



**Ministry of Public Security of Sri Lanka
Department of Immigration and Emigration**

**BIDDING DOCUMENT (Volume 1 & Volume 3)
(Two Envelope System)**

**Procurement of Supply of Five (5) Million e-Passports to
the Department of Immigration and Emigration**

**Sri Lanka
IFB No: PS/03/PB/PR/05/28/23**

Employer: Controller General
Department of Immigration and Emigration
5th Floor,
“Suhurupaya”,
Sri Subhuthipura Road,
Battaramulla,
Sri Lanka.



Invitation for Bids (IFB)
Ministry of Public Security of Sri Lanka
Department of Immigration and Emigration

Procurement of Supply of Five (5) Million e-Passports to the Department of Immigration and Emigration - Sri Lanka

IFB No: PS/03/PB/PR/05/28/23

1. The Chairman, Cabinet Appointed Procurement Committee (CAPC) on behalf of the **Department of Immigration and Emigration** invites sealed bids from eligible bidders for the **Procurement of Supply of Five (5) Million e-Passports to the Department of Immigration and Emigration -Sri Lanka**.
2. Bidding will be conducted through the **International Competitive Bidding (ICB- Two Envelope system)** specified in the National Procurement Guidelines, and are opened to all eligible bidders as defined in the Guidelines.

To be eligible for contract award, the successful bidder shall not have been blacklisted. The qualification criteria for the eligible bidders shall include the following. (Additional qualification requirements are given in the Bidding Documents):

a) **General Experience;**

Bidder should have experience in Manufacturing Passports in the role of contractor, subcontractor or management contractor during at least last Ten (10) years prior to the Bid Submission Deadline;

b) **Specific Experience in contract of similar nature:**

Bidder should have manufactured and successfully completed at least one (1) e-Passport project with a minimum number of Three (3) million within the last Ten (10) years prior to the Bid submission Deadline;

c) **Quality and Security Requirements:**

The production factory of the e-Passport shall be certified with ISO 14298-Intergraf - Government level or higher and shall be certified with ISO 9001:2015;

d) **Average Annual Turnover:**

Bidder should have minimum average annual turnover of **USD 17 Million** calculated as total certified payments received for contracts in progress or completed, within the last 3 years;

e) **Financial Resources:**

The bidder must demonstrate access to or availability of financial resources such as liquid assets, un-encumbered real assets, line of credit and other financial means, other than any contractual advance payments to meet the cash flow requirement of not less than **USD 1 Million** and net of the bidder's other commitments for this project.

3. Interested Bidders may obtain further information from Accountant (Procurement), Ministry of Public Security, 14th Floor, "Suhurupaya", Sri Subhuthipura Road, Battaramulla, Sri Lanka or through Telephone: +94112887328, Email: acc_proc@pubsec.gov.lk. and inspect the Bidding Document free of charge during 9.00 a.m. to 3.00 p.m. on working days commencing from **November 9, 2023** at the below address (Para 6). Bidding document is published on Ministry of Public Security website (www.pubsec.gov.lk) and Department of Immigration and Emigration web site (www.immigration.gov.lk) **only for reference purpose**.
4. A complete set of Bidding Documents in English may be purchased from Ministry of Public Security office (address below para 6) by interested bidders on the submission of a written request on a business letterhead, and upon payment of a non-refundable fee of **LKR 500,000.00 or the equivalent amount in a freely convertible currency in Sri Lanka**. The method of payment will be by cash.
5. Bids must be delivered to the address below para (6) **at or before 2.00 p.m. on December 21, 2023**. Late bids will be rejected. Bids will be opened soon after the bid closing in the presence of the bidders' representatives, who choose to attend **at 2.00 p.m. on December 21, 2023**. All bids must be accompanied by a Bid Security in the form of bank guarantee of not less than **Sri Lankan Rupees Two Hundred Million (LKR 200 million) or the equivalent amount in a freely convertible currency in Sri Lanka**.
6. A Pre-Bid Meeting will be held at **11.00 a.m. on November 23, 2023 in the Auditorium of Ministry of Public Security, 14th Floor, "Suhurupaya", Sri Subhuthipura Road, Battaramulla, Sri Lanka**. All interested bidders may participate to the Pre-Bid meeting.

