful qualification is a prerequisite for awarding the contract to a lowest evaluated bid. If the result of the qualification is negative, this leads to the rejection of the bidder of the bidder with the lowest cost, and in this case, the contracting entity will undertake an evaluation process similar to the eligibility of the bidder with the lowest cost that follows, to ensure that he is able to implement the contract in an appropriate and acceptable manner.

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### **38.Contracting Entity’s Right to accept or reject all or any of the bids**

38.1 The Contracting Entity is not bound to accept the lowest Bid. The Contracting Entity reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid Guarantees, shall be promptly returned to the Bidders together with the cost of purchasing the Bidding forms as paid by the Bidders.

## **F. Award of Contract**

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### **39.Award Criteria**

- 39.1 Subject to ITB 38.1, the Contracting Entity shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be eligible and elegendible to perform the Contract satisfactorily.
- 39.2 The Contracting Entity reserves the right to accept any of the essential deviations submitted in accordance with ITB 17.2 by the lowest evaluated bidder, at the price shown for the deviation in the bid.
- 39.3 Before the award, the Contracting Entity has to verify from the relevant authorities the validation of the substantial forms provided in the Bids including the Bid Guarantee.

### **40.Notification of Award**

- 40.1 Prior to the expiration of the period of bid validity, the Contracting Entity shall notify the winning Bidder, in writing, that its bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the “Letter of Acceptance”) shall specify the sum that the Contracting Entity will pay the Contractor in consideration of the execution and completion of the Factory and Services (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”).
- 40.2 At the same time, the Contracting Entity shall also notify all other Bidders of the results of the bidding, and shall publish the results as per the applicable Iraqi Laws identifying the bid and lot No.s and the following information: (i) name of each Bidder who submitted a Bid; (ii) bid prices as read out at Bid Opening; (iii) name and evaluated prices of each Bid that was evaluated; (iv) name of bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, and the Price and currency it offered, as well as the duration and summary scope of the contract awarded.
- 40.3 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract subject to the settlement of Appeal by unwinning bidder as per ITB 41.
- 40.4 The Contracting Entity shall promptly respond in writing to any unwinning Bidder who, after notification of award in accordance with ITB 40.2, requests in writing the grounds on which its bid was not selected.

### **41.Complaints and Appeals**

- 41.1 The mechanism specified in the instructions for implementing government contracts in effect in this regard shall be approved.

### **42.Signing of Contract**

- 42.1 Promptly upon notification, the Contracting Entity shall send the Contract Agreement to the winning bidder. The Contract shall be drafted in the language indicated in Bid Data Sheet.

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## Section I. Instructions to Bidders

- 42.2 Within fourteen (14) days of Acceptance of the Contract Agreement - or (29) twenty nine days in the case referred to in ITB 41.1 above- the winning Bidder shall sign, date, and return the Contract Agreement to the Contracting Entity. Otherwise, legal measures per the contract shall be taken in accordance with the provisions of the instructions for implementing government contracts in effect in this regard. The contract shall be approved according to what is stipulated in the bidding data sheet.
- 42.3 Notwithstanding ITB 42.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Contracting Entity, to the country of the Contracting Entity, or to the use of the Factory and Services to be supplied, where such export restrictions arise from trade regulations from a country supplying those Factory and Services, the Bidder shall not be bound by its bid, always provided, however, that the Bidder can demonstrate to the satisfaction of the Contracting Entity that signing of the Contract Agreement has not been prevented by any lack of diligence on the part of the Bidder in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the Factory and Services under the Conditions of the Contract.

### 43. Good Performance Guarantee

- 43.1 Within fourteen (14) days of the Acceptance of notification of award from the Contracting Entity, the winning Bidder shall submit the good performance guarantee in accordance with the General Conditions, subject to ITB 35.7, using for that purpose the Performance Guarantee Form included in Section IX, Contract Forms, or another form acceptable to the Contracting Entity. If the performance Guarantee submitted by the winning Bidder is in the form of a Guarantee, it shall be issued by a Guaranteeing or insurance company that has been determined by the winning Bidder to be acceptable to the Contracting Entity. A foreign institution providing a performance Guarantee shall have a correspondent financial institution located in the Contracting Entity's Country.
- 43.2 Upon the failure of the winning Bidder to submit the above-mentioned good performance Guarantee sign the Contract within the here above fourteen (14) days, the Contracting Entity will send an official notice for the winning Bidder to sign the Contract within fifteen (15) days from receiving this notice, after which the Contracting Entity has sufficient grounds to proceed with the annulment of the award and forfeiture of the Bid Guarantee. In that event the Contracting Entity may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Contracting Entity to be eligible to perform the Contract satisfactorily. In that case the winning Bidder will be responsible for paying the difference in the bids prices in addition to forfeiture of the Bid Guarantee.

## Second Section Bid Data Sheet

This section contains provisions for each tender, and complements the information or requirements specified in the first section (Instructions to Bidders)

### A. Introduction

<b>1.1</b>	<b>Contracting Entity's name:</b> <i>[insert contracting entity's name]</i>
<b>1.1</b>	Tender / Invitation Name: <i>[specify the name of the tender]</i> Tender / Invitation Number <i>[insert reference for tender]</i> The number of lots (and the resulting contracts) in this tender / invitation is: <i>[specify the number and names of slides / lots]</i>
<b>1.2</b>	The name and reference number of the project as stated in the federal budget for the Iraqi government is: <i>[specify: name and reference number of the project]</i> <i>[Specify the year of the federal budget certified by the relevant authorities with the project's tab]</i> for the account <i>[specify: contracting agency name]</i> Funding source for this contract (these contracts): <i>[specify: funding source]</i>
<b>4.1a</b>	The individuals or firms in a joint venture, joint venture or association [ <b>“shall be”</b> or <b>“shall not be”</b> ] jointly and severally liable for contract execution.
<b>4.4</b>	List of diseligible bidders is available on the following website address: <i>[insert the relevant website address/addresses of the Contracting Entity and that of the Ministry of Planning Directorate of General Government Contracts]</i>

### B. Bidding Document

<b>7.1</b>	For Inquiries only, the Contracting Entity's address is: <b>Attention:</b> <i>[Insert: name of the person in charge and the title _____ ]</i> <b>Street Address:</b> <i>[specify_____ ]</i> <b>Building and Floor/Room No.:</b> <i>[specify_____ ]</i> <b>City:</b> <i>[specify_____ ]</i> <b>PO Box:</b> <i>[specify_____ ]</i> <b>Country :</b> <i>[specify _____ ]</i>
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Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]



Section II. **Section Bid Data Sheet**

	<p><b>Telephone :</b> [specify _____ ]</p> <p><b>Inquiries shall be delivered personally, by mail or by express courier and [Select "Accept" or "Do not accept"] by cable.</b></p>
<b>7.4</b>	<p>Place and time of the Pre-bidding conference:  <i>If it is not planned, specify "not applicable", otherwise, state:</i></p> <p>Date: [insert the date, but not to be less than seven (7) days prior to the deadline for submission of bids]</p> <p>Time: [insert the time of the conference]</p> <p>Place: [insert the place of the conference]</p> <p>A site visit conducted by the Contracting Entity ["shall" or "shall not"] be organized</p>
<b>C. Preparation of Bids</b>	
<b>10.1</b>	<p>The language of the bid is: [Choose one or more languages: Arabic, Kurdish or English]</p> <p>{In case of more than one permitted language to Bid: insert: the Bidders are permitted, at their choice, to submit their bids in one of the languages above indicated. Bidders shall not submit bids in more than one language}.</p>
<b>11.1</b>	<p>The Bidder shall submit with its bid the following additional documents:</p> <p><b>{N.B.: This concerns any additional document not already listed in ITB 11.1 that shall be submitted with the Bid}</b></p> <p><b>[Insert additional Documentation required according to the subject of the Tender]</b></p>
<b>13.1</b>	<p><b>{N.B.: Use one of the following options as appropriate}</b></p> <p>a. Alternative bids are invited in accordance with ITB 13.2 and/or 13.4          [Where alternative bids are invited, the Contracting Entity shall specify the type(s) of alternative(s) accepted in relation to ITB 13.2 and 13.4]          Or</p> <p>b. Alternative bids are permitted in accordance with ITB 13.3.          Or</p> <p>c. Alternative bids are not permitted.</p>
<b>13.2</b>	<p>Alternatives to the Time Schedule [insert "shall" or "shall not be"] permitted.</p> <p><u>{Alternative times for completion shall be permitted when the Contracting Entity sees potential net benefits in</u></p>

Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]



Section II. **Section Bid Data Sheet**

	<p>different times for completion; they also have merit for contracts bid on a “slice and package” basis}</p> <p>If alternatives to the Time Schedule are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.</p>
<b>13.4</b>	<p>Alternative technical solutions shall be permitted for the following parts of the Factory and Services: [<i>insert parts for which alternative technical solutions are permitted, or “none”</i>] as further detailed in the Specification. If alternative technical solutions are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.</p>
<b>17.1</b>	<p>{<b>N.B.:</b> Use one of the following options as appropriate</p> <p>Bidders shall quote for the following components or services on a single responsibility basis [ ]</p> <p><i>and/or</i></p> <p>The following components or services will be provided under the responsibility of the Contracting Entity: [ ]}</p>
<b>17.5a</b>	<p>Take-over site name [ ]</p>
<b>17.5b</b>	<p>Final Take-over Site Name: [ ]</p> <p>The collection of Government debts will be applicable as per the Iraqi Law for collecting government debts No.56 of year 1977 .</p> <p>The foreign Contractors (shall, shall not) be exempted from the Income Taxes, Reconstruction of Iraq Taxes, and all other applicable taxes if the Contract is for Development Projects and listed under Development Program only.</p>
<b>17.7</b>	<p>The prices quoted by the Bidder shall be: [<i>insert “fixed” or “adjustable”</i>]</p>
<b>18.1</b>	<p>The currency(ies) of the bid shall be as follows:</p> <p>{Choose just one of the following alternatives below}</p> <p><b>Alternative A</b> (Bidders to quote entirely in Iraqi Dinar):</p> <p><i>The unit rates and the prices shall be quoted by the Bidder in the Schedules, entirely in in Iraqi Dinar.</i></p> <p><b>OR</b></p> <p><b>Alternative B</b> (Bidders allowed to quote in local and foreign currencies):</p> <p><i>The unit rates and prices shall be quoted by the Bidder in the Schedules separately in</i></p>

Bid No. [ ]

Contracting Entity [ ]

## Section II. Section Bid Data Sheet

	<p><i>the following currencies:</i></p> <ol style="list-style-type: none"> <li>1. For the goods or inputs to the requirements that the bidder expects to submit from inside Iraq, <b>in Iraqi dinars;</b></li> <li>2. For the goods or inputs to the requirements that the bidder expects to import from outside Iraq (defined by "items in foreign currencies"), a maximum of three currencies can be used from the currencies of eligible countries, provided that this currency (currencies) is among the list of currencies that The Central Bank of Iraq issues its exchange rates in Iraqi dinars.</li> </ol>
19.1	<p>The bid validity period [<i>insert: number (number of days after calculating the time required for evaluation of bids and approval, and awarding with the taking of precautions in place by the competent authorities)</i>] shall be days after the deadline for Acceptance of bids.</p> <p><u>Note: The bid validity period shall be realistic and sufficient to allow the completion of the bid evaluation, taking into consideration the degree of work complexity and the time required to study and clarify the tenders and obtain approvals and reviews and to notify the award decision. Usually, this period shall not exceed twenty (120) days.</u></p>
20.1	<p>The bid shall include a bid guarantee issued by an accredited bank in Iraq in accordance with the instructions of the Central Bank of Iraq.</p> <p>{<u>[If decided by the Contracting entity: <b>The Contracting entity has decided not to ask for Bid Guarantees from the Decent Firms in accordance with the Iraqi applicable laws and regulations</b>]</u>}.</p> <p>The amount of the Bid Guarantee shall be [<i>insert: _____</i>] % of the Bid price or the equivalent amount of 1% of the Tender budget] or its equivalent <i>in a convertible currency adopted by the Iraq Central Bank.</i></p>
20.8	<p>If the Bidder commits any of the actions prescribed in subparagraphs (a) or (b) of this provision, the Contracting Entity will declare the Bidder in violation and will inform the Ministry of Planning and Economic Development to take the required actions against the violating Bidder (including Suspension or Black Listing) as per the applicable Iraqi laws.</p>
22.1	<p>In addition to the original of the bid, the No. of copies is:</p>
22.2	<p>The written confirmation of authorization to sign on behalf of the Bidder shall consist of: a Power of Attorney issued by the Bidder (or JV) dated no more than 3 month or Company Registration Form (Certificate of establishment showing the authorized signatory).</p> <p><i>[All Bid pages shall be No.ed]</i></p>

Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

Section II. **Section Bid Data Sheet**

**D. Submission and Opening of Bids**

<p><b>23.1</b></p>	<p>For bid submission purposes only, the Contracting Entity’s address is:  <b>Attention:</b> <i>[insert the name and title of the person responsible to receive the bids]</i>  <b>Street address:</b> [specify _____]  <b>Building and floor / chamber No.:</b> [specify _____]  <b>City:</b> [specify _____]  <b>PO Box:</b> [specify _____]  <b>Country:</b> [specify _____]                      The deadline for bid submission is:  <b>Date:</b> [specify _____]  <b>Timing:</b> [specify _____]  <u>{Note: The bid submission date is generally 10 to 60 days from the date of last Contracting Notice, depending on the importance of Tender and the estimation of the Contracting entityContracting entity. For such a Tender, 35 days would be advised as minimum }.</u>                      17.1 Note: Choose one of the following options, as appropriate:</p>
<p><b>26.1</b></p>	<p>Bidding shall be opened at the following address:  <b>Street address:</b> [specify _____]  <b>Building and floor / chamber No.:</b> [specify _____]  <b>City:</b> [specify _____]  <b>Country:</b> [specify _____]  <b>Date:</b> [specify _____]  <b>Timing:</b> [specify _____]  <u>{Note: The bid opening date shall be the same as the deadline for submitting bids, in order to reduce potential complaints related to unsafe storage of bids. In exceptional cases and when it is not possible to perform the bid opening at the same deadline for the submission of bids, and after the approval of the contracting entity, the date for the bid opening may be determined on the morning of the next business day, according to the Iraqi laws in force}.</u></p>
<p><b>E. Evaluation, and Comparison of Bids</b></p>	
<p><b>33.1</b></p>	<p><i>[Insert “Not Applicable” if Alternative A is retained for ITB 18.1]</i>  <i>[Use the following only if Alternative B is retained for ITB 18.1]</i>  <b>The currency(ies) of the Bid shall be converted into a single currency as follows:</b>  <b>The Iraqi dinar will be used for the purposes of evaluation and comparison of bids, and all bid prices will be converted in other currencies into the Iraqi dinar.</b></p>

## Section II. Section Bid Data Sheet

	<p>The source of exchange rate shall be: [<i>Insert: name of the source of exchange rates (e.g., the Central Bank in Iraq)</i>].</p> <p>The date for the exchange rate shall be: [<i>insert: day, month and year, i.e, the deadline for bids submission</i>].</p>
34.1	<p>A margin of preference preference [<i>insert “shall” or “shall not” apply</i>].</p> <p>If a margin of preference applies, the application methodology will be as specified in Section III (Evaluation and Qualification Criteria).</p>
37.4	<p><b>Subcontracting:</b></p> <p>Public Firms shall not subcontract without the written pre-approval of the Contracting Entity and as per the conditions set by the applicable Iraqi laws. In addition, Public Firms shall not subcontract in full their awarded public contract.</p> <p>Companies affiliated with the Ministry of Industry and Minerals cannot contract with subcontractors to implement the works that are the subject of the contract if they are awarded.</p>
42.1	<p>The Contract shall be executed in: [<i>Insert: the language as Arabic, Kurdish, and English if possible</i>].</p> <p>The contract shall be legalized according to the procedures followed in this regard.</p>

Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

# **Section III. Evaluation and Qualification Criteria**

## **(Following Prequalification)**

This section includes all the criteria that the contracting Entity shall adopt to evaluate bids and qualify bidders. According to Clauses 35 and 37 of the Instructions to Bidders, no other standards, elements, or approaches may be adopted. The bidder shall give all the required information according to the forms specified in the fourth section, the bidding forms.

## 1. Evaluation<sup>1</sup>

### 1.1 Technical Evaluation

1.1.1 The contracting Entity shall conduct a technical analysis of the bids that have not been rejected previously, evaluation phases and have not been rejected, to determine whether the technical aspects are applicable to the bidding document. A bid that does not meet the minimum acceptable criteria for Completion and consistency in detail, and the minimum specific requirements (or maximum, as the case may be) for specified functional guarantees will be rejected for non-respond. In order to make the decision, the contracting entity will study and compare the technical aspects of bids on the basis of the information provided by the bidder, taking into account the following procedures and features:

- a. Comprehensive Completion and compliance with the fourth section; requirements of the contracting Entity; conformity of the factory and services provided to specific performance standards, including conference the minimum (or maximum requirements, as the case requires) related to each job guarantee, as defined in the specifications and in the third section, evaluation and qualification criteria The suitability of the factory and the services provided for the environmental and climatic conditions prevailing at the site; the quality, function and work of any process control concept contained in the bid; and
- b. sort, quantity and long-term availability of Mandatory and Recommended Spare Parts and Maintenance Services

1.1.2 Where Alternative Technical Solutions have been allowed in accordance with instruction to bid 13, and offered by the Bidder, the Contracting Entity will make a similar evaluation of the alternatives. Where alternatives have not been allowed but have been offered, they shall be ignored.

1.1.3 In addition to the previous features and procedures, the following factors shall apply: **[insert appropriate additional provisions]**

### 1.2 Economic / financial Evaluation

The following factors and methods will apply:

#### a. Time Curriculum

The period of completion the factory and the services executed since the effective date of the contract specified in Clause 3 of the contract agreement to specify the period of completion of the trial operation is: **[insert No. of days]**. No margin is given preference for early completion. **[The completion time specified shall be for the entire factory and services or for parts or sections of the factory and services]**.

#### b. O&M support costs

Since the operating and maintenance support costs for the facilities provided are a major part of the life cycle cost of these facilities, these costs will be evaluated according to the principles specified below, and also include the cost of spare parts for the initial period of operation listed below, and on the basis of The prices submitted by each bidder in the Table of Prices 1 and 2, as well as on the basis of previous experience with the contracting entity/contracting entity or employers with a similar condition. These costs are added to the bid price for evaluation purposes.

**[Use one of the two options given below]**

---

Bid No. [ ]

Contracting Entity [ ]

Alternative A. Section III. **Evaluation and Qualification Criteria (Following Prequalification)**

{Option 1: The operating and maintenance costs factors for calculation of the life cycle cost are:

- i. No. of years for life cycle: *[insert life cycle period in years. The period shall not exceed the time before a major overhaul of the facilities becomes necessary]*;
- ii. Support operating costs: *[insert fuel and/or other input unit cost for operational requirements]*;
- iii. Maintenance costs, including the cost of spare parts for the initial period of operation, and
- iv. A rate of *[insert rate in words and figures]* per cent, to be used to calculate the net present value for all annual future costs calculated under (ii) and (iii) above for the period specified in (i).

**Or**

{Option 2:

*[Enter a reference to the PROGRAM specified in the specifications or elsewhere in the bidding forms]*

The price of recommended spare parts quoted in Price Schedule No. 6 shall not be considered for evaluation}

**c. Functional Guarantees of the Factory and Services**

*[insert appropriate reference to the functional guarantees, and use text suggested below]*

The minimum (or maximum) requirements stated in the Specification for functional guarantees required in the Technical Specification are:

Functional Guarantee [as required in the Specification, e.g., performance, efficiency, consumption, etc].	Minimum (or Maximum, as appropriate) Requirement [as required in the Specification]
1.	
2.	
3.	
...	

Bid No. [ ]

Contracting Entity [ ]

## Alternative A. Section III. Evaluation and Qualification Criteria (Following Prequalification)

For the purposes of evaluation of [*insert FG to be evaluated*], for each percentage point that the functional guarantee of the proposed Factory and Services is below the norm specified in the Specification and in the above table, but above the minimum acceptable levels also specified therein, an amendment of [*insert amount in Iraqi Dinar*] will be added to the tender price. If the drop below the norm or the excess above the minimum acceptable levels is less than one per cent, the amendment will be prorated accordingly.

### d. Business, services, facilities, etc., to be provided by the Employer

A submitted bid shall include the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the bidding document, the contracting Entity shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation.

### a. Quantifiable Deviations and Omissions from the contractual obligations

e. The assessment shall be based on the evaluated cost of achieving the contract in compliance with all contractual obligations under this bidding document. The Contracting Entity will assess the cost of such a deviation for the purpose of ensuring fair comparison of bids.

### f. Specific additional criteria

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

[*If applicable, insert a list of additional criteria and evaluation method*]

Any amendments in price that result from the above procedures shall be added, for purposes of comparative evaluation only, to determine an "Evaluated Bid Price." Bid prices quoted by bidders shall remain unaltered

## 1.3 Technical alternatives

Technical alternatives shall be evaluated, if invited in accordance with ITB 13.4, as follows:

## 2. Qualification

### 2.1 Update of Information

The Bidder and any subcontractors shall meet or continue to meet the criteria used at the time of prequalification.

### 2.2 Financial Resources

The bidder shall demonstrate his ability or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:, by using the relevant Form No FIN3.3 in Section IV, Bidding Forms,

i. the following cash-flow requirement: [*insert relevant amount*]

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Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]



## Alternative A. Section III. Evaluation and Qualification Criteria (Following Prequalification)

and;

- ii. The overall cash flow requirements for this contract and its current works commitment.

*Cash flow requirement for a No. of months [Indicate under (i) above, determined as the total time needed by the Employer to pay a contractor's invoice, taking into consideration (a) the actual period for construction, from the beginning of the month invoiced, (b) the period needed by the Project Manager to issue monthly payment certificate, and (c) the period needed by the Employer to pay the amount certified. The total period shall not exceed six months. The assessment of the monthly amount shall be based on a straight-line projection of the estimated cash flow requirement over the particular contract period, neglecting the effect of any]*

### 2.3 Personnel

The Bidder shall demonstrate that he shall have the personnel for the key positions that meet the following requirements:

SN	Position/ Specialization	Total Work of Experience (years)	Experience In Similar Works (years)
1			
2			
3			
...			

The Bidder shall provide details of the proposed team work and their experience records in the relevant Information Forms included in Section IV, Bidding Forms. Proposed team work shall be committed for the execution of the Contract and shall not be replaced without the approval of the Contracting Entity/Employer.

*[The managerial and technical competence of a contractor is largely related to the key personnel on site. The extent to which the Bidder shall demonstrate having staff with extensive experience shall be limited to those requiring critical operational or technical skills. The prequalification criteria shall therefore refer to a limited No. of such key personnel, for instance, the project or contract manager and those superintendents working under the project manager who will be responsible for major components (e.g., superintendents specialized in dredging, piling, or earthworks, as required for each particular project). Criteria of acceptability shall be based on; (a) a minimum No. of years of experience in a similar position; and (b) a minimum No. of years of experience and/or No. of comparable projects carried out in a specified No. of preceding years].*

### 2.4 Equipment

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

SN	Equipment Type and Characteristics	Minimum No. required
1		
2		

Bid No. [ ]

Contracting Entity [ ]

Alternative A. Section III. Evaluation and Qualification Criteria (Following Prequalification)

3		
...		

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

[In most cases Bidders can readily purchase, lease, or hire equipment; thus, it is usually unnecessary for the assessment of a contractor's qualification to depend on the contractor's owning readily available items of equipment. The pass-fail criteria adopted shall therefore be limited only to those bulky or specialized items that are critical for the type of project to be implemented, and that may be difficult for the contractor to obtain quickly. Examples may include items such as heavy lift cranes and piling barges, etc. Even in such cases, contractors may not own the specialized items of equipment, and may rely on specialist subcontractors or equipment-hire firms. The availability of such subcontractors and of the specified equipment shall be subject to verification prior to contract award].

۲,۰ **Subcontractors / Manufacturers**

Subcontractors/factorys for major items of supply or services identified in the prequalification document shall meet or continue to meet the minimum criteria specified therein for each item.

Subcontractors for the following additional major items of supply or services shall meet the following minimum criteria, herein listed for that item:

Item No.	Description of Item	Minimum Criteria to be met
1		
2		
3		
...		

Failure to comply with this requirement will result in the rejection of the subcontractor. Major Subcontractors shall provide a Letter of Intent.

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

## Section III. Evaluation and Qualification Criteria (Without Prequalification)

This Section contains all the criteria that the Contracting Entity shall use to evaluate bids and qualify Bidders. In accordance with Instructions to Bidders 35 and 37, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

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Bid No. [  ]  
Contracting Entity [  ]

## 1. Evaluation

### 1.1 Technical Evaluation

1.1.1 The contracting Entity shall conduct a technical analysis of the bids that have not been rejected previously, evaluation phases and have not been rejected, to determine whether the technical aspects are applicable to the bidding document. A bid that does not meet the minimum acceptable criteria for Completion and consistency in detail, and the minimum specific requirements (or maximum, as the case may be) for specified functional guarantees will be rejected for non-respond. In order to make the decision, the contracting entity will study and compare the technical aspects of bids on the basis of the information provided by the bidder, taking into account the following procedures and features:

- a. Comprehensive Completion and compliance with the fourth section; requirements of the contracting Entity; conformity of the factory and services provided to specific performance standards, including conference the minimum (or maximum requirements, as the case requires) related to each job guarantee, as defined in the specifications and in the third section, evaluation and qualification criteria The suitability of the factory and the services provided for the environmental and climatic conditions prevailing at the site; the quality, function and work of any process control concept contained in the bid; and
- b. sort, quantity and long-term availability of Mandatory and Recommended Spare Parts and Maintenance Services

1.1.2 Where Alternative Technical Solutions have been allowed in accordance with instruction to bid 13, and offered by the Bidder, the Contracting Entity will make a similar evaluation of the alternatives. Where alternatives have not been allowed but have been offered, they shall be ignored.

1.1.3 In addition to the previous features and procedures, the following factors shall apply: *[insert appropriate additional provisions]*

### 2.1 Economic/Financial Evaluation

The following factors and methods will apply:

#### a. Schedule

The period of completion the factory and the services executed since the effective date of the contract specified in Clause 3 of the contract agreement to specify the period of completion of the trial operation is: *[insert No. of days]*. No margin is given preference for early completion.

***[The completion time specified shall be for the entire factory and services or for parts or sections of the factory and services].***

#### b. O&M support costs

Since the operating and maintenance support costs for the facilities provided are a major part of the life cycle cost of these facilities, these costs will be evaluated according to the principles specified below, and also include the cost of spare parts for the initial period of operation listed below, and on the basis of The prices submitted by each bidder in

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Bid No. [ ]

Contracting Entity [ ]

## Alternative B. Section III. Evaluation and Qualification Criteria (Without Prequalification)

the Table of Prices 1 and 2, as well as on the basis of previous experience with the contracting entity contracting entity or employers with a similar condition. These costs are added to the bid price for evaluation purposes.

### **[Use one of the two options given below]**

{Option 1: The operating and maintenance costs factors for calculation of the life cycle cost are:

- i. No. of years for life cycle: *[insert life cycle period in years. The period shall not exceed the time before a major overhaul of the facilities becomes necessary]*
- ii. Support operating costs: *[insert fuel and/or other input unit cost for operational requirements]*, and
- iii. Maintenance costs, including the cost of spare parts for the initial period of operation, and
- iv. A rate of *[insert rate in words and figures]* per cent, to be used to calculate the net present value for all annual future costs calculated under (ii) and (iii) above for the period specified in (i).

**Or**

{Option 2:

*[Enter a reference to the PROGRAM specified in the specifications or elsewhere in the bidding forms]*

The price of recommended spare parts quoted in Price Schedule No. 6 shall not be considered for evaluation.

### **c. Functional Guarantees of the Factory and Services**

*[appropriate reference to the functional guarantees, and use text suggested below]*

The minimum (or maximum) requirements stated in the Specification for functional guarantees required in the Technical Specification are:

Functional Guarantee [as required in the Specification, e.g., performance, efficiency, consumption, etc.]	Minimum (or Maximum, as appropriate) Requirement [as required in the Specification]
1.	
2.	
3.	
...	

For the purposes of evaluation of *[insert FG to be evaluated]*, for each percentage point that the functional guarantee of the proposed Factory and Services is below the norm specified in the Specification

Bid No. [ ]

Contracting Entity [ ]

## Alternative B. Section III. Evaluation and Qualification Criteria (Without Prequalification)

and in the above table, but above the minimum acceptable levels also specified therein, an amendment of [insert amount in Iraqi Dinar] will be added to the tender price. If the drop below the norm or the excess above the minimum acceptable levels is less than one per cent, the amendment will be prorated accordingly.

### d. D. Business, services, facilities, etc., to be provided by the Employer

A submitted bid shall include the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the bidding document, the contracting Entity shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation.

### e. Quantifiable Deviations and Omissions from the contractual obligations

The assessment shall be based on the evaluated cost of achieving the contract in compliance with all contractual obligations under this bidding document. The Contracting Entity will assess the cost of such a deviation for the purpose of ensuring fair comparison of bids.

### 3.1 Technical alternatives

Technical alternatives shall be evaluated, if invited in accordance with ITB 13.4, as follows:

[insert a reference to the methodology specified in the Specification or elsewhere in the bidding forms].

---

Bid No. [ ]

Contracting Entity [ ]

Alternative B. Section III. **Evaluation and Qualification Criteria (Without Prequalification)**

**2.1 Eligibility**

Factor	2.1 Eligibility					
	Sub-Factor	Requirement	Criteria			Documentation Required
			Bidder	Joint Venture, Consortium or Association		
		Single Entity	All partners combined	Each partner	At least one partner	
2.1.1 Nationality	Nationality in accordance with ITB 4.2.	Shall meet requirement	Existing or intended JVA shall meet requirement	Shall meet requirement	N / A	Elegibility Form – 1.1 and 1.2, with attachments
2.1.2 Conflict of Interest	No- conflicts of interests as described in ITB 4.3.	Shall meet requirement	Existing or intended JVA shall meet requirement	Shall meet requirement	N / A	Bid Submission Form
2.1.3 Contracting Entity Ineligibility	Not having been declared ineligible by the Contracting Entity as described in ITB 4.4.	Shall meet requirement	Existing JVA shall meet requirement	Shall meet requirement	N / A	Bid Submission Form
2.1.4 Government Owned Entity	Compliance with conditions of ITB 4.5	Shall meet requirement	Shall meet requirement	Shall meet requirement	N / A	Elegibility Form – 1.1 and 1.2, with attachments
2.1.5 Ineligibility based on a United Nations resolution or Contracting Entity’s country law	Not having been excluded as a result of the Contracting Entity’s country laws or official regulations, or by an act of compliance with UN Guarantee Council resolution, in accordance with ITB 4.8	Shall meet requirement	Existing JVA shall meet requirement	Shall meet requirement	N / A	Bid Submission Form

Bid No. [ ]

Contracting Entity [ ]

Alternative B. Section III. Evaluation and Qualification Criteria (Without Prequalification)

2.2 Qualification

Factor	2.2 Historical Contract No -Performance	Bidder				
Sub-Factor	Criteria	Single Entity	Joint Venture, Consortium or Association		At least one partner	Documentation Required
	Requirement		All partners combined	Each partner		
2.2.1 History of non-performing contracts	Non-performance of a contract did not occur within the last [insert No. of years, normally not more than three] ( ) years prior to the deadline for application submission, based on all information on fully settled Disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the bidder have been exhausted.	Shall meet requirement by itself or as partner to past or existing JV	N / A	Shall meet requirement by itself or as partner to past or existing JV	N / A	Form CON - 2
2.2.2 Pending Litigation	It shall not form all pending litigations which total is more than (*) % of the net current value of the bidder and it will be dealt with as settled lawsuits against the bidder's interest Pending claims= [ending contracts amount/total other amount for the last (3-5) years] Equation result shall be less than or equal to (30-50)%	Shall meet requirement	N / A	Shall meet requirement by itself or as partner to past or existing JV	N / A	Form CON - 2
[The above percentage shall normally be within the range of 30% to 50% of a Bidder's net worth]						

Bid No. [ ]

Contracting Entity [ ]



Alternative B. Section III. Evaluation and Qualification Criteria (Without Prequalification)

Factor		2.3 Financial Situation					Documentation Required
Sub-Factor	Requirement	Criteria					
		Single Entity	Bidder				
			Joint Venture, Consortium or Association				
			All partners combined	Each partner	At least one partner		
2.3.1 History of Financial Performance	Submission of audited balance sheets or if not required by the law of the bidder's country, other financial statements acceptable to the Contracting Entity, for the last [Insert no. of years in words and figures. <b>The time period shall not be less than 3 years</b> ] years to demonstrate the current soundness of the bidders financial position and its prospective long term profitability.	Shall meet requirement	N / A	Shall meet requirement	N / A	Financial Form – 3.1 with attachments	
[The financial information provided by a Bidder shall be reviewed in its entirety to allow a truly informed judgment, and the pass-fail decision on the financial position of the Bidder shall be given on this basis. Any abnormal features which may lead to financial problems shall alert the Contracting Entity to seek expert professional advice for further review and interpretation]							
2.3.2 Average Annual Turnover	Minimum average annual turnover of [ ] calculated as total certified payments received for contracts in progress or completed, within the last [Insert No. of years in words and figures; the time period is normally 3 years or more] years	Shall meet requirement	Shall meet requirement	Shall meet _____ per cent (____ %) of the requirement	Shall meet _____ per cent (____ %) of the requirement	Financial Form –3.2	
[The amount stated shall normally not be less than 2 x V/T, the estimated annual turnover or cash flow in the subject contract based on a straight-line projection of the Contracting Entity's estimated cost (V), including contingencies, over the contract duration (T). The multiplier of two may be reduced for very large contracts but shall not be less than 1.5]2 Projects in progress or to be completed shall be clearly stated with indication to Contracts Price and rate (%) of completion							

Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

Alternative B. Section III. **Evaluation and Qualification Criteria (Without Prequalification)**

<p><b>2.3.3</b> <b>Financial Resources</b></p>	<p>The bidder shall provide the cash liquidity amounting to (...) dinars within a period of (.....)</p>	<p>Shall meet requirement</p>	<p>Shall meet requirement</p>	<p>Shall meet _____ per cent (____%) of the requirement</p>	<p>Shall meet _____ per cent (____%) of the requirement</p>	<p>Financial Form -3.3</p>
--	---	-------------------------------	-------------------------------	---	---	----------------------------

[Indicate under (1) above the construction cash flow requirement for a No. of months determined as the total time needed by the Employer to pay a contractor's invoice, allowing for (a) the actual time consumed for construction, from the beginning of the month invoiced, (b) the time needed by the Engineer to issue the monthly payment certificate, and (c) the time needed by the Employer to pay the amount certified. The total period shall not exceed six months. The assessment of the monthly amount shall be based on a straight-line projection of the estimated cash flow requirement over the particular contract period, neglecting the effect of any advance payment and retention monies, but including contingency allowances in the estimated contract cost]

Factor	2.4 Experience	
Sub-Factor	Criteria	Documentation Required

	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.4.1 General Experience	Experience under contracts in the role of contractor, subcontractor, or management contractor for at least the last [ <i>Insert No. of years in words and figures. The time period is normally 5 years or more</i> ] years prior to the applications submission deadline.	Shall meet requirement	N / A	Shall meet requirement	N / A	Expertise Form-2.4.1
2.4.2 Specific Experience	(a) Participation as contractor, management contractor, or subcontractor, in at least [ <i>see Note 1 below</i> ] contracts within the last [see Note 2 below] years, each with a value of at least [see Note 3 below], that have been winningly and substantially completed and that are similar to the proposed Factory and Services. The similarity shall be based on	Shall meet requirement	Shall meet requirements for all characteristics	N / A	Shall meet requirement for one characteristic	Expertise Form 2.4.2(a)

Bid No. [\_\_\_\_\_]

Contracting Entity [\_\_\_\_\_]

Alternative B. Section III. **Evaluation and Qualification Criteria (Without Prequalification)**

	the physical size, complexity, methods/technology or other characteristics as described in Section VI, Contracting Entity's Requirements.					
<p><b>[(1) Insert No. of contracts, the range shall be one to three, depending on the size and complexity of the subject contract, the exposure of the Employer to risk of contractor default, and local conditions.]</b></p>						
2.4.2 Specific Experience	<p>(b) For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum experience in the following key activities:  <b>[Insert key activities as appropriate]</b></p>	Shall meet requirements	Shall meet requirements	N / A	Shall meet requirements	Expertise Form-2.4.2(b)

Bid No. [ ]

Contracting Entity [ ]

---

Bid No. [ ]  
Contracting Entity [ ]

## 2.5 Personnel (leading staff)

The Bidder shall demonstrate that it will have the personnel for the key positions that meet the following requirements:

No.	Position/ Expertise	Total Work of Experience (years)	Experience In Similar Works (years)
1			
2			
3			
...			

The Bidder shall provide details of the proposed team work and their experience records in the relevant Forms included in Section IV, Bidding Forms. Proposed personnel shall be committed for the implementation of the Contract and shall not be replaced without the approval of the Contracting Entity/Employer.

*[The managerial and technical competence of a contractor is largely related to the key personnel on site. The extent to which the Bidder shall demonstrate having staff with extensive experience shall be limited to those requiring critical operational or technical skills. The prequalification criteria shall therefore refer to a limited No. of such key personnel, for instance, the project or contract manager and those superintendents working under the project manager who will be responsible for major components (e.g., superintendents specialized in dredging, piling, or earthworks, as required for each particular project). Criteria of acceptability shall be based on; (a) a minimum No. of years of experience in a similar position; and (b) a minimum No. of years of experience and/or No. of comparable projects carried out in a specified No. of preceding years.]*

## 2.6 Equipment

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

No.	Equipment Type and Characteristics	Minimum No. required
1		
2		
3		
...		

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

*[In most cases Bidders can readily purchase, lease, or hire equipment; thus, it is usually unnecessary for the assessment of a contractor's qualification to depend on the contractor's owning readily available items of equipment. The pass-fail criteria adopted shall therefore be limited only to those bulky or specialized items that are critical for the type of project to be implemented, and that may be difficult for the contractor to obtain quickly. Examples may include items such as heavy lift cranes and piling barges, etc. Even in such cases, contractors may not own the specialized items of equipment, and may*

Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

Alternative B. Section III. **Evaluation and Qualification Criteria (Without Prequalification)**

*rely on specialist subcontractors or equipment-hire firms. The availability of such subcontractors and of the specified equipment shall be subject to verification prior to contract award. ]2.5 Subcontractors/factorys.*

**2.7 Subcontractors / Factorys**

Item No.	Description of Item	Minimum Criteria to be met
1		
2		
3		
...		

Failure to comply with this requirement will result in the rejection of the subcontractor. Major **Subcontractors** shall provide a Letter of Intent.

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

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Bid No. [ ]

Contracting Entity [ ]

# Section IV. Bidding Forms

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Bid No. [  ]

Contracting Entity [  ]

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**Bid No.** [  ]  
Contracting Entity [  ]



## Bid Submission Form

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

OT No.: \_\_\_\_\_

Invitation for Bid No.: \_\_\_\_\_

To: *[Insert Name of Contracting]*

We, the undersigned, declare that:

- a. We have examined the Bidding Document, and have no reservation to that including amendments issued in accordance with Instructions to Bidders (ITB) 8;
- b. We offer to \_\_\_\_\_, in conformity with the Bidding Document, the following Factory and Services:
- c. The price of our Bid, excluding any discounts offered in item (d) below is the sum of: \_\_\_\_\_, (\_\_\_\_\_), and \_\_\_\_\_, (\_\_\_\_\_)
- d. The discounts offered and the methodology for their application are:

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

- e. Our bid shall be valid for a period of \_\_\_\_\_ days from the date fixed for the bid submission deadline in accordance with the Bidding Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- f. If our bid is accepted, we commit to obtain a performance Guarantee in accordance with the Bidding Document;
- g. We, including any subcontractors or factorys for any part of the contract, have or will have nationalities from eligible countries, in accordance with ITB-4.2;
- h. We, including any subcontractors or factorys for any part of the contract, do not have any conflict of interest in accordance with ITB-4.3;
- i. We are not submitting more than one bid in this bidding process as a Bidder, either individually or as a partner in a joint venture, in accordance with ITB-4.3, except for alternative offers permitted under ITB Clause 13;
- j. We, or any of our subcontractors or manufacturers, have not been declared any part of this contract, and no decision has been issued by the Ministry of Planning or any other body legally binding on the State of Iraq that includes our ineligibility or blacklisting under the applicable Iraqi laws or official instructions with Connection or by the act of complying with a United Nations Security Council resolution;

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Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

## Section IV. Bidding Forms

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- k. We are not a state company / we are a public company of the state and the public sector, but we meet the requirements of Article 4.1 of the instructions to bidders.
- l. Until the final version of the formal contract is prepared and concluded between us, we realize that this tender, with your written acceptance of it included in your notice of the award decision, is a binding contract between us; and in the event of our failure to sign the contract, we are obligated to bear all the legal consequences of that. Including the execution of the contract on our account in accordance with Article 43.2 of the Instructions to Bidders.
- m. We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

We confirm that our website address is \_\_\_\_\_

And that Mr./Ms. \_\_\_\_\_ of Job Title: \_\_\_\_\_ and email address: \_\_\_\_\_ will be following up all matters relevant to any Clarifications.

The name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_

This is as a person authorized to sign this tender in favor of and on behalf of \_\_\_\_\_

Dated [*insert: number*] of month [*insert: month*], year [*insert: year*]

---

Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

## **Schedules of Rates and Prices**

### **PREAMBLE**

#### General

1. The Price Schedules are divided into separate Schedules as follows:  
Schedule No. 1 Factory (including Mandatory Spare Parts) Supplied from outside Iraq  
Schedule No. 2 Factory (including Mandatory Spare Parts) Supplied from outside Iraq  
Schedule No. 3 Design Services  
Schedule No. 4 Civil Works, Installation, and Other Services  
Schedule No. 5 Grand Summary (Schedule Nos. 1 to 4)  
Schedule No. 6 Recommended Spare Parts
2. The Schedules generally give a full description of the factory to be supplied and the civil works and services to be performed under each item. Bidders shall be deemed to have read the Contracting Entity's Requirements and other sections of the Bidding Document and reviewed the Drawings to ascertain the full scope of the requirements included in each item prior to filling in the rates and prices. The entered rates and prices shall be deemed to cover the full scope as aforesaid, including overheads and profit.
3. For Turn Key/Lump Sum Contracts, the Contractor shall submit his proposal of Payment Schedules, in accordance with the activities in item (1) above.
4. If bidders are unclear or uncertain as to the scope of any item, they shall seek clarification in accordance with ITB 7 prior to submitting their bid.

**Schedule No. 1. Factory and Mandatory Spare Parts Supplied from Abroad**

Item	Description	Code <sup>1</sup>	Qty.  <i>(1)</i>	Unit Price <sup>2</sup>		Total Price <sup>3</sup>  <i>(1) x (3)</i>
					CIP  <i>(3)</i>	
				<i>(2)</i>		
TOTAL (to Schedule No. 5. Grand Summary)						
Price to be stated in figures and equivalent words						
Name of Bidder: _____						
Signature of Bidder: _____						

Country of Origin Declaration Form

Item	Description	Code	Country

The submitted certificate of the country of origin for all imported items shall be issued upon trading.

<sup>1</sup> Bidders shall enter a code representing the country of origin of all imported factory and equipment.

<sup>2</sup> Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1. Create and use as many columns for Unit Price and Total Price as there are currencies.

<sup>3</sup> Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1. Create and use as many columns for Unit Price and Total Price as there are currencies.

**Bid No.** [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

Section IV. **Bidding Forms**

**Schedule No. 2. Factory and Mandatory Spare Parts Supplied from  
Within the Contracting Entity's Country**

Item	Description	Qty. (1)	EXW Unit Price <sup>4</sup> (2)	EXW Total Price <sup>5</sup> (1) x (2)
<b>TOTAL (to Schedule No. 5. Grand Summary)</b>				
<p>Price to be stated in figures and equivalent words</p> <p>Name of Bidder: _____</p> <p>Signature of Bidder: _____</p>				

<sup>4</sup> Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1

<sup>5</sup> Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1

**Bid No.** [ \_\_\_\_\_ ]

**Contracting Entity** [ \_\_\_\_\_ ]

Section IV. **Bidding Forms**

**Schedule No. 3. Design Services**

Item	Description	Qty (1)	EXW Unit Price <sup>6</sup>		EXW Total Price <sup>7</sup> (1) x (2)
			Local Currency Portion (2)	Foreign Currency Portion (optional)	
TOTAL (to Schedule No. 5. Grand Summary)					
Price to be stated in figures and equivalent words Name of Bidder: _____ Signature of Bidder: _____					

<sup>6</sup> Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1

<sup>7</sup> Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1

Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

Section IV. **Bidding Forms**

**Schedule No. 4. Civil Works, Installation and Other Services**

Item	Description	Qty.  (1)	Unit Price <sup>8</sup>		Total Price <sup>9</sup>	
			Foreign Currency Portion  (2)	Local Currency Portion  (3)	Foreign   (1) x (2)	Local   (1) x (3)

TOTAL (to Schedule No. 5. Grand Summary)

Price to be stated in figures and equivalent words

Name of Bidder: \_\_\_\_\_

Signature of Bidder: \_\_\_\_\_

6. {If Training Services for the Iraqi Government Staff are needed under the Scope of this Tender (for Commissioning Operation, and supporting commissioning etc), the Price Schedule has to include this Item and to identify if needed inside or outside Iraq with relevant justifications. The No. of Staff involved, Training period, location of Training, scope of training, and programme shall be specified. If the location is outside Iraq, the item has to include all relevant Travelling requirements.

The staff involved in this training shall be of relevant expertise and eligible and will be committed to work in the line of the training received. The same will be reflected in the Contract as well}.

<sup>8</sup> Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1.

<sup>9</sup> Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1.

**Bid No.** [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

## Section IV. Bidding Forms

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**Bid No.** [  ]

Contracting Entity [  ]



Section IV. **Bidding Forms**

**Schedule No. 5. Grand Summary**

Item	Description	Total Price <sup>10</sup>	
		Foreign	Local
	Total Schedule No. 1. Factory, and Mandatory Spare Parts Supplied from Abroad		
	Total Schedule No. 2. Factory, and Mandatory Spare Parts Supplied from Within the Contracting Entity's Country		
	Total Schedule No. 3. Design Services		
	Total Schedule No. 4. Civil Works, Installation and Other Services		
		TOTAL (to Bid Form)	
Price to be stated in figures and equivalent words Name of Bidder: _____ Signature of Bidder: _____			

<sup>10</sup> Specify currency in accordance with specifications in Bid Data Sheet under ITB 18.1. Create and use as many columns for Foreign Currency requirement as there are foreign currencies

**Bid No.** [ \_\_\_\_\_ ]  
**Contracting Entity** [ \_\_\_\_\_ ]

Section IV. **Bidding Forms**

**Schedule No. 6. Recommended Spare Parts**

Item	Description	Qty. <i>(1)</i>	Unit Price		Total Price <i>(1) x (2) or (3)</i>
			CIF or CIP (foreign parts) <i>(2)</i>	EXW (local parts) <i>(3)</i>	
		Price to be stated in figures and equivalent words			
		Name of Bidder _____			
		Signature of Bidder _____			

Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

**Price Amendment (shall be applied under effective instructions)**

{Where the Contract Period (excluding the Defects Liability Period) exceeds eighteen (18) months, it is normal procedure that prices payable to the Contractor shall be subject to amendment during the performance of the Contract to reflect changes occurring in the cost of labour and material components. In such cases the bidding forms shall include in this form a formula of the following general type, pursuant to SCC Sub-Clause 11.2.