Chairman,
Cabinet Appointed Procurement Committee (CAPC)
Ministry of Public Security;
14th Floor;
"Suhurupaya";
Sri Subhuthipura Road;
Battaramulla;
Sri Lanka.
November 09, 2023

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Inspection Only

Section I – Instructions to the Bidders

Inspection Only

Section I – Instructions to the Bidders

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SECTION I – INSTRUCTIONS TO THE BIDDERS

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

A. General

- 1. Scope of Bid**
- 1.1 In connection with the Invitation for Bids indicated in the Bid Data Sheet (BDS), the Employer, as indicated in the BDS, issues these Bidding Documents for the procurement of Information Technology (IT) Products and Services as specified in Volume 2 -Section VI (Schedule of Requirements). The name, identification, and number of lots (Contracts) of the **International Competitive Bidding (ICB)** are provided in the BDS.
- 1.2 Unless otherwise stated, throughout this Bidding Document definitions and interpretations shall be as prescribed in Volume 3-Section VII (General Conditions) (GC).
- 2. Source of Funds**
- 2.1 Government of Sri Lanka (GoSL) shall provide the financing required to meet eligible payments under the Contract for which these Bidding Documents are issued.
- 3. Corrupt Practices**
- 3.1 It is the policy of GoSL that the officials of the procuring entity as well as Bidders, Suppliers, Service Providers and Contractors and their sub-Contractors under GoSL financed Contracts observe the highest standard of ethics during the procurement and execution of such Contracts, in pursuance of this policy, the GoSL;
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
- i. “corrupt practice” means the offering, giving receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any party in the procurement process or the execution of a Contract;
 - ii. “fraudulent practice” means a misrepresentation or omission of facts in order

to influence a procurement process or the execution of a Contract;

iii. “collusive practices” means a scheme or arrangement between two or more Bidders, with or without the knowledge of the employer, designed to influence the action of any party in a procurement process or the execution of a Contract;

iv. “coercive practices” means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a Contract;

(b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract; and

(c) will sanction a party or its successor, including declaring ineligible, either indefinitely or for a stated period of time, to participate in GoSL financed activities if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, GoSL financed Contract.

3.2 Furthermore, Bidders shall be aware of the provision stated in the Volume 3- General Conditions (GC 47.1, Termination for Contractor’s Default).

4. Eligible Bidders

4.1 A Bidder may be a private entity or a government-owned entity or any combination of such entities with the intent to enter into an agreement supported by a letter of intent or under an existing agreement in the form of a joint venture, consortium or association (JV). In the case of a Joint Venture (JV):

(a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms, and

(b) the JV shall nominate one of the partners who shall have the authority to conduct all business for and on behalf of any and all the partners of the JV during the Bidding process and, in the event the JV is awarded the Contract, during Contract execution. This shall be evidence by submitting a Power of Attorney signed by legally authorized signatories of all the partners.

4.2 A Bidder, and all partners constituting the Bidder, shall have a nationality of an eligible country and shall have legal rights to supply Products and Services under the Contract resulting from these Bidding Documents. A Bidder shall be deemed to have the nationality of a country if the Bidder is a national or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed sub-Contractors or Contractors for any part of the Contract including related services.

4.3 GoSL considers a conflict of interest to be a situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, Contractual obligations, or compliance with applicable laws and regulations. Bidders and Contractors under GoSL financed Contracts, shall observe the highest standard of ethics. GoSL will take appropriate actions, which include not financing of the Contract, if it determines that a conflict of interest has flawed the integrity of any procurement process. Consequently all Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest with one or more parties in this Bidding process if, including but not limited to:

- (a) they have controlling partners in common; 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 with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the Employer regarding this Bidding process; or
- (e) A Bidder participates in more than one Bid in this Bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which it is involved. However, this does not limit the inclusion of the same sub-Contractor, not otherwise participating as a Bidder, in more than one Bid; or
- (f) A Bidder or any of its affiliates participated as a consultant in the preparation of the design and/or technical specifications of the products and services and/or other documents that are the subject of the procurement under these Bidding documents.

4.4 A firm that is under a declaration of ineligibility by **GoSL or any other Country** in accordance with ITB 3 at the date of the deadline for Bid submission or thereafter, shall be disqualified.

4.5 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

4.6 In case a prequalification process has been conducted prior to the Bidding process, this Bidding is open only to prequalified Bidders.

4.7 Firms shall be excluded if by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the employer's country prohibits any import of goods or Contracting of works or services from that country or any payments to persons or entities in that country.

- 4.8 Local Companies bidding for these tender or Local partners of Foreign Companies bidding for this tender shall be registered under the Public Contracts Act, No 3 of 1987.
- 5. Eligible Products and Services**
- 5.1 For the purposes of these Bidding Documents, the Products and Services means all:
- (a) the required information technologies, including all information processing and communications-related hardware, software, supplies and consumable items that the Bidder is required to supply and install under the Contract, plus all associated documentation, and all other materials and products to be supplied, installed, integrated, and made operational (collectively called the products in some clauses of the ITB); and
 - (b) the related software development, transportation, insurance, installation, customization, integration, commissioning, training, technical support, maintenance, repair, and other Services necessary for proper operation of the products to be provided by the selected Bidder and as specified in the Contract.
- 5.2 The Products and Services to be supplied under the Contract shall have their origin in eligible source countries as defined in ITB 4.2 above and all expenditures under the Contract will be limited to such Products and Services.
- 5.3 For the purposes of ITB 5.2 above - origin means the place where through software development, manufacturing, or substantial and major assembly or integration of components, a commercially recognized Product results that is substantially different in basic characteristics or in purpose or utility from its components.

6. Intellectual Property

6.1 By signing the Bid Submission Form, the Bidder represents that it either is the owner of the Intellectual Property Rights in the Products and Services offered, or that it has proper authorization and/or license to offer them from the owner of such rights. Wilful misrepresentation of these facts shall be considered fraudulent practice subject to the provisions of ITB 3.1 through 3.2 above, without prejudice of other remedies that the Employer may take.

7. Status of Sub - Contractors

7.1 If it is allowed in the BDS for Sub-Contractors to be nominated for certain components to be taken into account in assessing the Bidder's overall qualifications, any Sub-Contractor so nominated by any Bidder is automatically disqualified from being a Bidder itself or a partner in a Joint Venture. Non-compliance may result in the rejection of all Bids in which the affected firm participates as Bidder or as partner in a Joint Venture.

7.2 Any firm not participating as Bidder or as partner in a Joint Venture may be proposed as a Sub-Contractor in any number of Bids.

A firm which is a Bidder, whether as a single Bidder or as a partner in a Joint Venture, cannot be a Sub-Contractor in other Bids, except for the supply of commercially available Hardware or Software by the firm, as well as purely indicated services such as installation/configuration, routing training and ongoing maintenance support.

7.3 If a Bidder intends to Sub-Contract major items of Products and Services, it shall include in the Bid details of the name and nationality of the proposed Sub-Contractor, including vendors for each of those items and shall be responsible for ensuring that any Sub-Contractor proposed complies with the requirements of ITB 3.

7.4 Bidders are free to list more than one Sub-Contractor against each item. Quoted rates and prices will be deemed to apply, whichever Sub-Contractor is appointed, and no adjustment of the rates or prices will

be permitted. The Employer reserves the right to delete any proposed Sub- Contractor from the list. This shall be done prior to Contract signature, by deleting such unacceptable Sub-Contractors in Volume 3-Appendix 3 of Section IX (Contract Forms), which shall list the approved Sub- Contractors for each item prior to Contract signature. Subsequent additions and deletions from the list of approved Sub-Contractors shall be performed in accordance with GC Clause 20.

- 7.5 The Employer, where applicable, may select only some of the listed Sub- Contractors in evaluating a Bid. The criteria for selection will be set out in the BDS.
- 8. Contacting the Employer**
- 8.1 From the time of Bid advertisement to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the Bid, it should do so in writing.
- 8.2 If a Bidder tries to directly influence the Employer or otherwise interfere in the Bid submission and evaluation process and the Contract award decision, its Bid may be rejected.