Where Contracts are of a shorter duration than eighteen (18) months or in cases where there is to be no Price Amendment, the following provision shall not be included. Instead, it shall be indicated under this form that the prices are to remain firm and fixed for the duration of the Contract}.

*Sample Price Amendment Formula (Indicative now, not being implemented at present)*

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

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

in which:

$P_1$  = amendment amount payable to the Contractor

$P_0$  = Contract price (base price)

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

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

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

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

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

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

Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

## Section IV. Bidding Forms

### Conditions Applicable To Price Amendment

---

The Bidder shall indicate the source of labour and materials indices and the base date indices in its bid.

<u>Item</u>	<u>Source of indicators</u>	<u>base date indicators</u>
-------------	-----------------------------	-----------------------------

The base date shall be the date thirty (28) days prior to the Bid closing date.

The date of amendment shall be the mid-point of the period of manufacture or installation of component or Factory.

The following conditions shall apply:

- a. No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Employer under the Conditions of the Contract. No price increase will be allowed for periods of delay for which the Contractor is responsible. The Employer will, however, be entitled to any price decrease occurring during such periods of delay
- b. If the currency in which the Contract price, P0, is expressed is different from the currency of the country of origin of the labour and/or materials indices, a correction factor will be applied to avoid incorrect amendments of the Contract price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for amendment as defined above.

---

Bid No. [  ]

Contracting Entity [  ]

## **Technical Proposal**

- Site Organization
- Method Statement
- Mobilization Schedule
- Construction Schedule
- Factory
- Contractor's Equipment
- Personnel
- Proposed Subcontractors for Major Items of Factory and Services
- Others

---

**Bid No.** [  ]

Contracting Entity [  ]

Site Organization

Explain in several lines

---

**Bid No.** [  ]

Contracting Entity [  ]

Section IV. **Bidding Forms**

---

A statement about the work methodology

Explain in several lines

---

**Bid No.** [  ]

Contracting Entity [  ]

## Mobilization Schedule

---

**Bid No.** [  ]  
**Contracting Entity** [  ]



Works implementation method

Explain in several lines

Factory

Explain in several lines

---

Bid No. [  ]

Contracting Entity [  ]

Section IV. **Bidding Forms**

**Contractor's Equipment**

Form EQU

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

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

Omit the following information for equipment owned by the Bidder.

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

Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

Functional Guarantees

Form FUNC

The Bidder shall copy in the left column of the table below, the identification of each functional guarantee required in the Specification and stated by the Contracting Entity in paragraph 1.2 © of Section III. Evaluation and Qualification Criteria, and in the right column, provide the corresponding value for each functional guarantee of the proposed factory and equipment.

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

**Personnel**

Form PER -1

**Proposed Personnel**

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

<b>1.</b>	<b>Title of position*</b>
	<b>Name</b>
	<b>Experience:</b>
	<b>Scientific Qualification:</b>
<b>2.</b>	<b>Title of position*</b>
	<b>Name</b>
	<b>Experience:</b>
	<b>Scientific Qualification:</b>
<b>3.</b>	<b>Title of position*</b>
	<b>Name</b>
	<b>Experience:</b>
	<b>Scientific Qualification:</b>
<b>4.</b>	<b>Title of position*</b>
	<b>Name</b>
	<b>Experience:</b>
	<b>Scientific Qualification:</b>

\*As listed in Section III.

---

Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

**Resume of Proposed Personnel**

<b>Name of Bidde</b>		
<b>Position</b>		
<b>Personnel information</b>	<b>Name</b>	<b>Date of birth</b>
	<b>Professional qualifications</b>	
<b>Present employment</b>	<b>Name of employer</b>	
	<b>Address of employer</b>	
	<b>Telephone</b>	<b>Contact (manager / personnel officer)</b>
	<b>Fax</b>	<b>E-mail</b>
	<b>Job title</b>	<b>Years with present employer</b>

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

<b>From</b>	<b>To</b>	<b>Company / Project / Position / Relevant technical and management experience</b>

**Bid No.** [ \_\_\_\_\_ ]

**Contracting Entity** [ \_\_\_\_\_ ]

Section IV. **Bidding Forms**

---

**Proposed Subcontractors for Major Items of Factory and Services**

A list of major items of Factory and Services is provided below.

The following Subcontractors and/or factorys are proposed for carrying out the item of the facilities indicated. Bidders are free to propose more than one for each item.

<b>Major Items of Factory and Services</b>	<b>Proposed Subcontractors/Factorys</b>		<b>Nationality</b>		

---

Bid No. [  ]

Contracting Entity [  ]

**Other Forms - Time Schedule**

(to be used by Bidder when alternative Completion Term  
is invited in ITB 13.2)

---

**Bid No.** [  ]  
**Contracting Entity** [  ]



## Qualification Information Forms

Elegibility Form 1.1

### Bidder Information Sheet

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

OT No: \_\_\_\_\_

Invitation for Bid No: \_\_\_\_\_

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

1. Bidder's Legal Name
2. In case of JV, legal name of each party:
3. Bidder's actual or intended Country of Registration:
4. Bidder's Year of Registration:
5. Bidder's Legal Address in Country of Registration:
6. Bidder's Authorized Representative Information

Name:

Address:

Telephone/Fax No.s:

Email Address:

7. Attached are copies of original documents of:
  - Clauses of Incorporation or Registration of firm named in 1, above, in accordance with ITB Sub-Clauses 4.1 and 4.2.
  - In case of JV, letter of intent to form JV including a draft agreement, or JV agreement, in accordance with ITB Sub-Clauses 4.1 and 11.1(i.(
  - In case of government owned entity from the Contracting Entity's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Sub-Clause 4.5.

Please note that a written authorization should be attached to this list as required in Article 21.2 of the Instructions to Bidders.

---

Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

**Elegibility Form No. 1.2**  
**Party to JV Information Sheet**

Date: \_\_\_\_\_  
OT No: \_\_\_\_\_  
Invitation for Bid No: \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Bidder's Legal Name:
2. JV's Party legal name:
3. JV's Party Country of Registration:
4. JV's Party Year of Registration:
5. JV's Party Legal Address in Country of Registration:
6. JV's Party Authorized Representative Information Name: Address: Telephone/Fax No.s: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> Clauses of Incorporation or Registration of firm named in 1, above, in accordance with ITB Sub-Clauses 4.1 and 4.2. <input type="checkbox"/> In case of government owned entity from the Contracting Entity's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Sub-Clause 4.5.

**Bid No.** [ \_\_\_\_\_ ]  
**Contracting Entity** [ \_\_\_\_\_ ]

**Biography of unfinished contracts**

In the event of a pre-qualification process, this form should be used only if the information provided at the time of pre-qualification requires updating.

Legal name of the bidder: \_\_\_\_\_ Date: \_\_\_\_\_  
 Coalition partner legal name: \_\_\_\_\_ Bid number: \_\_\_\_\_  
 Page \_\_\_\_\_ of \_\_\_\_\_ pages

Unfinished contracts according to Section three - evaluation and qualification criteria			
<input type="checkbox"/> There are no unsuccessful contracts during the stipulated period, according to Sub Factor 2.2.1 of Section Three, evaluation and qualification criteria			
Judicial disputes without verdicts (pending) according to Section III, evaluation and qualification criteria			
??			
??			
??	??	??	??
_____	_____	??	_____
_____	_____	??	_____

Section IV. **Bidding Forms**

CCC Form

Current Contract Commitments / Works in Progress

Bidders and each partner to a JV shall 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 unelegible, full completion certificate has yet to be issued.

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

Bid No. [  ]

Contracting Entity [  ]

**Financial Situation**

**Historical Financial Performance**

Bidder’s Legal name: \_\_\_\_\_  
 JV partner legal name: \_\_\_\_\_

Date: \_\_\_\_\_  
 OT No.: \_\_\_\_\_  
 Page \_\_\_\_\_ of \_\_\_\_\_ pages

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

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

- Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions:
- A- Shall reflect the financial situation of the Bidder or partner to a JV, and not sister or parent Firms
  - B- Historic financial statements shall be audited by a certified accountant
  - C- Historic financial statements shall be complete, including all notes to the financial statements
  - D- Historic financial statements shall correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted)

Section IV. **Bidding Forms**

**Financial Form – 3.2**

**Average Annual Turnover**

Bidder's Legal name: \_\_\_\_\_  
JV partner legal name: \_\_\_\_\_

Date: \_\_\_\_\_  
OT No.: \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_ pages

Annual turnover data (construction only)		
Year	Amount and Currency	US\$ equivalent
	_____	_____
	_____	_____
	_____	_____
	_____	_____
Average Annual Construction Turnover <sup>11</sup>	_____	_____

<sup>11</sup> Average annual turnover calculated as total certified payments received for work in progress or completed, divided by the No. of years specified in Section III, Evaluation Criteria, Sub-Factor 2.3.2.

**Bid No.** [ \_\_\_\_\_ ]  
**Contracting Entity** [ \_\_\_\_\_ ]

Section IV. **Bidding Forms**

---

**Financial Form 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 (US\$ equivalent)
1.	
2.	
3.	
4.	

---

**Bid No.** [  ]

Contracting Entity [  ]

Section IV. **Bidding Forms**

**Expertise Form 2.4.1**

**1,1 Expertise - General Expertise**

Bidder's Legal name: \_\_\_\_\_  
 JV partner legal name: \_\_\_\_\_

Date: \_\_\_\_\_  
 OT No.: \_\_\_\_\_  
 Page \_\_\_\_\_ of \_\_\_\_\_ pages

Starting Month / Year	Ending Month / Year	Years <sup>12</sup>	Contract Identification	Role of Bidder
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____

<sup>12</sup> List calendar year for years with contracts with at least nine (9) months activity per year starting with the earliest year

**Bid No.** [ \_\_\_\_\_ ]  
**Contracting Entity** [ \_\_\_\_\_ ]



Section IV. **Bidding Forms**

**Expertise Form – 2.4.2(a)**

**Specific Expertise**

Bidder's Legal name: \_\_\_\_\_  
 JV partner legal name: \_\_\_\_\_

Date: \_\_\_\_\_  
 OT No.: \_\_\_\_\_  
 Page \_\_\_\_\_ of \_\_\_\_\_ pages

<b>Similar Contract No.: ___ of ___ required.</b>	<b>Information</b>		
Contract Identification	_____		
Award date Completion date	_____		
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Su contractor
Total contract amount	_____		_____ US\$
If partner in a JV or subcontractor, specify participation of total contract amount	_____ %		_____ US\$
Employer's Name:	_____		
Address:	_____ _____		
Telephone/fax No.:	_____		
E-mail:	_____		

	<b>Information</b>		
Contract Identification	_____		
Award date Completion date	_____		
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Su contractor
Total contract amount	_____		_____ US\$
If partner in a JV or subcontractor, specify participation of total contract amount	_____ %		_____ US\$
Employer's Name:	_____		
Address:	_____ _____		

**Bid No.** [ \_\_\_\_\_ ]  
**Contracting Entity** [ \_\_\_\_\_ ]

## Section IV. Bidding Forms

Telephone/fax No.:	_____
E-mail:	_____

---

Bid No. [ \_\_\_\_\_ ]  
Contracting Entity [ \_\_\_\_\_ ]

Section IV. **Bidding Forms**

**Expertise Form – 2.4.2(a) (cont.)**

**Specific Expertise (cont.)**

Bidder's Legal name: \_\_\_\_\_

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

JV partner legal name: \_\_\_\_\_

<b>Similar Contract No. __[insert specific No.] of [total No. of contracts] __ required</b>	<b>Information</b>
Description of the similarity in accordance with Sub-Factor 2.4.2a) of Section III:	
Amount	_____
Physical size	_____
Complexity	_____
Methods/Technology	_____
Physical Production Rate	_____

Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

**Specific Expertise in Key Activities**

Bidder's Legal name: \_\_\_\_\_  
 JV partner legal name: \_\_\_\_\_  
 Subcontractor's Legal Name: \_\_\_\_\_

Date: \_\_\_\_\_  
 OT No.: \_\_\_\_\_  
 Page \_\_\_\_\_ of \_\_\_\_\_ pages

<b>Information</b>			
Contract Identification	_____		
Award date	_____		
Completion date	_____		
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
Total contract amount	_____		_____ US\$
If partner in a JV or subcontractor, specify participation of total contract amount	_____ %	_____	_____ US\$
Employer's Name:	_____		
Address:	_____		
Telephone/fax No.:	_____		
E-mail:	_____		

Section IV. **Bidding Forms**

**Expertise Form – 2.4.2 (b)(cont.)**

**Specific Expertise in Key Activities (cont.)**

Bidder's Legal name: \_\_\_\_\_

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

JV partner legal name: \_\_\_\_\_

Subcontractor's Legal Name: \_\_\_\_\_

	<b>Information</b>
Description of the key activities in accordance with Sub-Factor 2.4.2b) of Section III:	

**Bid No.** [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

## Guarantee Form

/ \_\_\_\_\_

It is preferable to use the CBI model

**Beneficiary:** *[insert: name of contracting entity]*

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

**BID GUARANTEE No.:** \_\_\_\_\_

We have been informed that *[Insert: name of the Bidder]* (hereinafter called “the Bidder”) has submitted to you its bid dated *[Insert: date of the Bid]* (hereinafter called “the Bid”) for the execution of *[Insert: Tender title]* under Invitation for Bids No. (“the IFB”) *[Insert: the IFB No.]*.

Furthermore, we understand that, according to your conditions, bids shall be supported by a bid guarantee.

At the request of the Bidder, we \_\_\_\_\_ hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of \_\_\_\_ (\_\_\_\_) upon Acceptance by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- a. has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid; or
- b. having been notified of the acceptance of its Bid by the Contracting Entity during the period of bid validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to submit the performance Guarantee, in accordance with the ITB.
- c. has complaint or appeals as per ITB clause 41 and it is found by Administrative Court to compensate all damages resulted from delaying the contract signing for false or unjustified reasons.

This guarantee will expire: (a) if the Bidder is the winning Bidder, upon our Acceptance of copies of the contract signed by the Bidder and the performance Guarantee issued to you upon the instruction of the Bidder; and (b) if the Bidder is not the winning Bidder, upon the earlier of (i) our Acceptance of a copy your notification to the Bidder of the name of the winning Bidder; or (ii) twenty-eight days after the expiration of the Bidder’s bid.

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

This guarantee is subject to the Uniform Rules for Guarantees issued by the Iraqi law.

\_\_\_\_\_ *[signature(s)]*

---

**Bid No.** [ \_\_\_\_\_ ]

**Contracting Entity** [ \_\_\_\_\_ ]

## Factory's Authorization

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

OT No: \_\_\_\_\_

To: \_\_\_\_\_

WHEREAS We \_\_\_\_\_, who are official factorys of \_\_\_\_\_, having factories at \_\_\_\_\_, do hereby authorize \_\_\_\_\_ to submit a bid the purpose of which is to provide the following goods, manufactured by us \_\_\_\_\_, and to subsequently negotiate and sign the Contract.

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

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Duly authorized to sign this Authorization on behalf of: \_\_\_\_\_

Dated on \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

---

Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

## Section IV. Bidding Forms

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---

**Bid No.** [  ]  
Contracting Entity [  ]



# PART 2 – Contracting Entity's Requirements

---

**Bid No.** [ ]

Contracting Entity [ ]

## **Section six- contracting entity requirements**

{This Section contains the Scope, the Specifications, the Drawings, and Supplementary Information that describe the Facilities.

On the base of design, supply and installation .and forms to be used during the implementation of the contract. No detailed technical specification as is normal practice is developed at the pre-bidding phase. However, the Contracting Entity does and shall know what it wants and shall communicate its needs to the bidders. Hence, this section on Contracting Entity's Requirements replaces the usual Technical Specifications of a more traditional approach.

To enable bidders to submit completed bids and subsequently for the bids received to be evaluated in an equitable manner, the Contracting Entity shall take its requirements as clearly and as precisely as possible. The Contracting Entity's requirements shall therefore, specify exactly the particular requirements of the completed Facilities. Where the performance of the completed Facilities could be measured in quantitative terms such as production output of a manufacturing factory or maximum generating capacity of a power station, the Contracting Entity's Requirements shall not only clearly specify the desired output/capacity but also the upper and lower acceptable limits of deviation from the desired capacity and how such deviations (if any) will be evaluated. It will also be necessary to specify the tests that will be carried out on completion of the Facilities to verify compliance with the requirements specified. The Contracting Entity's Requirements shall also clearly specify what associated or incidental services and goods shall be supplied by the Contractor. For example, the Contractor may be required to train the Contracting Entity's personnel and to supply consumable or spare parts as listed in a schedule.

While this section seeks to define the requirements of the contracting entity precisely, the details should not be overly specified in such a way that the flexibility or potential benefits associated with the design, supply and installation contract become seriously deleted or threatened or deleted. Therefore, qualified engineers with appropriate experiences and familiar with the requirements and the technical side of the required facilities should prepare these requirements carefully for the benefit of the contracting entity.

The Contracting Entity's Requirements shall be drawn up to permit the widest, possible competition and, at the same time, present a clear statement of the required standards man power, materials and performance of the Facilities. Only if this is done the objectives of economy and efficiency, fairness and transparency in Contracting will be realized, responsiveness of bids be ensured and the subsequent task of bid evaluation facilitated. The Contracting Entity's Requirements shall 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.

As for the drafting of the Specification, care shall be taken when drafting the Contracting Entity's Requirements to ensure that the requirements are not restrictive. Recognized international standards shall be used as much as possible for the description of goods, materials and man power. Where other particular standards are specified, whether national standards of the Borrower's country or other standards, it shall

Bid No. [  ]

Contracting Entity [  ]

## Sextion VI. **contracting entity requirements**

be stated that goods, materials and workmanship conference 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 shall always be elegeible with the terms “or equivalent .”

For a design, supply and installation contract no detail drawings would generally be available at the pre-tender phase. It would, however, be useful to include such conceptual drawings as are appropriate to supplement or help explain the general concept of the Contracting Entity’s needs}.

---

**Bid No.** [  ]

Contracting Entity [  ]

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## **Scope of Supply of Factory and Services by the Contractor**

### **Scope of works and supply by the employer**

{Before issuing tender documents, the contracting entity shall specify in this appendix details about all workers and facilities that the contracting entity will provide to the contractor and determine, when necessary, the costs of their use .

The contracting entity shall also specify any part (parts) of the facilities it intends to implement on its own (or through other contractors), and any plant, equipment, or materials that it proposes to purchase on its own and provide it to the contractor for use in these facilities, while specifying the costs involved when necessary(.

The following workers, installations, works and equipment will be provided / delivered by the employer to the contractor, and the GCC 10, 21 and 24 of the contract shall apply as appropriate.

The employer will provide / hand over all workers, installations, works and equipment in a timely manner for that, to avoid delaying the contractor's work, according to the timetable and performance program (implementation) agreed upon pursuant to the GCC 18.2.

Unless otherwise specified, all employees, installations, works and equipment are provided / delivered to the contractor at no cost and at the employer's expense.

<u>Workers</u>	<u>Cost to the contractor (if any)</u>

<u>Facilities</u>	<u>Cost to the contractor (if any)</u>

<u>Works</u>	<u>Cost to the contractor (if any)</u>

Sextion VI. **contracting entity requirements**

<u>Supplies</u>	<u>Cost to the contractor (if any)</u>

**Specification**

**Drawings**

---

Bid No. [  ]

Contracting Entity [  ]



## **Time execution Curriculum**

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**Bid No.** [  ]

Contracting Entity [  ]

**Additional Information**

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**Bid No.** [  ]

Contracting Entity [  ]

Sextion VI. **contracting entity requirements**

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**Bid No.** [  ]  
Contracting Entity [  ]

---

# PART 3

## Contract Conditions and documents

The Conditions of Contract comprise of two parts:

- a. General Conditions – GCC (Section VII of the Bidding Document), and
- b. Special Conditions – SCC (Section VIII of the Bidding Document).

The General Conditions contain general Clauses to be applied on all contracts. The General Conditions (Section VII of the Bidding Document in this Section, shall read in conjunction with the Special Conditions in Section VIII) and other documents listed therein, form a complete document expressing all the rights and obligations of the contracting parties .

The General Conditions herein shall not be altered.

The Special Conditions take precedence over the General Conditions.

The Special Conditions is intended to be used to introduce country or project specific provisions if so required .

{Whoever drafts the Special Conditions shall be thoroughly familiar with the provisions of the General Conditions and with any specific requirements of the Contract. Legal advice is recommended when amending provisions or drafting new ones}.

Clause No.s in the Special Conditions correspond to those in the General Conditions.

---

Bid No. [ ]

Contracting Entity [ ]

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Bid No. [ ]

Contracting Entity [ ]

# **General Conditions**

## **Contract and Definitions**

### **1. Definitions**

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

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

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

“GCC” means the General Conditions of the contract.

“SCC” means the Special Conditions.

“day” means calendar day.

“year” means 365 days.

“month” means calendar month.

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

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

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

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

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

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

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

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

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

“Disputes Settlement Council” means the person or persons named as such in the **SCC** appointed by agreement between the Employer and the Contractor to make a decision with respect to any dispute or difference between the Employer and the Contractor referred to him or her by the Parties

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pursuant to GCC Sub-Clause 46.1 (Disputes Settlement Council) hereof.

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

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

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

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

“Country of Origin” means the countries and territories eligible as further elaborated in the SCC.

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

“Effective Date” means the date of fulfilment of all conditions stated in Clause 3 (Effective Date) of the Contract Agreement, from which the Completion Term shall be counted.

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

“Completion” means that the Facilities (or a specific part thereof where specific parts are specified in the Contract) have been completed operationally and structurally and put in a tight and clean condition, that all work in respect of Pre commissioning of the Facilities or such specific part thereof has been completed, and that the Facilities or specific part thereof are ready for Commissioning as provided in GCC Clause 24 (Completion) hereof.

“Pre commissioning” means the testing, checking and other requirements specified in the Employer’s Requirements that are to be carried out by the Contractor in preparation for Commissioning

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as provided in GCC Clause 24 (Completion) hereof.

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

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

“Initial Acceptance” means the acceptance by the Employer of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts), which certifies the Contractor’s fulfilment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GCC Clause 28 (Functional Guarantees) hereof and shall include "deemed acceptance" in accordance with GCC Clause 25 (Initial Operation and Acceptance) hereof.

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

“Factory” or plant means permanent construction, equipment, machinery and tools / equipment, materials, goods and items and all other related matters listed among the facilities and required to be submitted by the contractor according to the contract (including the spare parts required to be provided by the contractor under GCC 7.3 ) which does not include contractor equipment.

### 2. Contract Documents

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

### 3. Interpretations

3.1 In the Contract, except where the context requires otherwise:

- a. words indicating one gender include all genders;
- b. words indicating the singular also include the plural and words indicating the plural also include the singular;
- c. provisions including the word “agree,” “agreed,” or “agreement” require the agreement to be recorded in writing ;
- d. the word “tender” is synonymous with “bid,” “tenderer,” with “bidder,” and “Bidding forms” with “bidding forms,” and
- e. “Written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record .

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

### 3.2 INCOTERMS

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

Incoterms means international rules for interpreting trade terms published by

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the International Chamber of Commerce (latest edition), 38 Cours Albert 1er, 75008 Paris, France.

### 3.3 Entire Agreement

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

### 3.4 Amendment

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

### 3.5 Independent Contractor

The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the Parties hereto.

Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Employer, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and the Employer.

### 3.6 Assignment of Rights

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

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

### 3.7 Severability

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

### 3.8 Country of origin

“Origin” means the place where the factory and component parts thereof are mined, grown, produced or manufactured, and from which the services are provided. Factory components are produced when, through manufacturing,

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processing, or substantial or major assembling of components, a commercially recognized product results that is substantially in its basic characteristics or in purpose or utility from its components.

### **4. Communications**

4.1 When the Conditions of the Contract require giving or issuing approvals, certificates, permissions, decisions, notifications (notices), requests and concessions, these communications shall be:

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

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

### **5. Governing Law and Language**

5.1 The Contract shall be governed by and interpreted in accordance with the laws of the Republic of Iraq and as indicated in **SCC**.

5.2 The language of the contract is the language approved in accordance with the legal legislation in force in this regard and specified in **SCC**.

5.3 Unless the special conditions of the contract stipulate otherwise, the language of correspondence shall be the same as that of the contract.

### **6. Practices of Corruption and unlawful acts**

6.1 If the Employer determines as per the applicable Iraqi laws that the Contractor and/or any of its personnel, or its agents, or its Subcontractors, sub-consultants, services providers, suppliers and/or their employees has engaged in corrupt, fraudulent, collusive coercive, or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving fifteen (15) day's notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 42 shall apply as if such expulsion had been made under Sub-Clause 42.2.1 (c).

The Employer defines Practices of Corruption and unlawful acts as per the relevant applicable Iraqi laws. For the purposes of this Sub-Clause, the Employer will be guided by the definition of the terms as set forth below.

1. "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
2. "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;
3. "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;
4. "coercive practice" is impairing or harming, or threatening to impair or harm,

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directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

5. “obstructive practice” is
  - a. Deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an Employer’s investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
  - b. Acts intended to materially impede the exercise of the Employer’s inspection and audit rights provided for under Sub-Clause 9.8.

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**Subject to Contract**

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**7. Scope of Facilities**

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

**8. Time for Commencement and Completion**

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

**9. Contractor's Liabilities**

- 9.1 The Contractor shall design, manufacture (including associated purchases and/or subcontracting), install and complete the Facilities in accordance with the Contract. When completed, the Facilities shall be fit for the purposes for which they are intended as defined in the Contract.
- 9.2 The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the Facilities including any data as to boring tests provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site if access thereto was available and of other data readily available to it relating to the Facilities as per the period stated in the **SCC** prior to bid submission. The Contractor acknowledges that any

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failure to acquaint itself with all such data and information shall not relieve it from the responsibility of properly estimating the difficulty or cost of winningly performing the Facilities.

- 9.3 The Contractor shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under GCC Sub-Clause 10.3 hereof and that are necessary for the performance of the Contract.
- 9.4 The Contractor shall comply with all laws in force in the country where the Facilities are to be implemented. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Sub-Clause 10.1 hereof.
- 9.5 Any Factory and Services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under GCC Clause 1 (Country of Origin). Any subcontractors retained by the Contractor shall be from a country as specified in GCC Clause 1 (Country of Origin).
- 9.6 The Contractor shall permit the Employer to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by the relevant authorities in accordance with the applicable Iraqi laws and regulations.,
- 9.7 If the Contractor is a joint venture, or association (JV) of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfilment of the provisions of the Contract, unless otherwise specified in the SCC, and shall designate one of such persons to act as a leader with authority to bind the JV. The composition or the constitution of the JV shall not be altered without the prior consent of the Employer.
- 9.8 The Contractor shall permit, and shall cause its Subcontractors and sub-consultants to permit, the Employer and/or persons appointed by the Employer to inspect the Site and all accounts and records relating to the performance of the Contract and the submission of the Bid, and to have such accounts and records audited by the relevant authorities in accordance with the applicable Iraqi laws and regulations .

The Contractor's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 6.1 [Practices of Corruption and unlawful acts] which provides, inter alia, that acts intended to materially impede the exercise of the inspection and audit rights provided for under Sub-Clause 9.8 constitute a prohibited practice subject to contract termination as well as to a determination of ineligibility pursuant to the Iraqi's prevailing sanctions procedures.

### 10. Employer's Liabilities

- 10.1 All information and/or data to be supplied by the Employer as described in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, shall be deemed to be accurate, except when the Employer expressly states otherwise.

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- 10.2 The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in that Appendix.
- 10.3 The Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which (a) such authorities or undertakings require the Employer to obtain in the Employer's name, (b) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract, and (c) are specified in the Appendix (Scope of Works and Supply by the Employer).
- 10.4 If requested by the Contractor, the Employer shall use its best endeavours to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain approvals or permits.
- 10.5 Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly eligible operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature, including those required by the Contractor to properly carry out Pre-commissioning, Commissioning and Guarantee Tests, all in accordance with the provisions of the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, at or before the time specified in the program submitted by the Contractor under GCC Sub-Clause 18.2 hereof and in the manner thereupon specified or as otherwise agreed upon by the Employer and the Contractor.
- 10.6 The Employer shall be responsible for the continued operation of the Facilities after Completion, in accordance with GCC Sub-Clause 24.8, and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with GCC Sub-Clause 25.2.
- 10.7 All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Employer, save those to be incurred by the Contractor with respect to the performance of Guarantee Tests, in accordance with GCC Sub-Clause 25.2.
- 10.8 In the event that the Employer shall be in breach of any of his obligations under this Clause, the additional cost incurred by the Contractor in consequence thereof shall be determined by the Project Manager and added to the Contract Price in accordance to the applicable Iraqi laws and regulations.

### Payments

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#### 11. Contract Price

- 11.1 The Contract Price shall be as specified in Clause 2 of the Contract Agreement.
- 11.2 Unless an amendment clause is provided for in the SCC, the Contract Price shall be a firm lump sum not subject to any alteration, except in

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the event of a Change in the Facilities or as otherwise provided in the Contract

- 11.3 Subject to GCC Sub-Clauses 9.2, 10.1 and 35 hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract

### 12. Payment Terms

- 12.1 The Contract Price shall be paid as specified in Clause 2 (Contract Price and Payment Terms) of the Contract Agreement and in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, which also outlines the procedures to be followed in making application for and processing payments and as indicated in the SCC .
- 12.2 No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Facilities or any part(s) thereof.
- 12.3 In the event that the Employer fails to make any payment by its respective due date or within the period set forth in the Contract, the Employer and the Contractor shall seek the possible solutions to resolve the issue and as indicated in the SCC.
- 12.4 The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contractor's bid.

### 13. Guarantees

#### 13.1 Issuance of Guarantees

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

#### 13.2 Advance Payment Guarantee

In the event that the contracting Entity shall grant an advanced payment (operating advance) to the contractor and in accordance with the provisions of the investment budget instructions related to this subject, the following is observed:

13.2.1 The contractor shall submit the letter of guarantee for the request of the advance payment (the operational advance) as soon as possible and before the payment of the first stage payment for the completed work so that it is equivalent to the value of the advance payment (the operational advance) calculated according to the annex to the contract agreement entitled "terms and procedures for payment" in the same currency or currencies And, as specified in the SCC.

13.2.2 The Guarantee shall be payable upon demand and unconditional guarantee issued by an accredited bank in Iraq as per the official publication of the Iraqi Central Bank. If the Guarantee is issued by a Bank located outside the Employer's country, the issuer shall have a correspondent accredited financial institution located in the Employer's Country to make it enforceable.

In the case of a bank guarantee, the Guarantee shall be submitted either using the Bid Guarantee Form included in Section IX. - Contract Forms or in another substantially similar format with the prior approval of the Employer as per the applicable Iraqi laws. In either case, the form shall include the complete name of the Contractor. The Guarantee shall be addressed to the Employer stating the No. and title of this Contract. The amount of the Guarantee shall be reduced in proportion to the value of the Facilities executed by and paid to the Contractor from time to

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time, and shall automatically become null and void when the full amount of the advance payment has been recovered by the Employer. The Guarantee shall be returned to the Contractor immediately after its expiration.

### 13.3 Good Performance Guarantee

- 13.3.1 The Contractor shall, within fourteen (14) days of the notification of contract award, provide a Guarantee for the due performance of the Contract in the amount specified in the **SCC**. Or in (29) days in case of any of rejection submitted by the diseligible bidders
- 13.3.2 The Good performance Guarantee shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Employer, and shall be in the form provided in Section IX, Contract Forms, corresponding to the type of bank guarantee stipulated by the Employer in the **SCC**, or in another form acceptable to the Employer.
- 13.3.3 Unless otherwise specified in the **SCC**, the Guarantee shall be reduced by half on the date of the Initial Acceptance. The Guarantee shall become null and void, or shall be reduced pro rata to the Contract Price of a part of the Facilities for which a separate Completion Term is provided, five hundred and forty (540) days after Completion of the Facilities or three hundred and sixty five (365) days after Initial Acceptance of the Facilities, whichever occurs first; provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC Sub-Clause 27.8 hereof, the Contractor shall issue an additional Guarantee in an amount proportionate to the Contract Price of that part. The Guarantee shall be returned to the Contractor immediately after its expiration, provided, however, that if the Contractor, pursuant to GCC Sub-Clause 27.10, is liable for an extended Defects Guarantee obligation, the performance Guarantee shall be extended for the period specified in the **SCC** pursuant to GCC Sub-Clause 27.10 and up to the amount specified in the **SCC**.
- 13.3.4 The Employer shall not make a claim under the Performance Guarantee, except for amounts to which the Employer is entitled under the Contract. The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Guarantee to the extent to which the Employer was not entitled to make the claim.

## 14. Taxes and Fees

- 14.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the country where the Site is located, and as indicated in the **SCC**, and according to the applicable regulations.
- 14.2 Notwithstanding GCC Sub-Clause 14.1 above, the Employer shall bear and promptly pay:
  - a. all customs and import duties for the Factory specified in Price Schedule No. 1; and

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- b. other domestic taxes such as, sales tax and value added tax (VAT) on the Factory specified in Price Schedules No. 1 and No. 2 and that is to be incorporated into the Facilities, and on the finished goods, imposed by the law of the country where the Site is located.
- 14.3 If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the IRAQ where the Site is located, the Employer shall use its best endeavours to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.
- 14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Clause 2 (Contract Price and Payment Terms) of the Contract Agreement is based on the taxes, duties, Tariffs and charges prevailing at the date twenty-eight (28) days prior to the date of bid submission in the country where the Site is located (hereinafter called "Tax" in this GCC Sub-Clause 14.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Contractor, Subcontractors or their employees in connection with performance of the Contract, an equitable amendment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GCC Clause 36 hereof.

### Intellectual Property

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#### 15. Licenses and use of technical information

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

#### 16. Confidential Information

- 16.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other Party hereto, divulge to any third Party any documents, data or other information submitted directly or indirectly by the other Party hereto in connection with the Contract, whether such information has been submitted prior to, during or following

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termination of the Contract. Notwithstanding the above, the Contractor may submit to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GCC Clause 16.

- 16.2 The Employer shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the Contractor shall not use such documents, data and other information received from the Employer for any purpose other than the design, Contracting of Factory, construction or such other work and services as are required for the performance of the Contract.
- 16.3 The obligation of a Party under GCC Sub-Clauses 16.1 and 16.2 above, however, shall not apply to that information which:
- Now or hereafter enters the public domain through no fault of that Party.
  - Can be proven to have been possessed by that Party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other Party hereto.
  - Otherwise lawfully becomes available to that Party from a third Party that has no obligation of confidentiality.
- 16.4 The above provisions of this GCC Clause 16 shall not in any way amend any undertaking of confidentiality given by either of the Parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.
- 16.5 The provisions of this GCC Clause 16 shall survive binding to the parties after termination or withdraw, for whatever reason, of the Contract.

### Execution of the Facilities

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#### 17. Representatives

##### 17.1 Project Manager

If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Employer shall appoint and **notify the Contractor** in writing of the name of the Project Manager. The Employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon Acceptance of such notice by the Contractor. The Project Manager shall represent and act for the Employer at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.

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

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### 17.2 Contractor's Representative & Construction Manager

- 17.2.1 If the Contractor's Representative is not named in the Contract, then within fourteen (14) days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Employer in writing to approve the person so appointed. If the Employer makes no objection to the appointment within fourteen (14) days, the Contractor's Representative shall be deemed to have been approved. If the Employer objects to the appointment within fourteen (14) days giving the reason therefore, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GCC Sub-Clause 17.2.1 shall apply thereto.
- 17.2.2 The Contractor's Representative shall represent and act for the Contractor at all times during the performance of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information and all other communications under the contract.
- All notices, instructions, information and all other communications given by the Employer or the Project Manager to the Contractor under the Contract shall be given to the Contractor's Representative or, in its absence, its deputy, except as herein otherwise provided .
- The Contractor shall not revoke the appointment of the Contractor's Representative without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC Sub-Clause 2.1.
- 17.2.3 The Contractor's Representative may, subject to the approval of the Employer which shall not be unreasonably withheld, at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Project Manager.
- Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Sub-Clause 17.2.3 shall be deemed to be an act or exercise by the Contractor's Representative.
- 17.2.4 From the commencement of installation of the Facilities at the Site until Completion, the Contractor's Representative shall appoint a suitable person as the Construction Manager. The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as the Construction Manager's deputy .
- 17.2.5 The Employer may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC Sub-Clause 22.3. The Employer shall provide evidence of the same, whereupon

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the Contractor shall remove such person from the Facilities.

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

### 18. Program of Contractor

#### 18.1 Contractor's Organizational Chart

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

#### 18.2 Program of Performance

Within twenty-eight (28) days after the Effective Date, the Contractor shall submit to the Project Manager a detailed program of performance of the Contract, made in a form acceptable to the Project Manager and showing the sequence in which it proposes to design, manufacture, transport, assemble, install and pre-commission the Facilities, as well as the date by which the Contractor reasonably requires that the Employer shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve Completion, Operation and Acceptance of the Facilities in accordance with the Contract. The program so submitted by the Contractor shall accord with the Time Schedule included in the Appendix to the Contract Agreement titled Time Schedule, and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without amendment in the Times for Completion specified in the SCC pursuant to Sub-Clause 8.2 and any extension granted in accordance with GCC Clause 40, and shall submit all such revisions to the Project Manager.

#### 18.3 Progress Report

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

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

#### 18.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the program referred to in GCC Sub-Clause 18.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Employer or the Project Manager, prepare and submit to the Project Manager a revised program, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress

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so as to attain Completion of the Facilities within the Completion Term under GCC Sub-Clause 8.2, any extension thereof entitled under GCC Sub-Clause 40.1, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.

### 18.5 Procedures

The Contract shall be executed in accordance with the Contract Documents including the procedures given in the Forms and Procedures of the Employer's Requirements. The Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract.

## 19. Subcontracting

- 19.1 The Contractor may subcontract parts of the Contract as per the approval of the Contracting Entity where the Contractor retains full responsibility in executing the Contract and where the Contract may not be assigned to a Subcontractor .

The Appendix to the Contract Agreement titled List of Major Items of Factory and Services and List of Approved Subcontractors, specifies major items of supply or services and a list of approved Subcontractors against each item, including factories, and as indicated in SCC. Insofar as no Subcontractors are listed against any such item, the Contractor shall prepare a list of Subcontractors for such item for inclusion in such list. The Contractor may from time to time propose any addition to or deletion from any such list .

The Contractor shall submit any such list or any amendment thereto to the Employer for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the Employer for any of the Subcontractors shall not relieve the Contractor from any of its obligations, duties or Liabilities under the Contract.

- 19.2 The Contractor shall select and employ its Subcontractors for such major items from those listed in the lists referred to in GCC Sub-Clause 19.1.

For items or parts of the Facilities not specified in the Appendix to the Contract Agreement titled List of Major Items of Factory and Services and List of Approved Subcontractors, the Contractor may employ such Subcontractors as it may select, at its discretion.

Each sub-contract shall include provisions which would entitle the Employer to require the sub-contract to be assigned to the Employer under GCC 19.5 (if and when applicable), or in event of termination by the Employer under GCC 42.2 .

If a sub-contractor's obligations extend beyond the expiry date of the relevant Defects Liability Period and the Project Manager, prior to that date, instructs the Contractor to assign the benefits of such obligations to the Employer, then the Contractor shall do so.

## 20. Design and Engineering

- 20.1 Specifications and Drawings

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

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

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

### 20.2 Codes and Standards

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

### 20.3 Approval/Review of Technical Documents by Project Manager

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

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

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

20.3.2 Within the period indicated in the SCC after Acceptance by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Sub-Clause 20.3.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefore and the amendments that the Project Manager proposes.

If the Project Manager fails to take such action within the said above period, then said document shall be deemed to have been approved by the Project Manager .

20.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with the Contract or that it is contrary to

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good engineering practice .

- 20.3.4 If the Project Manager disapproves the document, the Contractor shall amend the document and resubmit it for the Project Manager's approval in accordance with GCC Sub-Clause 20.3.2. If the Project Manager approves the document subject to amendment(s), the Contractor shall make the required amendment(s), whereupon the document shall be deemed to have been approved.
- 20.3.5 If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any amendment(s) thereto that cannot be settled between the Parties within a reasonable period, then such dispute or difference may be referred to a Disputes Settlement Council for determination in accordance with GCC Sub-Clause 46.1 hereof. If such dispute or difference is referred to a Disputes Settlement Council, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Disputes Settlement Council upholds the Contractor's view on the dispute and if the Employer has not given notice under GCC Sub-Clause 46.3 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Disputes Settlement Council shall decide, and the Completion Term shall be extended accordingly.
- 20.3.6 The Project Manager's approval, with or without amendment of the document submitted by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from amendments required by the Project Manager.
- 20.3.7 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this GCC Sub-Clause 20.3.

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

## 21. Contracting.

### 21.1 Factory

Subject to GCC Sub-Clause 14.2, the Contractor shall procure and transport all Factory in an expeditious and orderly manner to the Site. All imported Goods and Factorys shall be delivered with certificates of the country of origin and associated trading lists endorsed by the relevant Iraqi Commercial Agencies outside Iraq and as indicated in the **SCC**.

### 21.2 Factory provided by the employer

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

- 21.2.1 The Employer shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the Parties and make such item available to the Contractor at the time specified in the program submitted by the Contractor, pursuant to GCC Sub-Clause 18.2, unless otherwise mutually agreed .
- 21.2.2 Upon Acceptance of such item, the Contractor shall inspect the same visually and notify the Project Manager of any detected shortage, defect or default. The Employer shall immediately remedy any shortage, defect or default, or the Contractor shall, if practicable and possible, at the request of the Employer, remedy such shortage, defect or default at the Employer's cost and expense. After inspection, such item shall fall under the care, custody and control of the Contractor. The provision of this GCC Sub-Clause 21.2.2 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items that have been repaired.
- 21.2.3 The foregoing Liabilities of the Contractor and its obligations of care, custody and control shall not relieve the Employer of liability for any undetected shortage, defect or default, nor place the Contractor under any liability for any such shortage, defect or default whether under GCC Clause 27 or under any other provision of Contract.

### 21.3 Transportation

- 21.3.1 The Contractor shall at its own risk and expense transport all the materials and the Contractor's Equipment to the Site by the mode of transport that the Contractor judges most suitable under all the circumstances.
- 21.3.2 Unless otherwise provided in the Contract, the Contractor shall be entitled to select any safe mode of transport operated by any person to carry the materials and the Contractor's Equipment .
- 21.3.3 Upon dispatch of each shipment of materials and the Contractor's Equipment, the Contractor shall notify the Employer by telex, cable, facsimile or electronic means, of the description of the materials and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Contractor shall provide the Employer with relevant shipping documents to be agreed upon between the Parties .
- 21.3.4 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the materials and the Contractor's Equipment to the Site. The Employer shall use its best endeavours in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any claim for damage to roads, bridges or any other traffic facilities

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that may be caused by the transport of the materials and the Contractor's Equipment to the Site .

### 21.4 Customs Clearance

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

## 22. Installation

### 22.1 Setting Out/Supervision

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

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

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

### 22.2 Labour

#### 22.2.1 Engagement of Staff and Labour

Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.

The Contractor is encouraged to use local labour that has the necessary skills as stated in the **SCC** of the contract.

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The Contractor shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Contract .

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 will 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 .

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

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

### 22.2.2 Persons in the Service of Employer

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

### 22.2.3 Labour and Social Guarantee Laws

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

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

The Contractor shall, in all dealings with its labour and the labour of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and

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all local laws and regulations pertaining to the employment of labour.

### 22.2.4 Rates of Wages and Conditions of Labour

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 the Country in respect of such of their salaries, wages and allowances as are chargeable under the Laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

### 22.2.5 Working Hours

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

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

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

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

### 22.2.6 Facilities for Staff and Labour

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

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

### 22.2.7 Health and Safety

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The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be eligible for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the performance of the Contract, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority

The Contractor shall send to the Project Manager, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Engineer may reasonably require.

### 22.2.8 Funeral Arrangements

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

### 22.2.9 Records of Contractor's Personnel

The Contractor shall keep accurate records of the Contractor's personnel, including the No. of each class of Contractor's Personnel on the Site and the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis in a form approved by the Project Manager and shall be available for inspection by the Project Manager until the Contractor has completed all work.

### 22.2.10 Supply of Foodstuffs

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

### 22.2.11 Supply of Water

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

### 22.2.12 Measures against Insect and Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce

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their danger to health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

### 22.2.13 Alcoholic Liquor or Drugs

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

### 22.2.14 Arms and Ammunition

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

### 22.2.15 Prohibition of All Forms of Forced or Compulsory Labour .

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

### 22.2.16 Prohibition of Harmful Child Labour

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

## 22.3 Contractor’s Equipment

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

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

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

## 22.4 Site Regulations and Safety

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

Such Site regulations shall include, but shall not be limited to,

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rules in respect of Guarantee, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.

### 22.5 Opportunities for Other Contractors

- 22.5.1 The Contractor shall, upon written request from the Employer or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors employed by the Employer on or near the Site .
- 22.5.2 If the Contractor, upon written request from the Employer or the Project Manager, makes available to other contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services .
- 22.5.3 The Contractor shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of the Employer in regard to their work..
- 22.5.4 The Contractor shall notify the Project Manager promptly of any defects in the other contractors' work that come to its notice, and that could affect the Contractor's work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the Facilities. Decisions made by the Project Manager shall be binding on the Contractor

### 22.6 Emergency Work

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

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

### 22.7 Site Clearance.

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

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required for execution of the Contract.

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

### 22.8 Watching and Lighting

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

## 23. Testing and Inspection

- 23.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Factory and any part of the Facilities as are specified in the Contract .
- 23.2 The employer and the project manager or their official representative shall have the right to attend the examination and / or inspection mentioned above, provided that the contractor shall bear all the costs and expenses associated with this attendance, which include but not limited to travel costs, crossing fees, food and housing expenses .
- 23.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third Party or factory any necessary permission or consent to enable the Employer and the Project Manager or their designated representatives to attend the test and/or inspection .
- 23.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection .

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

- 23.5 **The Project Manager** may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of work on the Facilities and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Completion Term and the other obligations so affected.
- 23.6 If any Factory or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Factory or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 23.3.
- 23.7 If any dispute or difference of opinion shall arise between the Parties in connection with or arising out of the test and/or inspection of the Factory or part of the Facilities that cannot be settled between the Parties within a reasonable period of time, it may be referred to an Disputes Settlement Council for determination in accordance with GCC Sub-Clause 6.1.

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- 23.8 The Contractor shall afford the Employer and the Project Manager, at the Employer's expense, access at any reasonable time to any place where the Factorys are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Contractor a reasonable prior notice .
- 23.9 The Contractor agrees that neither the execution of a test and/or inspection of Factory or any part of the Facilities, nor the attendance by the Employer or the Project Manager, nor the issue of any test certificate pursuant to GCC Sub-Clause 23.4, shall release the Contractor from any other Liabilities under the Contract.
- 23.10 No part of the Facilities or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Project Manager whenever any such parts of the Facilities or foundations are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.
- 23.11 The Contractor shall uncover any part of the Facilities or foundations, or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts .

If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of GCC Sub-Clause 23.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Employer, and the Completion Term shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

### 24. Completion of the Facilities

- 24.1 As soon as the Facilities or any part thereof has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Employer's Requirements, excluding minor items not materially affecting the operation or safety of the Facilities, the Contractor shall so notify the Employer in writing.
- 24.2 Within the period specified in the SCC after Acceptance of the notice from the Contractor under GCC Sub-Clause 24.1, the Employer shall supply the operating and maintenance personnel specified in the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer for Pre-commissioning of the Facilities or any part thereof
- Pursuant to the Appendix to the Contract Agreement titled Scope of Works and Supply by the Employer, the Employer shall also provide, within the period specified in the SCC, the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Pre-commissioning of the Facilities or any part thereof.
- 24.3 As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Employer and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters have been provided by the Employer in accordance with GCC Sub-Clause 24.2, the Contractor shall commence

## Section VII. General Conditions of the Contract

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Pre-commissioning of the Facilities or the relevant part thereof in preparation for Commissioning, subject to GCC Sub-Clause 25.5.

24.4 As soon as all works in respect of Pre-commissioning are completed and, in the opinion of the Contractor, the Facilities or any part thereof is ready for Commissioning, the Contractor shall so notify the Project Manager in writing.

24.5 The Project Manager shall, within the period specified in the **SCC** after Acceptance of the Contractor's notice under GCC Sub-Clause 24.4, either issue a Completion Certificate in the form specified in the Employer's Requirements (Forms and Procedures), stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's notice under GCC Sub-Clause 24.4, or notify the Contractor in writing of any defects and/or deficiencies.

If the Project Manager notifies the Contractor of any defects and/or deficiencies, the Contractor shall then correct such defects and/or deficiencies, and shall repeat the procedure described in GCC Sub-Clause 24.4.

If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within period stated in the **SCC** after Acceptance of the Contractor's repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as of the date of the Contractor's repeated notice.

If the Project Manager is not so satisfied, then it shall notify the Contractor in writing of any defects and/or deficiencies within period stated in the **SCC** after Acceptance of the Contractor's repeated notice, and the above procedure shall be repeated.

24.6 If the Project Manager fails to issue the Completion Certificate and fails to inform the Contractor of any defects and/or deficiencies as per GCC Sub-Clause 24.4 or within the period specified after Acceptance of the Contractor's repeated notice under GCC Sub-Clause 24.5, or if the Employer makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the Contractor's notice or repeated notice, or as of the Employer's use of the Facilities, as the case may be.

24.7 As soon as possible after Completion, the Contractor shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the Employer will undertake such completion and deduct the costs thereof from any monies owing to the Contractor.

24.8 Upon Completion, the Employer shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.

### 25. Initial Operation and Acceptance

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- 25.1.1 Commissioning of the Facilities or any part thereof shall be commenced by the Contractor immediately after issue of the Completion Certificate by the Project Manager, pursuant to GCC Sub-Clause 24.5, or immediately after the date of the deemed Completion, under GCC Sub-Clause 24.6 .
- 25.1.2 The Employer shall supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Commissioning.
- 25.1.3 In accordance with the requirements of the Contract, the Contractor's and Project Manager's advisory personnel shall attend the Commissioning, including the Guarantee Test, and shall advise and assist the Employer.

### 25.2 Defects Guarantee Test

- 25.2.1 Subject to GCC Sub-Clause 25.5, the Guarantee Test and repeats thereof shall be conducted by the Contractor during Commissioning of the Facilities or the relevant part thereof to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees. The Employer shall promptly provide the Contractor with such information as the Contractor may reasonably require in relation to the conduct and results of the Guarantee Test and any repeats thereof.
- 25.2.2 If for reasons not attributable to the Contractor, the Guarantee Test of the Facilities or the relevant part thereof cannot be winningly completed within the period from the date of Completion specified in the SCC or any other period agreed upon by the Employer and the Contractor, the Contractor shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and GCC Sub-Clauses 28.2 and 28.3 shall not apply.

### 25.3 Initial Acceptance

- 25.3.1 Subject to GCC Sub-Clause 25.4 below, Initial Acceptance shall occur in respect of the Facilities or any part thereof when:
  - a. the Guarantee Test has been winningly completed and the Functional Guarantees are met; or
  - b. the Guarantee Test has not been winningly completed or has not been carried out for reasons not attributable to the Contractor within the period from the date of Completion specified in the SCC pursuant to GCC Sub-Clause 25.2.2 above or any other period agreed upon by the Employer and the Contractor; or
  - c. the Contractor has paid the performance Guarantee penalties specified in GCC Sub-Clause 28.3 hereof; and
  - d. any minor items mentioned in GCC Sub-Clause 24.7 hereof relevant to the Facilities or that part thereof have been completed
- 25.3.2 At any time after any of the events set out in GCC Sub-Clause 25.3.1 have occurred,

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the Contractor may give a notice to the Project Manager requesting the issue of an Initial Acceptance Certificate in the form provided in the Employer's Requirements (Forms and Procedures) in respect of the Facilities or the part thereof specified in such notice as of the date of such notice .

- 25.3.3 The Project Manager shall, after consultation with the Employer, and within the period specified in the **SCC** after Acceptance of the Contractor's notice, issue an Initial Acceptance Certificate.

Contractor's said notice.

- 25.3.4 If the Project Manager fails to issue the Initial Acceptance Certificate as or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Initial Acceptance Certificate as set out in GCC Sub-Clause 25.3.3, the Facilities or the relevant part thereof shall be deemed to have been accepted as of the date of the

### 25.4 Partial Acceptance

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

- 25.4.2 If a part of the Facilities comprises facilities such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Initial Acceptance Certificate for such facility when it attains Completion, provided that the Contractor shall thereafter complete any outstanding minor items that are listed in the Initial Acceptance Certificate.

### 25.5 Delayed Pre-commissioning and/or Guarantee Test

- 25.5.1 In the event that the Contractor is unable to proceed with the Pre-commissioning of the Facilities pursuant to Sub-Clause 24.3, or with the Guarantee Test pursuant to Sub-Clause 25.2, for reasons attributable to the Employer either on account of non-availability of other facilities under the Liabilities of other contractor(s), or for reasons beyond the Contractor's control, the provisions leading to "deemed" completion of activities such as Completion, pursuant to GCC Sub-Clause 24.6, and Initial Acceptance, pursuant to GCC Sub-Clause 25.3.4, and Contractor's obligations regarding Defects Guarantee Period, pursuant to GCC Sub-Clause 27.2, Functional Guarantee, pursuant to GCC Clause 28, and Care of Facilities, pursuant to GCC Clause 32, and GCC Clause 41.1, Suspension, shall not apply. In this case, the following provisions shall apply.

- 25.5.2 When the Contractor is notified by the Project Manager that he will be unable to proceed with the activities and obligations pursuant to above Sub-Clause 13.1, the Contractor shall be entitled to the following:

- a. The Time of Completion shall be extended for the period of suspension without imposition of liquidated damages pursuant to GCC Sub-Clause 26.2;
- b. Payments due to the Contractor in accordance with the provision specified

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in the Appendix to the Contract Agreement titled Terms and Procedures of Payment, which would not have been payable in normal circumstances due to non-completion of the subject activities, shall be released to the Contractor against submission of a Guarantee in the form of a bank guarantee of equivalent amount acceptable to the Employer, and which shall become null and void when the Contractor will have complied with its obligations regarding those payments, subject to the provision of Sub-Clause 25.5.3 below;

- c. The expenses towards the above Guarantee and extension of other Guarantees under the contract, of which validity needs to be extended, shall be reimbursed to the Contractor by the Employer as per the applicable IRAQI laws;
- d. The additional charges towards the care of the Facilities pursuant to GCC Sub-Clause 32.1 shall be reimbursed to the Contractor by the Employer for the period between the notification mentioned above and the notification mentioned in Sub-Clause 25.5.4 below. The provision of GCC Sub-Clause 33.2 shall apply to the Facilities during the same period.

25.5.3 In the event that the period of suspension under above Sub-Clause 25.5.1 actually exceeds one hundred eighty (180) days, the Employer and Contractor shall mutually agree to any additional compensation payable to the Contractor provided the Contractor notifies the Employer in writing within twenty eight (28) days from the start of the suspension of the intension to claim in this regard.

25.5.4 When the Contractor is notified by the Project Manager that the factory is ready for Pre-commissioning, the Contractor shall proceed without delay in performing Pre-commissioning in accordance with Clause 24.

### **Guarantees and Liabilities**

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#### **26. Works Completion Guarantee within specific period**

26.1 The Contractor guarantees that it shall attain Completion of the Facilities (or a part for which a separate Completion Term is specified) within the Completion Term specified in the **SCC** pursuant to GCC Sub-Clause 8.2, or within such extended time to which the Contractor shall be entitled under GCC Clause 40 hereof.

26.2 If the Contractor fails to attain Completion of the Facilities or any part thereof within the Completion Term or any extension thereof under GCC Clause 40, the Contractor shall pay to the Employer liquidated damages in the amount specified in the **SCC** as a percentage rate of the Contract Price or the relevant part thereof. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as "Maximum" in the **SCC** as a percentage rate of the Contract Price. Once the "Maximum" is reached, the Employer may consider termination of the Contract, pursuant to GCC Sub-Clause 42.2.2

Such payment shall completely satisfy the Contractor's obligation to attain Completion of the Facilities or the relevant part thereof within the Completion Term or any extension thereof under GCC Clause 40. The Contractor shall have no further liability whatsoever to the Employer in respect thereof.

However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete

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the Facilities or from any other obligations and liabilities of the Contractor under the Contract.

Save for liquidated damages payable under this GCC Sub-Clause 26.2, the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in the Appendix to the Contract Agreement titled Time Schedule, and/or other program of work prepared pursuant to GCC Sub-Clause 18.2 shall not render the Contractor liable for any loss or damage thereby suffered by the Employer.

### 27. Defects Guarantee

- 27.1 The Contractor warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Factory supplied and of the work executed.
- 27.2 The Defects Guarantee Period shall be five hundred and forty (540) days from the date of Completion of the Facilities (or any part thereof) or one year from the date of Initial Acceptance of the Facilities (or any part thereof), whichever first occurs, unless specified otherwise in the SCC pursuant to GCC Sub-Clause 27.10.

If during the Defects Guarantee Period any defect shall be found in the design, engineering, materials and workmanship of the Factory supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good as the Contractor shall determine at its discretion, such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect, or of any damage to the Facilities arising out of or resulting from any of the following causes :

- 27.3 The contractor shall not be responsible for repairing or replacing the defect or defect in the facilities (with fixing what is properly connected) due to any of the following reasons:
- a. Improper operation or maintenance of the Facilities by the Employer;
  - b. Operation of the Facilities outside specifications provided in the Contract; or
  - c. Normal wear and tear.
- 27.4 The Contractor's obligations under this GCC Clause 27 shall not apply to :
- a. Any materials that are supplied by the Employer under GCC Sub-Clause 21.2, are normally consumed in operation, or have a normal life shorter than the Defects Guarantee Period stated herein ;
  - b. Any designs, specifications or other data designed, supplied or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility herein; or
  - c. Any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GCC Sub-Clause 27.7.
- 27.5 The Employer shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof.

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The Employer shall afford all reasonable opportunity for the Contractor to inspect any such defect.

- 27.6 The Employer shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this GCC Clause 27.

The Contractor may, with the consent of the Employer, remove from the Site any Factory or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.

- 27.7 If such part fails the tests, the Contractor shall carry out further repair, replacement or making good, as the case may be, until that part of the Facilities passes such tests. The tests shall be agreed upon by the Employer and the Contractor.

If this part of the facilities fails to pass the tests, the contractor shall perform additional repairs and / or replacements (or whatever is appropriate) according to the case, until this part (facilities) passes these tests, provided that these tests are agreed between the two parties.

- 27.8 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time as indicated in the SCC, the Employer may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Employer in connection therewith shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due the Contractor or claimed under the Performance Guarantee.

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

- 27.10 In addition, any such component of the Facilities, and during the period of time as may be specified in the SCC, shall be subject to an extended Defects Guarantee period. Such obligation of the Contractor shall be in addition to the Defects Guarantee period specified under GCC Sub-Clause 27.2 .

- 27.11 In addition to the above, any component of the installations may, during the period specified in the Special Conditions of the contract, be subject to an extension of the period of guaranteeing the defects. This obligation is in addition to the contractor's obligations related to the period of guaranteeing the defects specified under paragraph 27.2 of the general conditions of the contract.

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### 28. Functional Guarantees

- 28.1 The Contractor guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, subject to and upon the conditions therein specified.
- 28.2 If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, amendments and/or additions to the Factory or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, amendments and/or additions, and shall request the Employer to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Contractor eventually fails to meet the minimum level of Functional Guarantees, the Employer may consider termination of the Contract, pursuant to GCC Sub-Clause 42.2.2.
- 28.3 If, for reasons attributable to the Contractor, the Functional Guarantees specified in the Appendix to the Contract Agreement titled Functional Guarantees, are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the said Appendix to the Contract Agreement is met, the Contractor shall, at the Contractor's option, either
- a. Shall make such changes, amendments and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Employer to repeat the Guarantee Test or
  - b. Shall pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the Appendix to the Contract Agreement titled Functional Guarantees.
- 28.4 The payment of liquidated damages under GCC Sub-Clause 28.3, up to the limitation of liability specified in the Appendix to the Contract Agreement titled Functional Guarantees, shall completely satisfy the Contractor's guarantees under GCC Sub-Clause 28.3, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Initial Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.

### 29. Patent Indemnity

- 29.1 The Contractor shall, subject to the Employer's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Employer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the Facilities by the Contractor or the use of the Facilities in

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## Section VII. General Conditions of the Contract

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the country where the Site is located; and (b) the sale of the products produced by the Facilities in any country.

Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, factory or materials not supplied by the Contractor, pursuant to the Contract Agreement .

- 29.2 If any proceedings are brought or any claim is made against the Employer arising out of the matters referred to in GCC Sub-Clause 29.1, the Employer shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days after Acceptance of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defence of any such proceedings or claim.

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

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

### 30. Limitation of Liability

- 30.1 Except in cases of criminal negligence or wilful misconduct,
- a. Neither Party shall be liable to the other Party, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, which may be suffered by the other Party in connection with the Contract, other than specifically provided as any obligation of the Party in the Contract, and
  - b. the aggregate liability of the Contractor to the Employer, whether under the Contract, or otherwise, shall not exceed the amount resulting from the application of the multiplier specified in the SCC, to the Contract Price or, if a multiplier is not so specified, the total Contract Price, provided that this limitation shall not apply

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to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

### Risk Distribution

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#### 31. Transfer of Ownership

- 31.1 Ownership of the Factory (including spare parts) to be imported into the country where the Site is located shall be transferred to the Employer upon loading on to the mode of transport to be used to convey the Factory from the country of origin to that country.
- 31.2 Ownership of the Factory (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Factory are brought on to the Site.
- 31.3 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.
- 31.4 Ownership of any Factory in excess of the requirements for the Facilities shall revert to the Contractor upon Completion of the Facilities or at such earlier time when the Employer and the Contractor agree that the Factory in question are no longer required for the Facilities.
- 31.5 Notwithstanding the transfer of ownership of the Factory, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor pursuant to GCC Clause 32 (Care of Facilities) hereof until Completion of the Facilities or the part thereof in which such Factory are incorporated.

#### 32. Facilities Care

- 32.1 The Contractor shall be responsible for the care and custody of the Facilities or any part thereof until the date of Completion of the Facilities pursuant to GCC Clause 24 or, where the Contract provides for Completion of the Facilities in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any cause whatsoever during such period .

The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GCC Clause 27. Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clauses 32.2 and 38.1.

- 32.2 If any loss or damage occurs to the Facilities or any part thereof or to the Contractor's temporary facilities by reason of :
  - a. insofar as they relate to the country where the Site is located, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably

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foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GCC Clause 34 hereof; or

- b. any use or occupation by the Employer or any third Party other than a Subcontractor, authorized by the Employer of any part of the Facilities; or
- c. any use of or reliance upon any design, data or specification provided or designated by or on behalf of the Employer, or any such matter for which the Contractor has disclaimed responsibility herein

the Employer shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed or damaged. If the Employer requests the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with GCC Clause 39. If the Employer does not request the Contractor in writing to make good any loss or damage to the Facilities thereby occasioned, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Employer shall terminate the Contract pursuant to GCC Sub-Clause 42.1 hereof.

- 32.3 The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the Facilities, except (i) as mentioned in GCC Sub-Clause 32.2 with respect to the Contractor's temporary facilities, and (ii) where such loss or damage arises by reason of any of the matters specified in GCC Sub-Clauses 32.2 (b) and (c) and 38.1.
- 32.4 With respect to any loss or damage caused to the Facilities or any part thereof or to the Contractor's Equipment by reason of any of the matters specified in GCC Sub-Clause 38.1, the provisions of GCC Sub-Clause 38.3 shall apply.

### **33. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification**

- 33.1 Subject to GCC Sub-Clause 33.3, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property other than the Facilities whether accepted or not, arising in connection with the supply and installation of the Facilities

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and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Employer, its contractors, employees, officers or agents.

- 33.2 If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GCC Sub-Clause 33.1, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Contractor fails to notify the Employer within twenty-eight (28) days after Acceptance of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defence of any such proceedings or claim.

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

- 33.3 The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Facilities not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 34, provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor .
- 33.4 The Party entitled to the benefit of an indemnity under this GCC Clause 33 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the Party fails to take such measures, the other Party's liabilities shall be correspondingly reduced.

### 34. Insurance

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

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a. Cargo Insurance During Transport

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

b. Insurance against all installation risks

To cover material losses or damage to installations on the job site, which occur before the completion of the installations, while extending coverage on maintenance associated with the contractor's responsibility for any loss or damage that may result during the period of ensuring defects while the contractor on the site is exercising its obligations during a period Defects guarantee.

c. Insurance against personal injury and property damage - the third party

To cover the bodily injury, or the death of any third party (including employer employees), and the loss or damage to property that may occur as a result of handing over and installing the facilities.

d. Liability of vehicle insurance

To cover the contractor and its subcontractors 'use of all vehicles used for contract purposes, whether or not these vehicles are owned by them.

e. Workers' Compensation

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

f. Employer's Liability

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

g. Other Insurances

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

34.2 The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under

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all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 34.1 except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

- 34.3 The Contractor shall, in accordance with the provisions of the Appendix to the Contract Agreement titled Insurance Requirements, deliver to the Employer certificates of insurance or copies of the insurance policies as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to the Employer by insurers prior to cancellation or material amendment of a policy.
- 34.4 The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.
- 34.5 The Employer shall at its own expense take out and maintain in effect during the performance of the Contract those insurances specified in the Appendix to the Contract Agreement titled Insurance Requirements, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor's Subcontractors shall be named as co-insureds under all such policies. All insurers' rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Employer shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than twenty-one (21) days' notice shall be given to the Contractor by all insurers prior to any cancellation or material amendment of the policies. If so requested by the Contractor, the Employer shall provide copies of the policies taken out by the Employer under this GCC Sub-Clause 34.5.
- 34.6 If the Contractor fails to take out and/or maintain in effect the insurances referred to in GCC Sub-Clause 34.1, the Employer may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Contractor under the Contract any premium that the Employer shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Contractor. If the Employer fails to take out and/or maintain in effect the insurances referred to in GCC 34.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Employer under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Employer. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or

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responsibility towards the Employer, and the Contractor shall have full recourse against the Employer for any and all liabilities of the Employer herein.

- 34.7 Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 34, and all compensations payable by any insurers shall be paid to the Contractor. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.

### 35. Unexpected /Unforeseen Conditions

- 35.1 If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions other than climatic conditions, or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Facilities including any data as to boring tests, provided by the Employer, and on the basis of information that it could have obtained from a visual inspection of the Site if access thereto was available, or other data readily available to it relating to the Facilities, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional Factory or Contractor's Equipment, notify the Project Manager in writing of
- a. The physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;
  - b. The additional work and/or Factory and/or Contractor's Equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;
  - c. The extent of the anticipated delay; and
  - d. The additional cost and expense that the Contractor is likely to incur and that the Employer shall consider as per the applicable Iraqi Laws.

On receiving any notice from the Contractor under this GCC Sub-Clause 35.1, the Project Manager shall promptly consult with the Employer and Contractor and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.

- 35.2 Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in GCC Sub-Clause 35.1 shall be

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paid by the Employer to the Contractor as an addition to the Contract Price.

If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC Sub-Clause 35.1, the Completion Term shall be extended in accordance with GCC Clause 40.

### 36. Change of Laws and Regulations

36.1 If, after Seven (7) days prior to the date of Bid submission, in the IRAQ where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed which shall be deemed to include any change in interpretation or application by the competent authorities,

that subsequently affects the costs and expenses of the Contractor and/or the Completion Term, the Contract Price shall be correspondingly increased or decreased, and/or the Completion Term shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract.

Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price amendment provisions where applicable, in accordance WITH the SCC pursuant to GCC Sub-Clause 11.2.

### 37. Force Majeure

37.1 “Force Majeure Means” any situation is beyond the control of the Employer or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the Party affected, and shall include, without limitation, the following:

- a. War, hostilities or warlike operations whether a state of war be declared or not, invasion, act of foreign enemy and civil war.
- b. Rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts,
- c. Confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority
- d. strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague
- e. earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster
- f. shortage of labour, materials or utilities where caused by

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circumstances that are themselves Force Majeure.

- 37.2 If either Party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within the period indicated in the SCC after the occurrence of such event.
- 37.3 The Party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such Party's performance is prevented, hindered or delayed. The Completion Term shall be extended in accordance with GCC Clause 40.
- 37.4 The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfil its or their obligations under the Contract, but without prejudice to either Party's right to terminate the Contract under GCC Sub-Clauses 37.6 and 38.5.
- 37.5 No delay or non-performance by either Party hereto caused by the occurrence of any event of Force Majeure shall
- a. constitute a default or breach of the Contract, or
  - b. give rise to any claim for damages or additional cost or expense (b)occasioned thereby, subject to GCC Sub-Clauses 32.2, 38.3 and 38.4
- if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.
- 37.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than ninety (90) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other, but without prejudice to either Party's right to terminate the Contract under GCC Sub-Clause 38.5.
- 37.7 In the event of termination pursuant to GCC Sub-Clause 37.6, the rights and obligations of the Employer and the Contractor shall be as specified in GCC Sub-Clauses 42.1.2 and 42.1.3.
- 37.8 Notwithstanding GCC Sub-Clause 37.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.

### 38. War Risks

- 38.1 "War Risks" shall mean any event specified in paragraphs (a) and (b) of

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GCC Sub-Clause 37.1 and any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war, occurring or existing in or near the country (or countries) where the Site is located.

- 38.2 Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to:
- a. destruction of or damage to Facilities, Factory, or any part thereof;
  - b. destruction of or damage to property of the Employer or any third Party; or
  - c. injury or loss of life
  - d. If such destruction, damage, injury or loss of life is caused by any War Risks, and the Employer shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.
- 38.3 If the Facilities or any Factory or Contractor's Equipment or any other property of the Contractor used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any War Risks, the Employer shall pay the Contractor for
- a. any part of the Facilities or the Factory so destroyed or damaged to the extent not already paid for by the Employer and so far as may be required by the Employer, and as may be necessary for completion of the Facilities
  - b. Replacing or making good any Contractor's Equipment or other property of the Contractor so destroyed or damaged
  - c. Replacing or making good any such destruction or damage to the Facilities or the Factory or any part thereof .

If the Employer does not require the Contractor to replace or (make good) any such destruction or damage to the Facilities, the Employer shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to GCC Sub-Clause 42.1.

If the Employer requires the Contractor to replace or( make good) on any such destruction or damage to the Facilities, the Completion Term shall be extended in accordance with GCC 40 .

- 38.4 Notwithstanding anything contained in the Contract, the Employer shall pay the Contractor for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any War Risks, provided that the Contractor shall as soon as practicable notify the Employer in writing of any such increased cost.