B. Contents of Bidding Document

- 9. Sections of Bidding Document**
- 9.1 The Bidding Document consists of Volume 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 11.

| | |
|-----------------|---------------------------------------|
| Volume 1 | Bidding Procedures |
| Section I | Instructions to Bidders (ITB) |
| Section II | Bid Data Sheet (BDS) |
| Section III | Evaluation and Qualification Criteria |
| Section IV | Bidding Forms |
| Section V | Eligible Countries |
| Volume 2 | Requirements |
| Section VI | Schedule of Requirements |

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| Volume 3 | Conditions of Contract and Contract Forms |
| Section VII | General Conditions (GC) |
| Section VIII | Particular Conditions (PC) |
| Section IX | Contract Forms |

- 9.2 The Invitation for Bids issued by the Employer is not part of the Bidding Document and is intended for references only. In case of inconsistencies, the actual Bidding Documents shall prevail.
- 9.3 The Employer is not responsible for the completeness of the Bidding Document and its addenda, if they were not obtained directly from the source stated by the Employer in the Invitation for Bids.
- 9.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the Bid.
- 10. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting**
- 10.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer's address indicated in the BDS or raise his enquiries during the pre-Bid meeting if provided for in accordance with ITB 10.4. The Employer 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 Employer's response shall be in writing with copies to all Bidders who have acquired the Bidding Document in accordance with ITB 9.3, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 11 and ITB 26.2.
- 10.2 The Bidder, may on notifying the Employer in

writing within the time stated in the BDS, visit and examine the site/s where the Products and Services are 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 Products and Services. The costs of visiting site(s) shall be at the Bidder's own expense.

- 10.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection. No site visits shall be arranged or scheduled after the deadline for submission of the Bids and prior to the award of the Contract.
- 10.4 The Bidder's designated representative is invited to attend a pre-Bid meeting, if provided for in the BDS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 10.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Employer not later than one week before the meeting.
- 10.6 Minutes of the pre-Bid meeting, including the text of the questions raised without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with ITB 9.3. Any modification to the Bidding Document that may become necessary as a result of the pre-Bid meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to ITB 11 and not

through the minutes of the pre-Bid meeting.

10.7 Nonattendance at the pre-Bid meeting will not be a cause for disqualification of a Bidder.

11. Amendment of Bidding Document

11.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Bidding Document by issuing addenda.

11.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Employer in accordance with ITB 9.3.

11.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer may, at its discretion, extend the deadline for the submission of Bids, pursuant to ITB 26.2.

C. Preparation of Bids

12. Cost of Bidding

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

13. Language of Bid

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

14. Documents Comprising the Bid

14.1 The documents comprising the Bid are listed in Section IV (Bidding Forms), in the Bidder Response Format (BRF). Bidders must use the BRF provided to

structure and submit their Bids.

- 14.2 The Bid shall comprise two envelopes submitted simultaneously, one called the Technical Bid containing the documents listed in Table 1 (Bidder's Response Format – Technical Bid of Section IV (Bidding Forms), and the other the Price Bid containing the documents listed in Table 2 (Bidder's Response Format – Price Bid of Section IV (Bidding Forms), both envelopes enclosed together in an outer single envelope.
- 14.3 Any other documents required as listed in the BDS
- 15. Letter of Bid and Schedules** 15.1 The Bidder shall complete the Letter of Bid, including the appropriate Price Schedules, using the relevant forms furnished in Section IV (Bidding Forms). The forms must be completed as instructed in each form.
- 16. Alternative Bids** 16.1 Unless otherwise specified in the BDS, alternative Bids shall not be considered.
- 17. Documents Establishing the Eligibility of the Products and Services** 17.1 To establish the eligibility of the Products and Services in accordance with ITB 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV (Bidding Forms).
- 18. Documents Establishing the Eligibility and Qualifications of the Bidder** 18.1 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 Bidder Response Format included in Section IV (Bidding Forms).
- 18.2 Domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility as described in ITB 38.
- 19. Documents Establishing Conformity of** 19.1 The Bidder shall furnish the information stipulated in Section IV (Bidding Forms), in sufficient detail to

the Products and Services

demonstrate substantial responsiveness of its Bid to the work requirements and the completion time.

- 19.2 For major items of Products and Services which the Bidder intends to purchase or sub contract, the Bidder shall give details of the name and nationality of the proposed Sub-Contractors, including manufacturers, for each of those items. In addition, the Bidder shall include in its Bid information establishing compliance with the requirements specified by the Employer for these items. Quoted rates and prices will be deemed to apply to whichever Sub-Contractor is appointed, and no adjustment of the rates and prices will be permitted.
- 19.3 The written evidence of conformity of the Products and Services shall be inserted into the tables that comprise the Bidder's response to items in Volume 2- Section VI (Schedule of Requirements) in the form of written descriptions, literature, diagrams, certifications, and client references.
- 19.4 The Bidder will provide an item-by-item response to the Employer's Schedule of Requirements, demonstrating what the Bidder will provide, and how from a technical, functional, business or Service perspective, as appropriate, its Products and Services respond to the requirements. In demonstrating responsiveness, the commentary may include explicit cross references to the relevant pages in the supporting materials included in the Bid. Whenever a discrepancy arises between the item-by-item commentary and any catalogues, technical specifications, or other pre-printed materials submitted with the Bid, the item-by-item commentary shall prevail.
- 19.5 A Preliminary Project Plan is required, the details of which are described in Volume 2 - Section VI (Schedule of Requirements).
- 19.6 A written confirmation that the Bidder accepts