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- 38.5 If during the performance of the Contract any War Risks shall occur that financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than ninety (90) days or an aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other.
- 38.6 In the event of termination pursuant to GCC Sub-Clauses 38.3 or 38.5, the rights and obligations of the Employer and the Contractor shall be specified in GCC Sub-Clauses 42.1.2 and 42.1.3.

### Variation orders

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#### 39. Change in the Facilities

##### 39.1 Making a Change

No changes shall be introduced to the contract or to add new works or quantities unless for extreme need and in accordance with **SCC**. In such case, the Change shall be narrowed to the minimum and would be applicable for the following reasons :

- a. If the change is not introduced, a delay in the Factory or a major economic and technical damage to the Factory will result;
- b. If the change is not introduced, the Factory cannot be useful upon completion;
- c. If the change will realize savings in the cost of the Factory;
- d. If the change does not result in a major amendment to the pre-determined service or capacity of the Factory, and as indicated in **SCC**;
- e. If the change will result earlier Completion Term but not to result in inferior technical specification or scope of supply,

Any change shall not be implemented until it is issued in writing by the Contracting Entity .

- 39.1.1 Subject to GCC Sub-Clauses 39.2.5 and 39.2.7, the Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, amendment, addition or deletion to, in or from the Facilities hereinafter called "variation", provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract .
- 39.1.2 The Contractor may from time to time during its performance of the Contract propose to the Employer with a copy to the Project Manager, any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Facilities. The Employer may at its discretion approve or reject any Change proposed by the Contractor, provided that the Employer

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shall approve any Change proposed by the Contractor to ensure the safety of the Facilities.

39.1.3 Notwithstanding GCC Sub-Clauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a variation, and such change shall not result in any amendment of the Contract Price or the Completion Term.

39.1.4 The procedure on how to proceed with and execute variation is specified in GCC Sub-Clauses 39.2 and 39.3, and further details and forms are provided in the Employer's Requirements (Forms and Procedures).

### 39.2 Variations Originating from Employer

39.2.1 If the Employer proposes a Change pursuant to GCC Sub-Clause 39.1.1, it shall send to the Contractor a "Request for Change Proposal," requiring the Contractor to prepare and submit to the Project Manager as soon as reasonably practicable a "variation Proposal," which shall include the following:

- a. Brief description of the variation.
- b. Impact on the Completion Term (if any).
- c. Estimated cost of the variation.
- d. Impact on Functional Guarantees (if any).
- e. Impact on any other provisions of the Contract.

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

Upon Acceptance of the Contractor's Estimate for variation Proposal, the Employer shall do one of the following:

- a. Accept the Contractor's estimation with instructions to the Contractor to proceed with the preparation of the Change Proposal.
- b. Advise the Contractor of any part of its Estimation for variation Proposal that is unacceptable and request the Contractor to review its estimate.
- c. Advise the Contractor that the Employer does not intend to proceed with the variation.

39.2.3 Upon Acceptance of the Employer's instruction to proceed under GCC Sub-Clause 39.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Sub-Clause 39.2.1.

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39.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract and in accordance with the rules of the Works Contract Conditions in Iraq, when applicable. If such rates and prices are inequitable, the Parties thereto shall agree on specific rates for the valuation of the Change. The resulting cost of all Changes shall not exceed the financial authorities of the Contracting entity Contracting entity with due consideration to the rules of the instructions of executing the Federal Iraqi Budget.

39.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other variation Orders that have already become binding upon the Contractor under this GCC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Clause 2 (Contract Price) of the Contract Agreement by more than fifteen per cent (15%), the Contractor may give a written notice of objection thereto prior to submitting the variation Proposal as aforesaid. If the Employer accepts the Contractor's objection, the Employer shall withdraw the proposed variation and shall notify the Contractor in writing thereof.

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

39.2.6 Upon Acceptance of the variation Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within the period stated in the SCC after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a variation Order.

If the Employer is unable to reach a decision within this stated above period, it shall notify the Contractor with details of when the Contractor can expect a decision.

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

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### 39.3 Changes arising from the Contractor.

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

Upon Acceptance of the Application for Change Proposal, the Parties shall follow the procedures outlined in GCC Sub-Clauses 39.2.6 and 39.2.7. However, shall the Employer choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

### 40. Extension of Works Completion term

- 40.1 The Time(s) for Completion specified in the SCC pursuant to GCC Sub-Clause 8.2 shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- a. Any Change in the Facilities as provided in GCC Clause (39.(
- b. Any suspension order given by the Employer under GCC Clause 41 hereof or reduction in the rate of progress pursuant to GCC Sub-Clause 41.2 or
- c. Any default or breach of the Contract by the Employer, specifically including failure to supply the items listed in the corresponding Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement, or any activity, act or omission of the Employer, or the Project Manager, or any other contractors employed by the Employer, or
- d. Any delay on the part of a sub-contractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this sub-clause, or
- e. Delays attributable to the Employer or caused by customs, or
- f. Any changes in laws and regulations as provided in GCC Clause 36 or

By such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

- 40.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a written notice of a claim for an extension of the Completion Term, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable but not later than (30) thirty days from the commencement of such event or circumstance .

As soon as reasonably practicable after Acceptance of such notice and supporting particulars of the claim but not later than (30) thirty days,

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the Employer shall reply. 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 appeal the Employer's decision as indicated in SCC. If still in disagreement, the Contractor is entitled to refer the matter to a Disputes Settlement Council, pursuant to GCC Sub-Clause 46.1.

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

In all cases where the Contractor has given a notice of a claim for an extension of time under GCC 40.2, the Contractor shall consult with the Project Manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall there after comply with all reasonable instructions which the Project Manager shall give in order to minimize such delay. If compliance with such instructions shall cause the Contractor to incur extra costs and the Contractor is entitled to an extension of time under GCC 40.1, the amount of such extra costs shall be considered by the Employer in accordance with applicable Iraqi laws.

### 41. Suspension

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

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

If the Employer fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with GCC Clause 39 or, where it affects the whole of the Facilities, as termination of the Contract under GCC Sub-Clause 42.1, and as indicated in SCC.

41.2 If

- a. The Employer has failed to pay the Contractor any sum due under the Contract within the specified period, or has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, as stipulated in GCC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy

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the same, as the case may be. If the Employer fails to pay such sum, or fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within the period stated in the **SCC** after Acceptance of the Contractor's notice or:

- b. the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas in accordance with GCC Sub-Clause 10.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities ,

Then the Contractor may by the period stated in the **SCC** notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

- 41.3 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GCC Clause 41, then the Completion Term shall be extended in accordance with GCC Sub-Clause 40.1, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price as indicated in the **SCC**, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the contract .
- 41.4 During the period of suspension, the Contractor shall not remove from the Site any Factory, any part of the Facilities or any Contractor's Equipment, without the prior written consent of the Employer.

### 42. Termination

#### 42.1 Termination for Employer's Convenience

- 42.1.1 The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GCC Sub-Clause 42.1.
- 42.1.2 Upon Acceptance of the notice of termination under GCC Sub-Clause 42.1.1, the Contractor shall either immediately or upon the date specified in the notice of termination
  - a. cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition
  - b. terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii) below
  - c. remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of

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any kind, and leave the whole of the Site in a clean and safe condition, and

- d. subject to the payment specified in GCC Sub-Clause 42.1.3 ,
  - i. deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination
  - ii. to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Factory as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and
  - iii. deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Facilities.

42.1.3 In the event of termination of the Contract under GCC Sub-Clause 42.1.1, the Employer shall pay to the Contractor the following amounts:

- a. The Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination.
- b. The costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel.
- c. Any amounts to be paid by the Contractor to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges.
- d. Costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 42.1.2.
- e. The cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third Parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.

### 42.2 Termination for Contractor's Default

42.2.1 The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefor to the Contractor, referring to this GCC Sub-Clause 42.2:

- a. if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up, other than

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a voluntary liquidation for the purposes of amalgamation or reconstruction, a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt

- b. If the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 43.
- c. If the Contractor, in the judgment of the Employer has engaged in corrupt, collusive, coercive, or fraudulent practices, as defined in GCC Clause 6, in competing for or in executing the Contract.

### 42.2.2 If the Contractor

- a. Has abandoned or repudiated the Contract.
- b. Has without valid reason failed to commence work on the Facilities promptly or has suspended, other than pursuant to GCC Sub-Clause 41.2, the progress of Contract performance for more than thirty (30) days after receiving a written instruction from the Employer to proceed.
- c. failed more than once in the implementation of the contract, or neglected more than once to perform his contractual duties and obligations without a legitimate reason, or that he has subcontracted in relation to any part of the contract in a way that is detrimental to the quality of the work or contravenes the instructions of the engineer,
- d. refuses or is unable to provide sufficient materials, services or labour to execute and complete the Facilities in the manner specified in the program submitted under GCC Sub-Clause 18.2 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Completion of the Facilities by the Completion Term as extended,

then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its Acceptance of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GCC Sub-Clause 42.2, after following the relevant procedures for termination as per the applicable Iraqi laws and as indicated in the **SCC**.

### 42.2.3 Upon Acceptance of the notice of termination in follow up to GCC Sub-Clauses 42.2.1 or 42.2.2 and as indicated in **SCC**, the Contractor shall terminate upon such date as specified in the notice of termination and to the following:

- a. Cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition.

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- b. Terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) below
  - c. Deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination.
  - d. To the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Factory as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors.
  - e. Deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities
- 42.2.4 The Employer may enter upon the Site, expel the Contractor, and complete the Facilities itself or by employing any third Party. The Employer may, to the exclusion of any right of the Contractor over the same, take over and use with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of the Employer and with an indemnification by the Employer for all liability including damage or injury to persons arising out of the Employer's use of such equipment, any Contractor's Equipment owned by the Contractor and on the Site in connection with the Facilities for such reasonable period as the Employer considers expedient for the supply and installation of the Facilities.
- Upon completion of the Facilities or at such earlier date as the Employer thinks appropriate, the Employer shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.
- 42.2.5 Subject to GCC Sub-Clause 42.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Facilities executed as of the date of termination, the value of any unused or partially used Factory on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 42.2.3. Any sums due the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.
- 42.2.6 If the Employer completes the Facilities, the cost of completing the Facilities by the Employer shall be determined as stated in the SCC.
- If the sum that the Contractor is entitled to be paid, pursuant to GCC Sub-Clause 42.2.5, plus the reasonable costs incurred by the Employer in completing the Facilities, exceeds the Contract Price, the Contractor shall be liable for such

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excess.

If such excess is greater than the sums due the Contractor under GCC Sub-Clause 42.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under GCC Sub-Clause 42.2.5, the Employer shall pay the balance to the Contractor.

The Employer and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

### 42.3 Termination by the Contractor

#### 42.3.1 If

- a. the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be.

If the Employer fails to pay such sum, within fourteen (14) days after Acceptance of the Contractor's notice, or fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach, or

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

then the Contractor may give a notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within twenty-eight (28) days of the said notice, the Contractor may by a further notice to the Employer referring to this GCC Sub-Clause 42.3.1, shall pursue the resolution of this matter with the Employer or terminate of the Contract.

- 42.3.2 The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GCC Sub-Clause 42.3.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or

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reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.

42.3.3 If the Contract is terminated under GCC Sub-Clauses 42.3.1 or 42.3.2, then the Contractor shall immediately.

- a. Cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities is already executed, or any work required to leave the Site in a clean and safe condition.
- b. Terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph SCC 42-3-3 (2 d/
- c. Remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractors' personnel from the Site, and
- d. subject to the payment specified in GCC Sub-Clause 42.3.4,
  - i. Deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination..
  - ii. to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Facilities and to the Factory as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors, and
  - iii. Deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Facilities.

42.3.4 If the Contract is terminated under GCC Sub-Clauses 42.3.1 or 42.3.2, the Employer shall pay to the Contractor all payments specified in GCC Sub-Clause 42.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.

42.3.5 Termination by the Contractor pursuant to this GCC Sub-Clause 42.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GCC Sub-Clause 42.3.

42.4 In this GCC Clause 42, the expression "Facilities executed" shall include all work executed, Services provided, and all Factory acquired, or subject to a legally binding obligation to purchase, by the Contractor and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.

42.5 In this GCC Clause 42, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid

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by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to the Appendix to the Contract Agreement titled Terms and Procedures of Payment.

### **43. Assignment**

- 43.1 Assignment by the Contractor shall not be entitled unless stated otherwise in the **SCC**. If entitled, the Contractor shall not, without the express prior written consent of the Employer, which consent shall not be unreasonably withheld, assign to any third Party a part of the Contract, or either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

### **44. Export Restrictions**

- 44.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Employer, to the country of the Employer or to the use of the Factory and Services to be supplied which arise from trade regulations from a country supplying those Factory and Services, and which substantially impede the Contractor from conference its obligations under the Contract, shall release the Contractor from the obligation to provide deliveries or services, always provided, however, that the Contractor can demonstrate to the satisfaction of the Employer that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the Factory and Services under the Conditions of the Contract. Termination of the Contract on this basis shall be for the Employer's convenience pursuant to Sub-Clause 42.1.

## **Claims, Disputes and Arbitration**

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### **45. Contractor's Claims**

- 45.1 If the Contractor considers himself to be entitled to any extension of the Completion Term and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall submit a notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or shall 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 Completion Term shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

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

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

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(if instructed) submit copies to the Project Manager.

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

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

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

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

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

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

In the event that the Contractor and the Employer cannot agree on any matter relating to a claim, either Party may refer the matter to the Disputes Settlement Council pursuant to GCC 46 hereof.

### 46. Disputes and Arbitration

#### 46.1 Appointment of the Disputes Settlement Council

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Disputes shall be referred to a Disputes Settlement Council for decision in accordance with GCC Sub-Clause 46.3. The Parties shall appoint a DISPUTES SETTLEMENT COUNCIL by the date stated in the SCC.

The DISPUTES SETTLEMENT COUNCIL shall comprise, as stated in the SCC, either one or three suitably eligible persons (“the members”), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of activities involved in the performance of the Contract and with the interpretation of contractual documents. If the No. is not so stated and the Parties do not agree otherwise, the DISPUTES SETTLEMENT COUNCIL shall comprise three persons, one of whom shall serve as chairman.

If the Parties have not jointly appointed the DISPUTES SETTLEMENT COUNCIL fourteen (14) days before the date stated in the SCC and the DISPUTES SETTLEMENT COUNCIL is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.

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

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

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

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

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

### 46.2 Failure to Agree on the Composition of the Disputes Settlement Council

If any of the following conditions apply, namely

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- a. the Parties fail to agree upon the appointment of the sole member of the DISPUTES SETTLEMENT COUNCIL by the date stated in the first paragraph of GCC Sub-Clause 46.1 ,
- b. either Party fails to nominate a member (for approval by the other Party) of a DISPUTES SETTLEMENT COUNCIL of three persons by such date,
- c. the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DISPUTES SETTLEMENT COUNCIL by such date, or
- d. the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

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

### 46.3 Obtaining Disputes Settlement Council's Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with the performance of the Contract, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Project Manager, either Party may refer the dispute in writing to the DISPUTES SETTLEMENT COUNCIL for its decision, with copies to the other Party and the Project Manager. Such reference shall state that it is given under this Sub-Clause.

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

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

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

If either Party is dissatisfied with the DISPUTES SETTLEMENT COUNCIL's decision, then

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either Party may, within 30 days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the DISPUTES SETTLEMENT COUNCIL fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 30 days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.

In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in GCC Sub-Clauses 46.6 and 46.7, neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

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

### 46.4 Amicable Settlement

Where notice of dissatisfaction has been given under GCC Sub-Clause 46.3 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction and intention to commence arbitration was given, even if no attempt at amicable settlement has been made.

### 46.5 Arbitration

Unless indicated otherwise in the SCC, any dispute not settled amicably and in respect of which the DISPUTES SETTLEMENT COUNCIL's decision (if any) has not become final and binding shall be finally settled by arbitration. Unless otherwise agreed by both Parties, arbitration shall be conducted as follows:

- a. For contracts with foreign contractors :
  - i. international arbitration with proceedings administered by the international arbitration institution appointed in the SCC, in accordance with the rules of arbitration of the appointed institution,;
  - ii. the place of arbitration shall be the city where the headquarters of the appointed arbitration institution is located or such other place selected in accordance with the applicable arbitration rules; and
  - iii. the arbitration shall be conducted in the language for communications defined in Sub-Clause 5.3; and
- b. For contracts with domestic contractors:  
arbitration with proceedings conducted in accordance with the laws of the Republic

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of Iraq.

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

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

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

### 46.6 Failure to Comply with Disputes Settlement Council's Decision

In the event that a Party fails to comply with a DISPUTES SETTLEMENT COUNCIL decision which has become final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under GCC Sub-Clause 46.5. GCC Sub-Clauses 46.3 and 46.4 shall not apply to this reference.

### 46.7 Expiry of Disputes Settlement Council's Appointment

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

- a. GCC Sub-Clauses 46.3 and 46.4 shall not apply, and
- b. the dispute may be referred directly to arbitration under GCC Sub-Clause 46.5

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**APPENDIX A**

**General Conditions of Disputes Settlement Council Agreement**

1. Definitions

Each “Disputes Settlement Council Agreement” is a tripartite agreement by and between:

the “Employer;”

the “Contractor”; and

the “Member” who is defined in the Disputes Settlement Council Agreement as being:

- i. The sole member of the “DISPUTES SETTLEMENT COUNCIL” and, where this is the case, all references to the “Other Members” do not apply, or
- ii. One of the three persons who are jointly called the “DISPUTES SETTLEMENT COUNCIL” (or “Disputes Settlement Council”) and, where this is the case, the other two persons are called the “Other Members.”

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

2. General Provisions

Unless otherwise stated in the Disputes Settlement Council Agreement, it shall take effect on the latest of the following dates:

- a. the Commencement Date defined in the Contract,
- b. when the Employer, the Contractor and the Member have each signed the Disputes Settlement Council Agreement, or
- c. when the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a Disputes Settlement Council agreement.

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

3. Warranties

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

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

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

4. General obligations / duties of members of the “Disputes Settlement Council”,

the council member shall :

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- a. have no interest financial or otherwise in the Employer, the Contractor or the Project Manager, nor any financial interest in the Contract except for payment under the Disputes Settlement Council Agreement;
- b. Have not previously been employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Disputes Settlement Council Agreement;
- c. have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Disputes Settlement Council Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Project Manager, and any previous involvement in the overall project of which the Contract forms part;
- d. not, for the duration of the Disputes Settlement Council Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);
- e. comply with the Appendixed procedural rules and with GCC Sub-Clause 46.3;
- f. not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the Appendixed procedural rules;
- g. not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Project Manager regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Disputes Settlement Council Agreement;
- h. ensure his/her availability for all site visits and hearings as are necessary;
- i. become conversant with the Contract and with the progress of the Facilities (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
- j. treat the details of the Contract and all the DISPUTES SETTLEMENT COUNCIL's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and
- k. be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

### 5. General Obligations of the Employer and the Contractor

The employer, the contractor and their employees shall not seek advice or advice from members of the Dispute Settlement Board in relation to the contract except in the ordinary context of the activities of the Council as stipulated in the contract and under the Dispute Settlement Board agreement. The business owner and the contractor are responsible for compliance with these provisions from them and their employees, respectively.

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

- a. be appointed as an arbitrator in any arbitration under the Contract;
- b. be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or

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- c. be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

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

Whenever the Employer or the Contractor refers a dispute to the DISPUTES SETTLEMENT COUNCIL under GCC Sub-Clause 46.3, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate Guarantee for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

### 6. Payments

The Member shall be paid as follows, in the currency named in the Disputes Settlement Council Agreement:

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

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

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

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

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

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## Section VII. General Conditions of the Contract

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

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

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

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Disputes Settlement Council Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DISPUTES SETTLEMENT COUNCIL; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in accordance with GCC Sub-Clause 12.3.

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

### 7. Termination

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

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

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

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

### 8. Prejudice by the council member

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

### 9. Disputes

## Section VII. General Conditions of the Contract

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

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**Appendix: DISPUTES SETTLEMENT COUNCIL GUIDELINES**

1. Unless otherwise agreed by the Employer and the Contractor, the DISPUTES SETTLEMENT COUNCIL shall visit the site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DISPUTES SETTLEMENT COUNCIL, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.
2. The timing of and agenda for each site visit shall be as agreed jointly by the DISPUTES SETTLEMENT COUNCIL, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DISPUTES SETTLEMENT COUNCIL. The purpose of site visits is to enable the DISPUTES SETTLEMENT COUNCIL to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to prevent potential problems or claims from becoming Disputes.
3. Site visits shall be attended by the Employer, the Contractor and the Project Manager and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the DISPUTES SETTLEMENT COUNCIL shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.
4. Both the employer and the contractor must provide the Dispute Settlement Board with one copy of all documents that the council can request including contract documents / documents, work progress reports, instructions regarding changes, certificates and other documents related to the implementation of the contract. A copy of all correspondence between the Dispute Resolution Board and the employer or contractor must be sent to the other parties. If the Dispute Settlement Council includes three persons, the employer and the contractor must send copies of these correspondences and communications to each member of the council.
5. If any dispute is transferred to the Dispute Settlement council in accordance with GCC 46.3, then it can act in accordance with GCC 46.3 and according to these general directives. According to the time allowed to give notice of any decision and the rest of the relevant elements, the Dispute Settlement Council shall:
  - a. act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case, and
  - b. adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.
6. The DISPUTES SETTLEMENT COUNCIL may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.
7. Except as otherwise agreed in writing by the Employer and the Contractor, the DISPUTES SETTLEMENT COUNCIL shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the
8. The Employer and the Contractor empower the DISPUTES SETTLEMENT COUNCIL, among other things, to:
  - a. establish the procedure to be applied in deciding a dispute,

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## Section VII. General Conditions of the Contract

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- b. decide upon the DISPUTES SETTLEMENT COUNCIL's own jurisdiction, and as to the scope of any dispute referred to it,
  - c. conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Guidelines,
  - d. take the initiative in ascertaining the facts and matters required for a decision,
  - e. make use of its own specialist knowledge, if any,
  - f. decide upon the payment of financing charges in accordance with the Contract,
  - g. decide upon any provisional relief such as interim or conservatory measures,
  - h. open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute, and
  - i. appoint, shall the DISPUTES SETTLEMENT COUNCIL so consider necessary and the Parties agree, a suitable expert at the cost of the Parties to give advice on a specific matter relevant to the dispute.
9. The DISPUTES SETTLEMENT COUNCIL shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DISPUTES SETTLEMENT COUNCIL shall make and give its decision in accordance with GCC Sub-Clause 46.3, or as otherwise agreed by the Employer and the Contractor in writing. If the DISPUTES SETTLEMENT COUNCIL comprises three persons:
- a. it shall convene in private after a hearing, in order to have discussions and prepare its decision;
  - b. it shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
  - c. if a Member fails to attend a conference or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:
    - i. either the Employer or the Contractor does not agree that they do so, or
    - ii. the absent Member is the chairman and he/she instructs the other Members to not make a decision.

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# Section VIII.

## Special Conditions of the Contract (SCC)

The following Special Conditions shall supplement the General Conditions in Section VII. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions.

### Special Conditions of the contract

The following Special Conditions of the contract (SCC) shall supplement the General Conditions of the Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GC. The clause No. of the SCC is the corresponding clause No. of the GC.

#### SCC 1. Definitions

The Employer is: *[inter name of employer / contracting Entity/contracting entity and the contracting authority]*

The Project Manager is: *[insert the name of the project manager]*

Country of Origin: all countries and territories as indicated in Section V of the bidding forms, Eligible Countries.

#### SCC 5. Governing Law and Language

SCC 5.1 Taking into consideration the rules of the applicable laws of the temporary power of joint ventures (dissolved) No. ( 87) of 2004 and any law shall replace it and instructions to execute valid public contracts including Government Decisions in relation to the protection of the environment.

SCC 5.2 The ruling language (contract language) is: *[insert the contract's language]*

SCC 5.3 Correspondences Language [Insert the language]

SCC 2.6.3 Assignment of rights, authorities or compensations by any party (insert "applicable" or "not applicable")

#### SCC 7. Scope of Facilities *[Spare Parts]*

SCC 7.3 The Contractor agrees to supply spare parts for a period of years:

*[insert a reasonable No. of years in words and figures]*

{Where appropriate use the following additional provision to Special Conditions of the contract 7.3}

The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Factory. Other spare parts and components shall be supplied as promptly as possible, but at the most within six (6) months of placing the order and opening the letter of credit. In addition, in the event of termination of the production of spare parts, advance notification will be made to the Employer of the pending termination, with sufficient time

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Contracting Entity [ \_\_\_\_\_ ]

## Section VIII. **Special Conditions of the Contract**

to permit the Employer to procure the needed requirement. Following such termination, the Contractor will submit to the extent possible and at no cost to the Employer the blueprints, drawings and specifications of the spare parts, if requested.

### **SCC 8. Time for Commencement and Completion**

SCC 8.1 The Contractor shall commence work on the Facilities within **[insert days in words and figures]** from the Effective Date for determining Completion Term as specified in the Contract Agreement.

SCC 8.2 The Completion Term of the whole of the Facilities shall be **[insert days in words and figures]** from the Effective Date as described in the Contract Agreement.

**{ Where appropriate use the following additional provision to 8-2**

**“Completion Term for parts of the Facilities shall be [insert days in words and figures] from the Effective Date as described in the Contract Agreement”.**

**and where applicable**

**“Completion term for parts of the Facilities:**

**Time description of the completion period**

**Each part of the Facilities subject to a specific Completion Term shall be listed and briefly described with its respective Completion Term specified in figures and words}.**

### **SCC 11. Contract Price**

**{ This provision to be inserted only if Contract Price is subject to amendment }**

SCC 11.2 The Contract Price shall be adjusted in accordance with the provisions of Appendix 2 to the Contract Agreement titled Price Amendment

### **SCC 12. Payment Terms**

SCC 12.3 Possible solutions are [slow down of the work **or** an extension of execution **or** not applicable]

### **SCC 13. Guarantees**

SCC 13.2.1 The specific rules of the Federal Public Budget Law in Iraq shall apply. All advance payments shall not be approved before the submittal of relevant Guarantees .

Public Sector Firms shall be exempted from providing Advance Payment guarantees.

SCC 13.3.1 The amount of performance Guarantee, as a percentage of the Contract Price for the Facility or for the part of the Facility for which a separate Completion Term is provided, shall be five per cent (5) % of the Contract price.

SCC 13.3.2 The performance Guarantee shall be in the form of the **[insert the currency]** attached hereto in Section IX, Contract Forms, and shall be obtained from a bank accredited in Iraq.

SCC 13.3.3 The performance Guarantee shall not be released until the final certificate (Initial Acceptance Certificate) has been issued and the final payment settlements have been done

The performance Guarantee shall not be reduced on the date of the Initial Acceptance.

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## Section VIII. Special Conditions of the Contract

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SCC 13.3.3 {for reference only} The performance Guarantee shall be reduced to five percent (5%) of the value of the component covered by the extended Defects Guarantee to cover the Contractor's extended Defects Guarantee in accordance with the provision in the SCC, pursuant to GCC Sub-Clause 27.10 .

### SCC 14. Taxes and Fees

SCC 14.1 The collection of Government debts will be applicable as per the Iraqi Law for collecting government debts No.56 of year 1977.

The foreign Contractors shall or shall not be released from the Income Taxes, Reconstruction of Iraq Taxes, and all other applicable taxes if the Contract is for Development Projects and listed under Development Program only.

*[Insert tax description and the official source that issued an exemption].*

SCC 14.2: The employer shall bear the liability and costs set forth in clauses (a) and (b) (insert: shall or shall not "bear")

SCC Provisions of clause 14.4 (Applicable or not applicable)

### SCC 19. Subcontracting

SCC 19.1 The Public Firms shall not subcontract without the written pre-approval of the Contracting Entity and as per the conditions set by the applicable Iraqi laws. In addition, Companies of the Ministry of Industry and Minerals are not permitted to bind the works entrusted to them to subcontractors.

### SCC 20. Design and Engineering

SCC 20.3.2. The period is: *[advised as fourteen (14) days or up to 60 days]* and in as earlier as possible in accordance with the Iraqi administrative procedures].

### SCC 21. Contracting

SCC 21.1 For Goods and Factorys originating from countries member of the Arab Common Market, the certificates of origin and associated trading lists endorsed shall be submitted by the relevant country authority shall be sufficient (the applicable laws are deemed considered in (issuance and authentication)

### SCC 22. Installation

SCC 22.2.1 The Contractor commits to engage local labour of not less than 50% from the total labour and staff assigned for this Contract by applying to the employment centres in Baghdad and provinces, unless a written notice from the employment centre is issued, within (30) thirty days from receiving the Contractor's application, stating its inability to do so .

SCC 22.2.5 Working Hours

Normal working hours are: *[insert normal working hours]*

SCC 22.2.8 Funeral Arrangements

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Contracting Entity [ ]

## Section VIII. **Special Conditions of the Contract**

Funeral Arrangements: *[insert any other specific arrangements]*

### **SCC 24. Completion of the Facilities**

SCC 24.2 The period is *[advised as seven (7) days or up to 60 days and in as earlier as possible in accordance with the Iraqi administrative procedures]*.

SCC 24.5 The period is *[advised as fourteen (14) days or up to 60 days and in as earlier as possible in accordance with the Iraqi administrative procedures]*

The period is *[advised as seven (7) days or up to 60 days and in as earlier as possible in accordance with the Iraqi administrative procedures]*.

### **SCC 25. Initial Operation and Acceptance**

SCC 25.2.2 The guarantee test of the establishments must be successfully completed during *[insert number of days in numbers and letters]* starting from the date of completion.

SCC 25.3.3 The period is \_\_\_\_\_ *[advised as (7) days or up to 60 days and in as earlier as possible in accordance with the Iraqi administrative procedures]*.

### **SCC 26. Completion Time Guarantee**

SCC 26.2 Applicable rate for liquidated damages: *[insert percentage figure]*. The rate per one day shall be:  $\text{Contract Price/Contract Period} \times \%$

**{The applicable rate shall not exceed one-half percent (0.5%) per week}**

The above rate applies to the price of the part of the Facilities, as quoted in the Price Schedule, for that part for which the Contractor fails to achieve Completion within the particular Completion Term. The liquidated damages shall be due for payment after the expiry of the initial Completion Term and any approved extension thereof.

Maximum deduction for liquidated damages: **[insert a percentage. The maximum shall not exceed ten percent (10%) of the Contract Price]**.

The Employer has the right to reduce the liquidated damages as per the completion rate of an acceptable work done to requirement and in accordance with the adopted work programme .

SCC 26.3 Applicable (amount or rate) for the bonus for early Completion: Maximum bonus :

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

### **SCC 27. Defects Guarantee**

**The Employer shall not extend the Defects Guarantee Period beyond the period prescribed in GCC Sub-Clause 27.2, except where it is commercial practice for critical components in that type of Facilities, and in which case the relevant period shall be specified in the SCC under GCC Sub-Clause.**

**The Defects Guarantee Period [shall be specified by the contracting Entity].**

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Contracting Entity [ \_\_\_\_\_ ]

## Section VIII. Special Conditions of the Contract

SCC 27.8: The period: *[shall be considered and may not be less than 15 days]*

SCC. 27.11: The components of the essential facilities, which are covered by the extended period to ensure defects, are: *[These components shall be mentioned here or the section is referred to in Section Six titled (Employer Requirements)], and the period shall be [the number of years, without exceeding five (5) years].*

### SCC 30. Limitation of Liability

SCC 30.1 (b): The number multiplied by the contract value is: one (1) (applicable, not applicable)

### SCC 33. Change of laws and systems

Insert (applicable, not applicable)

### SCC 37. Force Majeure

SCC 37.2 The period is ( \_\_\_\_\_ ) *[advised as fourteen (14) days or ( \_\_\_\_\_ )]*

### SCC 39. Change orders

SCC 39.1 *[The limit of the change for Supply Contracts is 20% from the original Contract price upon the availability of budget of the employer].*

*[The Employer has the authority to raise the limit of the Provisional Sum of Works Contracts to 25% of the original Contract price upon the availability of budget and after notifying the Ministry of Planning]*

SCC 39.1.(d) If amending the country of origin for the Factory (or material or machinery, etc) does not affect the efficiency nor the capacity of the Factory, the amendment may be accepted by the Employer on the condition of the relevant regulations issued by the Ministry of Planning.

SCC 39.2.6 The period is \_\_\_\_\_ *[advised as fourteen (14) days or ( \_\_\_\_\_ )]*

### SCC 40. Extension of Completion Term

SCC 40.2 The Contractor's appeal has to be issued and made received by the Employer (at the Central Commission for Audit and Endorsement of Contractual Procedures) within ( ) days from the Employer's decision on extension. The Central Committee has to reply within ( ) days, otherwise, the appeal is considered rejected .

### SCC 41. Contract Suspension

SCC 41.1 The Contractor shall seek in consultation with the Employer all possible means and alternatives to resume the work or to adopt a new mode of work .

(Include any restrictions in the limit for periods to be observed)

SCC 41.1 **(Insert specified period)**

SCC 41.2 The period is \_\_\_\_\_ *[advised as fourteen (14) days or ( \_\_\_\_\_ )]*

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Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]



**Section VIII. Special Conditions of the Contract**

SCC 41.3 The Contractor has to submit to the Employer within [days] from Suspension date a written claim in this regard describing all relevant details.

**SCC 42. Termination**

SCC 42.2.2 If the total delay in completion exceeds by ( % ) of the Contract price, the Employer may issue a Cessation Notice (Termination) to the Contractor. The Contractor has the right to apply for cancelling this cessation within ( ) days from being informed of the Cessation Notice while providing a new commitment to continue the remaining work in accordance to an attached proposed work plan and in accordance to the applicable regulations, the Central Committee for Contracts ( insert the name of the committee) may to cancel Work Cessation Order and the Contractor shall proceed in his work upon providing an extended Performance Guarantee; nevertheless, the Liquidated Damages will continue to be applied on the Contractor for the remaining period.

SCC 42.2.3 If the Cessation is enforced as per the applicable Iraqi laws, termination procedures will take effect after (14 ) days from the Termination notice and the Employer will seize the Performance Guarantee. The Employer shall (retain) the value of Performance Guarantee and has the authority to confiscate the entire value of the Guarantee or a part of it, and as he deems appropriate. The employer may, while retaining his right to execute at the expense of the contractor by any of the contract methods, an Acceleration Committee for Contracts will be formed with the representation of the violating Contractor. If the violating Contractor refuses to participate in this Committee, a relevant court order will be obtained for the Employer to continue the work on his account while seizing the Factory and forming an inventory of all factory, material, supplies, and machinery belonging to the violating Contractor for the sake of settlement of accounts. Further actions shall be followed against the violating Contractor including Suspension and Blacklisting in accordance with the type of the violation by the Ministry of Planning as per the applicable Iraqi Laws

SCC 42.2.6 If the Employer or through employing a third party completes the work, the rate of the Administrative Fees needed for this completion shall be set at no more than 20% of the actual cost of this work.

SCC. 42.3 Insert (applicable, not applicable).

SCC. 42.3.2 This Clause applies only if the Employer is a non-sovereign entity (such as a public or mixed public company).

**SCC. 43 Assignment**

[Based on the prior approval of the Employer, the contractor may assign to any third party the funds entitled for payment or that will be entitled under the contract *or* may not be assigned under the applicable Iraqi laws].

**SCC. 45 Claims / objections and Disputes and arbitrations**

**SCC.45.1 (insert any alteration in the legal periods subject to apply this Clause ./(**

**SCC 46. Disputes and Arbitration**

SCC 46.1 The Disputes Arbitration Board shall be appointed within [advised 28 days *or* \_\_\_\_\_] after the Effective Date.

SCC 46.1 The Disputes Arbitration Board shall be:

[ \_\_\_\_\_ ]  
*OR*  
[ \_\_\_\_\_ ]



Section VIII. **Special Conditions of the Contract**

SCC 46.1 List of potential DISPUTES SETTLEMENT COUNCIL members is: [\_\_\_\_\_]

SCC 46.2 Appointment (if not agreed) to be made by: [\_\_\_\_\_]

SCC 46.5 Procedure to settle Disputes in respect of DISPUTES SETTLEMENT COUNCIL's decisions: [\_\_\_\_\_]

**a) International Arbitration Institution for Disputes Settlement: [\_\_\_\_\_]**

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# Section IX.

## Contract Documents

{ These forms are used during awarding and execution of the contract }.

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Bid No. [  ]

Contracting Entity [  ]

## Notification of Award - Letter of Acceptance

Date: [ ]

To: [ ]

This is to notify you that your Bid dated [ ] for execution of the [ ] for the total Contract Price of [ ] as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our administration.

You are requested to submit the Performance Guarantee within 14 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Guarantee Forms included in Section IX, - Contract Forms, of the Bidding Document

Authorized Signature: [ ]

Name and Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

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**Bid No.** [ ]

Contracting Entity [ ]

## **Contract Agreement**

THIS AGREEMENT is made the [ ] day of [ ], [ ]

- a. [ ], a corporation incorporated under the laws of [ ] and having its principal place of business at [insert full address] (hereinafter called “the Employer”), and
- b. [ ], a corporation incorporated under the laws of [ ] and having its principal place of business at [insert full address] (hereinafter called “the Contractor”).

WHEREAS the Employer desires to engage the Contractor to design, manufacture, test, deliver, install, complete and commission certain Facilities, [ ] (“the Facilities”), and the Contractor has agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

### Clause 1. Contract Documents

#### 1.1 Contract Documents (Reference GCC Clause 2)

The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract

- a. This Contract Agreement and the Appendices hereto
- b. Bid Submission Form and Price Schedules submitted by the Contractor
- c. Special Conditions
- d. General Conditions
- e. Specification
- f. Drawings
- g. Other completed bidding forms submitted with the Bid
- h. Any other documents forming part of the Employer’s Requirements
- i. Any other documents shall be added here

#### 1.2 Order of Precedence (Reference GCC Clause 2)

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

#### 1.3 Definitions (Reference GCC Clause 1)

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

### Clause 2. Contract Price and Payment Terms

#### 2.1 Contract Price (Reference GCC Clause 11)

The Employer hereby agrees to pay to the Contractor the Contract Price

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**Bid No.** [ ]  
Contracting Entity [ ]

## Section IX. Contract Documents

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in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of: [\_\_\_\_\_] / [\_\_\_\_\_] as specified in Price Schedule No. 5 (Grand Summary), and [\_\_\_\_\_] / [\_\_\_\_\_] or such other sums as may be determined in accordance with the terms and conditions of the Contract.

### 2.2 Payment Terms (Reference GCC Clause 12)

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

The Employer may instruct its bank to issue an irrevocable confirmed documentary credit made available to the Contractor in a bank in the country of the Contractor. The credit shall be for an amount of [\_\_\_\_\_]; and shall be subject to the current edition of Uniform Customs and Practice for Documentary Credits (ICC Publication)

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

## Clause 3. Effective Date

### 3.1 Effective Date (Reference GCC Clause 1)

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

- a. This Contract Agreement has been duly executed for and on behalf of the Employer and the Contractor;
- b. The Contractor has submitted to the Employer the good performance guarantee and the advance payment guarantee;
- c. The Employer has paid the Contractor the advance payment
- d. The Contractor has been advised that the documentary credit referred to in Clause 2.2 above has been issued in its favour.

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

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

## Clause 4. Communications

4.1 The address of the Employer for notice purposes according to GCC 4.1 is [\_\_\_\_\_]

4.2 The address of the Contractor for notice purposes according to GCC 4.1 is [\_\_\_\_\_]

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Bid No. [\_\_\_\_\_]  
Contracting Entity [\_\_\_\_\_]

Section IX. **Contract Documents**

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Clause 5. Appendices

5.1 The Appendices listed in the attached List of Appendices shall be deemed to form an integral part of this Contract Agreement.

5.2 Reference in the Contract to any Appendix shall mean the Appendices attached hereto, and the Contract shall be read and construed accordingly.

**IN WITNESS WHEREOF** the Employer and the Contractor have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

Signed by, for and on behalf of the Employer

Employer: *[Insert name of Contracting Entity/ Employer]*

Contracting entity: *[insert name of the Minister or Director General or Mayor or Head of Region ...authorized to sign on behalf of the Employer]*

Title: *[Insert title of Contracting entity Contracting entity : Minister or Director General or Mayor or Head of Region...]*

*Signature:*

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Bid No. [ ]

Contracting Entity [ ]

Section IX. **Contract Documents**

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Signed by, for and on behalf of the Contractor

[Insert name of Contractor] \_\_\_\_\_

[Insert name of authorized person to sign on behalf of Contractor] \_\_\_\_\_

[Insert Title of authorized person]

[Authorized signature as per the attached power of attorney dated not more than 3 months]

in the presence of [\_\_\_\_\_]

APPENDICES

- Appendix 1 Terms and Procedures of Payment
- Appendix 2 Price Amendment
- Appendix 3 Insurance Requirements
- Appendix 4 Time Schedule
- Appendix 5 List of Major Items of Factory and Services and List of Approved Subcontractors
- Appendix 6 Scope of Works and Supply determined by the Employer
- Appendix 7 List of Documents for Approval or Review

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Bid No. [\_\_\_\_\_]

Contracting Entity [\_\_\_\_\_]



## Appendix 1. Terms and Procedures of Payment

In accordance with the general provisions Clause 12 (Payment Terms), the Employer shall pay the Contractor in the following manner and at the following times and on the basis of the Price Breakdown given in the section on Price Schedules. Payments shall be made in the currencies quoted by the Bidder, provided that the currency(ies) selected by the Bidder shall be from the list of currencies for which the Central Bank of Iraq quotes the rate of exchange to the Iraqi Dinar, unless otherwise agreed by the Parties. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

### PAYMENT TERMS

#### Schedule No. 1. Factory and Equipment Supplied from outside of Iraq.

Ten per cent (10%) of the total CIP amount as an advance payment against Acceptance of invoice and an advance payment Guarantee for the equivalent amount made out in favour of the Employer. The advance payment Guarantee may be reduced in proportion to the value of the factory and equipment delivered to the site, as evidenced by shipping and delivery documents.

Twenty per cent (20%) of the total rate of CIP amount upon “INCOTERM CIP”, upon delivery to the carrier within [45 (advisable) or 60 days as early as possible, as per the Iraqi administrative procedures] days after the Acceptance of documents.

Fifty per cent (50%) of the total rate of CIP amount upon issue of the Completion Certificate, within [45 (advisable) or 60 days as early as possible, as per the Iraqi administrative procedures] days after the Acceptance of invoice.

Ten per cent (10 %) of the total rate of CIP amount upon issue of the Completion Certificate, within [45 (advisable) or 60 days as early as possible, as per the Iraqi administrative procedures] days after the Acceptance of invoice.

Ten per cent (10%) of the total or pro rata CIP amount upon issue of the Initial Acceptance Certificate, within [45 (advisable) or 60 days as early as possible, as per the Iraqi administrative procedures] days after the Acceptance of invoice.

#### Schedule No. 2. Factory and Mandatory Spare Parts Supplied from within IRAQ

Ten per cent (10%) of the total EXW amount as an advance payment against the Acceptance of invoice, as well as an advance payment Guarantee for the equivalent amount made out in favour of the Employer. The advance payment Guarantee may be reduced in proportion to the value of the factory and the equipment delivered to the site, as evidenced by shipping and delivery documents.

Twenty per cent (20%) of the total or pro rata EXW amount upon INCOTERM “Ex-Works,” upon delivery to the carrier within [45 (advisable) or 60 days as early as possible, as per the Iraqi administrative procedures] after the Acceptance of invoice and documents.

Fifty per cent (50%) of the total or pro rata EXW amount upon issue of the Completion Certificate, within [45 (advisable) or 60 days as early as possible, as per the Iraqi administrative procedures] after the Acceptance of invoice.

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Bid No. [ ]

Contracting Entity [ ]

## Section IX. Contract Documents

Ten per cent (10%) of the total or pro rata EXW amount upon issue of the Completion Certificate, within [45 (advisable) or 60 days as early as possible, as per the Iraqi administrative procedures] after the Acceptance of invoice.

Ten per cent (10 %) of the total or pro rata EXW amount upon issue of the Completion Certificate, within [45 (advisable) or 60 days as early as possible, as per the Iraqi administrative procedures] after the Acceptance of invoice.

### Schedule No. 3. Design Services

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

Ten per cent (10%) of the total design services amount as an advance payment against the Acceptance of invoice, and an advance payment Guarantee for the equivalent amount made out in favour of the Employer .

Ninety per cent (90%) of the total or pro rata design services amount upon the acceptance of design in accordance with GCC Clause 20 by the Project Manager within [45 (advisable) or 60 days as early as possible, as per the Iraqi administrative procedures] after the Acceptance of invoice .

### Schedule No. 4. Civil Works, Installation and Other Services

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

Ten per cent (10%) of the total civil works, installation and other services amount as an advance payment against Acceptance of invoice, and an irrevocable advance payment Guarantee for the equivalent amount made out in favour of the Employer. The advance payment Guarantee may be reduced in proportion to the value of work performed by the Contractor as evidenced by the invoices for civil works, installation and other services.

Eighty per cent (80%) of the measured value of work performed by the Contractor, as identified in the said Program of Performance, during the preceding month, as evidenced by the Employer's authorization of the Contractor's application, will be made monthly within [45 (advisable) or 60 days as early as possible, as per the Iraqi administrative procedures] after the Acceptance of invoice.

Five per cent (5%) of the total or pro rata value of civil works, installation and other services s performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Completion Certificate, within [45 (advisable) or 60 days as early as possible, as per the Iraqi administrative procedures] after the Acceptance of invoice.

Five per cent (5%) of the total or pro rata value of civil works, installation and other services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Initial Acceptance Certificate, within [45 (advisable) or 60 days as early as possible, as per the Iraqi administrative procedures] days after the Acceptance of invoice.

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Bid No. [ ]

Contracting Entity [ ]

## Section IX. Contract Documents

### Appendix 2. Price Amendment (Only if has been adopted in the Iraqi legislation in force)

{Where the Contract Period (excluding the Defects Liability Period) exceeds eighteen (18) months, it is normal procedure that prices payable to the Contractor shall be subject to amendment during the performance of the Contract to reflect changes occurring in the cost of labour and material components. In such cases the bidding forms shall include in this form a formula of the following general type, pursuant to SCC Sub-Clause 11.2.

Where Contracts are of a shorter duration than eighteen (18) months or in cases where there is to be no Price Amendment, the following provision shall not be included. Instead, it shall be indicated under this form that the prices are to remain firm and fixed for the duration of the Contract.

In any case, the Procedures and compactions for consideration of claims for compensation arising out of price increase issued by the Ministry of Planning and Economic Development thereof shall be reviewed. }

#### *Sample Price Amendment Formula (Indicative now, not being implemented at present)*

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

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

in which:

$P_1$  = amendment amount payable to the Contractor

$P_0$  = Contract price (base price)

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

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

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

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

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

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

Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

## Section IX. Contract Documents

### Conditions Applicable To Price Amendment

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The Bidder shall indicate the source of labour and materials indices and the base date indices in its bid.

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

The base date shall be the date twenty-eight (28) days prior to the Bid closing date.

The date of amendment shall be the mid-point of the period of manufacture or installation of component or Factory .

The following conditions shall apply:

- a. No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Employer under the Conditions of the Contract. No price increase will be allowed for periods of delay for which the Contractor is responsible. The Employer will, however, be entitled to any price decrease occurring during such periods of delay.
- b. If the currency in which the Contract price,  $P_0$ , is expressed is different from the currency of the country of origin of the labour and/or materials indices, a correction factor will be applied to avoid incorrect amendments of the Contract price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for amendment as defined above.
- c. No price amendment shall be payable on the portion of the Contract price paid to the Contractor as an advance payment.

---

Bid No. [  ]

Contracting Entity [  ]

**Appendix 3. Insurance Requirements**

**Insurances to be issued by the Contractor**

In accordance with the provisions of GCC Clause 34, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld.

a. **Cargo Insurance**

Covering loss or damage occurring, while in transit from the supplier's or factory's works or stores until arrival at the Site, to the Facilities (including spare parts therefor) and to the construction equipment to be provided by the Contractor or its Subcontractors.

<u>Amount</u>	<u>deductible limits</u>	<u>Parties insured</u>	<u>From</u>	<u>To</u>
---------------	--------------------------	------------------------	-------------	-----------

b. **Installation All Risks Insurance**

Covering physical loss or damage to the Facilities at the Site, occurring prior to completion of the Facilities, with extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defects Guarantee period while the Contractor is on the Site for the purpose of performing its obligations during the Defects Guarantee period.

<u>Amount</u>	<u>deductible limits</u>	<u>Parties insured</u>	<u>From</u>	<u>To</u>
---------------	--------------------------	------------------------	-------------	-----------

c. **Third Party Liability Insurance**

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

<u>Amount</u>	<u>deductible limits</u>	<u>Parties insured</u>	<u>From</u>	<u>To</u>
---------------	--------------------------	------------------------	-------------	-----------

d. **Automobile Liability Insurance**

Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the Facilities. Comprehensive insurance in accordance with statutory requirements.

e. **Workers' Compensation**

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

f. **Employer's Liability**

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

g. **Other Insurances**

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

Details:

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**Bid No.** [  ]

Contracting Entity [  ]

## Section IX. Contract Documents

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<u>Amount</u>	<u>deductible limits</u>	<u>Parties insured</u>	<u>From</u>	<u>To</u>
---------------	--------------------------	------------------------	-------------	-----------

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

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Bid No. [  ]

Contracting Entity [  ]

Section IX. **Contract Documents**

---

**Insurances To Be Taken Out By The Employer**

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

Details:

<u>Amount</u>	<u>deductible limits</u>	<u>Parties insured</u>	<u>From</u>	<u>To</u>
---------------	--------------------------	------------------------	-------------	-----------

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**Bid No.** [  ]

Contracting Entity [  ]

## Appendix 4. Time Schedule

{Except under exceptional circumstances, the Time Schedule shall indicate periods of time (e.g., weeks or months) and not specify calendar dates. All periods shall be shown from the Effective Date of the Contract

Shall it become necessary to amend the Time Schedule to reflect any agreements made with the selected Bidder prior to award of Contract, the amended Time Schedule shall replace the original Time Schedule prior to signature of the Contract Agreement .

If the bidding forms contain no Time Schedule, the Bidder shall be required to submit with its bid a detailed program, normally in the form of a bar chart, showing how and the order in which it intends to perform the Contract and showing the key events requiring action or decision by the Employer. In preparing this Program, the Bidder shall adhere to the Time(s) for Completion given in **the Bid Data Sheet** or give its reasons for not adhering thereto. The Time Schedule submitted by the selected Bidder and amended as necessary prior to award of Contract shall be included as Appendix to the Contract Agreement before the Contract is signed}.

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Bid No. [  ]

Contracting Entity [  ]



Section IX. **Contract Documents**

**Appendix 5. List of Major Items of Factory and Services and List of Approved Subcontractors**

{Prior to issuing the Bidding Document, the Contracting Entity has established a list of major item of factory and services for which approval of the Employer is required. Prior to award of Contract, the details of approved subcontractor, including factory's shall be completed, indicating those subcontractors proposed by the Bidder in the corresponding Attachment to its bid that are approved by the Employer for engagement by the Contractor during the performance of the Contract}.

A list of major items of Factory and Services is provided below.

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

major items of Factory and Services	Subcontractors and/or factory's	Nationality

Bid No. [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

## Appendix 6. Scope of Works and Supply by the Employer

{Prior to issuing the bidding forms, the Contracting Entity shall indicate in this Appendix details of all personnel and Facilities it will provide for use by the Contractor and indicate, where applicable, the charges that it will make in respect of their use.

The Contracting Entity shall also identify any part(s) of the facilities it intends to carry out itself (or by other contractors), and any factory, equipment, or materials that it proposes to purchase itself and supply to the Contractor for incorporation in the facilities, indicating, where applicable, the charges that it will make in respect thereof }

The following personnel, facilities, works and supplies will be provided/supplied by the Employer, and the provisions of GCC Clauses 10, 21 and 24 shall apply as appropriate.

All personnel, facilities, works and supplies will be provided by the Employer in good time so as not to delay the performance of the Contractor, in accordance with the approved Time Schedule and Program of Performance pursuant to GCC Sub-Clause 18.2.

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

Personnel Charge to Contractor (if any)

Facilities Charge to Contractor (if any)

Works Charge to Contractor (if any)

Supplies Charge to Contractor (if any)

Section IX. **Contract Documents**

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Appendix 7. List of Documents for Approval or Review

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

A. Approval

- ١.
- ٢.
- ٣.

B. Review

- ١.
- ٢.
- ٣.

---

**Bid No.** [  ]

Contracting Entity [  ]

## Appendix 8. Functional Guarantees

### 1. General

This Appendix sets out

- a. the functional guarantees referred to in GCC Clause 28 (Functional Guarantees)
- b. the preconditions to the validity of the functional guarantees, either in production and/or consumption, set forth below
- c. the minimum level of the functional guarantees
- d. the formula for calculation of liquidated damages for failure to attain the functional guarantees.

### 2. Preconditions

The Contractor gives the functional guarantees (specified herein) for the facilities, subject to the following preconditions being fully satisfied

[REDACTED]

### 3. Functional Guarantees

Subject to compliance with the foregoing preconditions, the Contractor guarantees as follows:

#### 3.1 Production Capacity

[REDACTED]

and/or

#### 3.2 Raw Materials and Utilities Consumption

[REDACTED]

### 4. Failure in Guarantees and Liquidated Damages

#### 4.1 Failure to Attain Guaranteed Production Capacity

If the production capacity of the facilities attained in the guarantee test, pursuant to GCC Sub-Clause 25.2, is less than the guaranteed figure specified in paragraph 3.1 above, but the actual production capacity attained in the guarantee test is not less than the minimum level specified in paragraph 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, amendments and/or additions to the Facilities, pursuant to GCC Sub-Clause 28.3, then the Contractor shall pay liquidated damages at the rate of [REDACTED] for every complete one per cent (1%) of the deficiency in the production capacity of the Facilities,

or at a proportionately reduced rate for any deficiency, or part thereof, of less than a complete one per cent (1%).

#### 4.2 Raw Materials and Utilities Consumption in Excess of Guaranteed Level

[REDACTED]

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**Bid No.** [REDACTED]

Contracting Entity [REDACTED]

## Section IX. Contract Documents

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If the actual measured figure of specified raw materials and utilities consumed per unit (or their average total cost of consumption) exceeds the guaranteed figure specified in paragraph 3.2 above (or their specified average total cost of consumption), but the actual consumption attained in the guarantee test, pursuant to GCC Sub-Clause 25.2, is not more than the maximum level specified in paragraph 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, amendments and/or additions to the Facilities pursuant to GCC Sub-Clause 28.3, then the Contractor shall pay liquidated damages at the rate of [amount in the contract currency] for every complete one per cent (1%) of the excess consumption of the Facilities, or part thereof, of less than a complete one per cent (1%).

### 4.3 Minimum Levels

Notwithstanding the provisions of this paragraph, if as a result of the guarantee test(s), the following minimum levels of performance guarantees (and consumption guarantees) are not attained by the Contractor, the Contractor shall at its own cost make good any deficiencies until the Facilities reach any of such minimum performance levels, pursuant to GCC Sub-Clause 28.2:

- a. Production capacity of the Facilities attained in the guarantee test: ninety-five per cent (95%) of the guaranteed production capacity (the values offered by the Contractor in its bid for functional guarantees represents 100%).  
and/or
- b. Average total cost of consumption of all the raw materials and utilities of the Facilities: one hundred and five per cent (105%) of the guaranteed figures (the figures offered by the Contractor in its bid for functional guarantees represents 100%).

### 4.4 Limitation of Liability

Subject to paragraph 4.3 above, the Contractor's aggregate liability to pay liquidated damages for failure to attain the functional guarantees shall not exceed [ ] per cent ([ ]%) of the Contract price

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Bid No. [ ]

Contracting Entity [ ]

Performance Bond  
**preferable using Iraqi Central bank form**

**Beneficiary:** \_\_\_\_\_

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

**Performance Guarantee No:** \_\_\_\_\_

We have been informed that \_\_\_\_\_ (hereinafter called “the Contractor”) has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with you, for the execution of \_\_\_\_\_ (hereinafter called “the Contract”)

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

At the request of the Contractor, we \_\_\_\_\_ hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of \_\_\_\_\_ (\_\_\_\_) , upon Acceptance by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein .

This guarantee shall be reduced by half upon our Acceptance of:

- a. a copy of the Initial Acceptance Certificate; or
- b. a registered letter from the Contractor (i) attaching a copy of its notice requesting issuance of the Initial Acceptance Certificate and (ii) stating that the project manager has failed to issue such Certificate within the time required or provide in writing justifiable reasons why such Certificate has not been issued, so that Initial Acceptance is deemed to have occurred.

This guarantee shall expire no later than<sup>13</sup>:

- a. twelve months after our Acceptance of either (a) or (b) above; or
- b. eighteen months after our Acceptance of:
  - i. a copy of the Completion Certificate; or
  - ii. a registered letter from the Contractor, attaching a copy of the notice to the project manager that the Facilities are ready for commissioning, and stating that [as specified in GCC 24.6] have elapsed from Acceptance of such notice [or repeated notice] and the project manager has failed to issue a Completion Certificate or inform the Contractor in writing of any defects or deficiencies; or

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<sup>13</sup> {This text shall be revised according to what is necessary and where consideration shall be taken (1) Partial receipt of the facilities in accordance with Paragraph 25.4 of the General Conditions of the Contract; and (2) Extending the implementation guarantee when the contractor is responsible for extending the obligation to guarantee defects pursuant to Paragraph 27.10 Among the general conditions of the contract (although in the latter case, the employer may wish to extend the period of defects guarantee instead of extending the guarantee of good implementation)}

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**Bid No.** [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

**Section IX. Contract Documents**

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iii. a registered letter from the Contractor stating that no Completion Certificate has been issued but the Employer is making use of the Facilities; or

c. the \_\_\_\_ day of \_\_\_\_\_, 2 . \_\_\_\_

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-Clause 20(a) is hereby excluded.

[signature(s)]: \_\_\_\_\_

---

**Bid No.** [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

## **Banking Guarantee Form for Advance Payment**

### **It is preferred to use the Iraqi Central Bank**

**Beneficiary:** \_\_\_\_\_

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

**Advance Payment Guarantee No:** \_\_\_\_\_

We have been informed that \_\_\_\_\_ (hereinafter called “the Contractor”) has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with you, for the execution of \_\_\_\_\_ (hereinafter called “the Contract”)

Furthermore, we understand that, according to the conditions of the Contract, an advance Payment Guarantee is required.

At the request of the Contractor, we \_\_\_\_\_ hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of \_\_\_\_\_ (\_\_\_\_), upon Acceptance by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract as the contractor has used the down payment for purposes other than that for the works.

To pay any claim or payment under this guarantee, the contractor shall have received the advance payment previously mentioned on their account number \_\_\_\_\_ on \_\_\_\_\_.

The maximum amount of this guarantee will be gradually reduced by the value of each part of a shipment or part of the factory and equipment delivery to the site, as indicated by copies of the shipping and delivery documents that shall be provided to us. The maximum validity of this guarantee shall expire upon receipt of the documents indicating that the contractor has repaid the full payment of the advance payment, or on \_\_\_\_\_ of the month \_\_\_\_\_, \_\_\_\_\_<sup>14</sup>, whichever is earlier. Consequently, any claim for payment under this guarantee shall be received at our office on or before that date.

This guarantee is subject to the Uniform Laws for Requesting Guarantees, International Chamber of Commerce Issues No. 458 \_\_\_\_\_.

[signature(s) name of the bank or financial institutions]: \_\_\_\_\_

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<sup>14</sup> Insert the date of twenty-eight days after the expected expiration date of the Defects Guarantee Period. The Employer shall be noted that in the event of an extension of the Completion Term of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request shall be in writing and shall 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.”

---

**Bid No.** [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]



## Completion Certificate

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

Invitation for Bidding: \_\_\_\_\_

to \_\_\_\_\_

Mr. / Mrs.

Pursuant to Article 24 (Completion of Facilities) of the General Conditions of the Contract concluded between you and the Employer on \_\_\_\_\_, of \_\_\_\_\_, we inform you that the following part (s) of the facilities have been completed on the date specified below, and that, according to the terms of the contract, he receives The business owner mentioned part (s), with responsibility for the care and care and the risk of loss, on the date mentioned below.

1. Description of the facilities or part thereof: \_\_\_\_\_

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

However, you are requested to complete the outstanding items listed in the appendix as soon as practicable.

This letter does not relieve you of the responsibilities of completing the implementation of the remaining facilities according to the contract, nor does it relieve you of your responsibilities during the period of guaranteeing defects.

Job Title: (project manager) \_\_\_\_\_

---

**Bid No.** [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

---

## Initial Acceptance Certificate Form

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

Invitation for Bidding: \_\_\_\_\_

to \_\_\_\_\_

Mr. / Mrs.

Pursuant to Article 25.3 (Initial Acceptance) of the General Conditions of the Contract concluded between you and the Employer on \_\_\_\_\_, of \_\_\_\_\_, we inform you that the following part (s) of the facilities have been completed on the date specified below, and that, according to the terms of the contract, he receives The business owner mentioned part (s), with responsibility for the care and care and the risk of loss, on the date mentioned below.

1. Description of the facilities or part thereof: \_\_\_\_\_

2. Initial Acceptance Date: \_\_\_\_\_

This letter does not relieve you of the responsibilities of completing the implementation of the remaining facilities according to the contract, nor does it relieve you of your responsibilities during the period of guaranteeing defects.

Job Title: (project manager) \_\_\_\_\_

---

**Bid No.** [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]

## Change order procedures and forms

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

Invitation for Bidding: \_\_\_\_\_

to \_\_\_\_\_

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1. General
2. Record change orders
3. References of changes

### Appendixes

- Appendix 1 Change Proposal Request
- Appendix 2 Change Proposal Cost Estimate
- Appendix 3 Cost Estimate Acceptance
- Appendix 4 Change Proposal
- Appendix 5 change order
- Appendix 6 Initial agreement awaiting the issuance of the change order
- Appendix 7 Change Proposal Form

**Change Order Procedure**

**1. General**

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

**2. Change Order Record**

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

**3. References for Changes**

- (1) Request for Change as referred to in GCC Clause 39 shall be serially No.ed CR-X-nnn.
- (2) Estimate for Change Proposal as referred to in GCC Clause 39 shall be serially No.ed CN-X-nnn.
- (3) Acceptance of Estimate as referred to in GCC Clause 39 shall be serially No.ed CA-X-nnn.
- (4) Change Proposal as referred to in GCC Clause 39 shall be serially No.ed CP-X-nnn.
- (5) Change Order as referred to in GCC Clause 39 shall be serially No.ed CO-X-nnn.

Note:

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

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

- b) The above No. “nnn” is the same for Request for Change, Estimate for Change Proposal, Acceptance of Estimate, Change Proposal and Change Order.

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**Section IX. Contract Documents**

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- c. If you have any opinion negative to the adoption of the requested Change in connection with the conformability to the other provisions of the Contract or the safety of the Factory or Facilities, please inform us of your opinion in your proposal of revised provisions.
- d. Any increase or decrease in the work of the Contractor relating to the services of its personnel shall be calculated.
- e. You shall not proceed with the execution of the work for the requested Change until we have accepted and confirmed the amount and nature in writing.

(Employer's Name): \_\_\_\_\_

(Signature): \_\_\_\_\_

(Name of signatory): \_\_\_\_\_

(Title of signatory): \_\_\_\_\_

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Appendix 2. Change Proposal Cost Estimate

(Contractor's Letterhead)

To: \_\_\_\_\_

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

Attention: \_\_\_\_\_

Contract Name: \_\_\_\_\_

Contract No: \_\_\_\_\_

Dear Ladies and/or Gentlemen:

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

1. Title of Change: \_\_\_\_\_

2. Change Request No./Rev: \_\_\_\_\_

3. Brief Description of Change: \_\_\_\_\_

4. Scheduled Impact of Change: \_\_\_\_\_

5. Cost for Preparation of Change Proposal: \_\_\_\_\_

a. Engineering (Amount)

i. Engineer \_\_\_\_\_ hrs x \_\_\_\_\_ rate/hr = \_\_\_\_\_

ii. Draftsperson \_\_\_\_\_ hrs x \_\_\_\_\_ rate/hr = \_\_\_\_\_

Sub-total hrs \_\_\_\_\_

Total Engineering Cost \_\_\_\_\_

b. Other Cost \_\_\_\_\_

Total Cost (a) + (b)

\_\_\_\_\_

(Contractor's Name): \_\_\_\_\_

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(Signature): \_\_\_\_\_

(Name of signatory): \_\_\_\_\_

(Title of signatory): \_\_\_\_\_

Costs shall be in the currencies of the Contract.

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Appendix 3. Acceptance of Estimate

(Employer's Letterhead)

To: \_\_\_\_\_

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

Attention: \_\_\_\_\_

Contract Name: \_\_\_\_\_

Contract No: \_\_\_\_\_

Dear Ladies and/or Gentlemen:

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

1. Change Request No./Rev: \_\_\_\_\_

2. Estimate for Change Proposal No./Rev: \_\_\_\_\_

3. Acceptance of Estimate No./Rev: \_\_\_\_\_

4. Acceptance of Estimate No./Rev: \_\_\_\_\_

5. Brief Description of Change: \_\_\_\_\_

6. Other Terms and Conditions: In the event that we decide not to order the Change accepted, you shall be entitled to compensation for the cost of preparation of Change Proposal described in your Estimate for Change Proposal mentioned in paragraph 3 above in accordance with GCC Clause 39 of the General Conditions.

(Employer's Name): \_\_\_\_\_

(Signature): \_\_\_\_\_

(Name and Title of signatory): \_\_\_\_\_

Bid No. [ \_\_\_\_\_ ]

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Section IX. Contract Documents

Appendix 4. Change Proposal

(Contractor's Letterhead)

To: \_\_\_\_\_

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

Attention: \_\_\_\_\_

Contract Name: \_\_\_\_\_

Contract No: \_\_\_\_\_

Dear Ladies and/or Gentlemen:

In response to your Request for Change Proposal No. \_\_\_\_\_, we hereby submit our proposal as follows:

- 1. Title of Change: \_\_\_\_\_
- 2. Change Proposal No./Rev: \_\_\_\_\_
- 3. Originator of Change: Employer: \_\_\_\_\_  
Contractor: \_\_\_\_\_
- 4. Brief Description of Change: \_\_\_\_\_
- 5. Reasons for Change: \_\_\_\_\_
- 6. Facilities and/or Item No. of Equipment related to the requested Change: \_\_\_\_\_
- 7. Reference drawings and/or technical documents for the requested Change:

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

8. Estimate of increase/decrease to the Contract Price resulting from Change Proposal<sup>15</sup>:

(Amount)

- a. Direct material: \_\_\_\_\_
- b. Major construction equipment: \_\_\_\_\_  
<sup>13</sup>Costs shall be in the currencies of the Contract: \_\_\_\_\_
- c. Direct field labour (Total hrs): \_\_\_\_\_
- d. Subcontracts: \_\_\_\_\_

<sup>15</sup>The costs shall be in the currencies specified in the contract

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Contracting Entity [ \_\_\_\_\_ ]

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e. Indirect material and labour: \_\_\_\_\_

f. Site supervision: \_\_\_\_\_

g. Head office technical staff salaries

Process engineer                    hrs @ \_\_\_\_\_ rate/hr

Project engineer                    hrs @ \_\_\_\_\_ rate/hr

Equipment engineer                hrs @ \_\_\_\_\_ rate/hr

Contracting                        hrs @ \_\_\_\_\_ rate/hr

Draftsperson                        hrs @ \_\_\_\_\_ rate/hr

Total                                hrs

h. Extraordinary costs (computer, travel, etc): \_\_\_\_\_

i. Fee for general administration, \_\_\_\_\_ % of Items: \_\_\_\_\_

j. Taxes and customs duties: \_\_\_\_\_

Total lump sum cost of Change Proposal: \_\_\_\_\_

Sum of items (a) to (j)

Cost to prepare Estimate for Change Proposal

(Amount payable if Change is not accepted)

9. Additional Completion Term required due to Change Proposal

10. Effect on the Functional Guarantees

11. Effect on the other terms and conditions of the Contract

12. Validity of this Proposal: within [No.] days after the Acceptance of this Proposal by the Employer

13. Other terms and conditions of this Change Proposal:

- a. You are requested to notify us of your acceptance, comments or rejection of this detailed Change Proposal within \_\_\_\_\_ days from your Acceptance of this Proposal.
- b. The amount of any increase and/or decrease shall be taken into account in the amendment of the Contract Price.
- c. Contractor's cost for preparation of this Change Proposal<sup>16</sup>.

(Contractor's Name): \_\_\_\_\_

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<sup>16</sup>Determine when necessary

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(Signature): \_\_\_\_\_

(Name of signatory): \_\_\_\_\_

(Title of signatory): \_\_\_\_\_

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Contracting Entity [ \_\_\_\_\_ ]

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**Bid No.** [ ]  
Contracting Entity [ ]

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Appendix 6. Change Order

(Employer’s Letterhead)

To: \_\_\_\_\_

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

Attention: \_\_\_\_\_

Contract Name: \_\_\_\_\_

Contract No: \_\_\_\_\_

Dear Ladies and/or Gentlemen:

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

1. Title of Change: \_\_\_\_\_

2. Employer’s Request for Change Proposal No./Rev.: \_\_\_\_\_ dated: \_\_\_\_\_

3. Contractor’s Change Proposal No./Rev.: \_\_\_\_\_ dated: \_\_\_\_\_

4. Brief Description of Change: \_\_\_\_\_

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

6. Reference Drawings and/or technical documents for the requested Change: \_\_\_\_\_

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

7. Amendment of Completion Term:

8. Other change in the Contract terms:

9. Other terms and conditions:

(Employer’s Name): \_\_\_\_\_

(Signature): \_\_\_\_\_

(Name of signatory): \_\_\_\_\_

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(Title of signatory): \_\_\_\_\_

**Appendix 7. Application for Change Proposal  
(Contractor's Letterhead)**

To: \_\_\_\_\_

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

Attention: \_\_\_\_\_

Contract Name: \_\_\_\_\_

Contract No: \_\_\_\_\_

Dear Ladies and/or Gentlemen:

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

- 1. Title of Change: \_\_\_\_\_
- 2. Application for Change Proposal No./Rev.: \_\_\_\_\_ dated: \_\_\_\_\_
- 3. Brief Description of Change: \_\_\_\_\_ dated: \_\_\_\_\_
- 4. Reasons for Change: \_\_\_\_\_
- 5. Order of Magnitude Estimation (in the currencies of the Contract): \_\_\_\_\_
- 6. Scheduled Impact of Change:

Description	Drawing/Document No.

7. Effect on Functional Guarantees, if any:

8. Appendix:

(Contractor's Name): \_\_\_\_\_

(Signature): \_\_\_\_\_

(Name of signatory): \_\_\_\_\_

(Title of signatory): \_\_\_\_\_

**Bid No.** [ \_\_\_\_\_ ]

Contracting Entity [ \_\_\_\_\_ ]