responsibility for the successful integration and interoperability of all Products and Services as required by the Bidding Documents.

19.7 For purposes of the commentary to be furnished pursuant to ITB 19.4, the Bidder shall note that any references to brand names or model numbers or national or proprietary standards designated by the Employer in Volume 2 - Section VI (Schedule of Requirements) are intended to be descriptive and not restrictive (except where explicitly prohibited in the BDS for specific items or standards). The Bidder may substitute alternative brand/model names or standards in its Bid, provided that it demonstrates to the Employer's satisfaction that the use of the substitute(s) will result in the Products and Services being able to perform substantially equivalent to or better than that specified in Volume 2 - Section VI (Schedule of Requirements).

20. Bid Prices

20.1 Unless otherwise specified in the BDS, Bidders shall quote for the entire Products 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 procurement and sub-Contracting (if any), delivery, construction, installation, completion, acceptance, commissioning and support of the Products and Services as specified in Volume 2 - Section VI (Schedule of Requirements). This includes all requirements under the Contractor's responsibilities for testing, pre-commissioning and commissioning of the Products and Services 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 Employer when executed and shall be deemed to be

covered by the prices for other items.

20.2 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).

20.3 The price of items that the Bidder has left blank in the cost tables provided in the BRF shall be assumed to be included in the price of other items. Items omitted altogether from the price tables shall be assumed to be omitted from the Bid and, provided that the Bid is substantially responsive, an adjustment to the Bid price will be made during evaluation in accordance with ITB 42.1(c) (i).

20.4 Unit prices must be quoted at a level of detail appropriate for calculation of any partial deliveries or partial payments under the Contract, in accordance with the Implementation Schedule in Volume 2 - Section VI (Schedule of Requirements), and with Volume 3 - GC and Appendix 7 (Terms and Procedures for Payment). Bidders may be required to provide breakdown of any composite or lump-sum items included in the price tables.

20.5 The prices for Products and Services are to be expressed and shall be defined and governed in accordance with the rules prescribed in the edition of Incoterms specified in the BDS, and quoted in the appropriate columns of the cost tables in the BRF as follows:

(a) Products supplied from outside the Employer's country:

Unless otherwise specified in the BDS, the prices shall be quoted on a CIP (named place of destination) basis, exclusive of all taxes, stamps, duties, levies, and fees imposed in the Employer's country. The named place of destination and special instructions for the Contract of carriage are as specified in the BDS. In quoting the price, the Bidder shall be free to use transportation through carriers registered in any eligible countries.

Similarly, the Bidder may obtain insurance Services from any eligible source country.

(b) Locally supplied Products:

Unit prices of Products offered from within the Employer's Country, shall be quoted on an EXW (ex factory, ex works, ex warehouse or off-the-shelf, as applicable) basis.

(c) Inland transportation:

Unless states otherwise in the BDS, inland transportation, insurance and related local costs incidental to the delivery of the Products to the designated Project Sites must be quoted separately as a Service item in accordance with ITB 20.6, whether the Products are to be supplied locally or from outside the Employer's country, except when these costs are already included in the price of the Products, as is, e.g., the case, when ITB 20.5(a) specifies CIP, and the named places of destination are the Project Sites.

20.6 The price of Services shall be quoted in total for each service (where appropriate, broken down into unit prices), separated into their local and foreign currency components. Unless otherwise specified in the BDS, the prices must include all costs incidental to the performance of the Services, as incurred by the Contractor, such as transportation, travel, subsistence, office support, communications, translation, printing of materials, etc. costs incidental to the delivery of the services but incurred by the Employer or its staff, or by third parties, must be included in the price only to the extent such obligations are made explicit in these Bidding Documents (as, e.g., a requirement for the Bidder to include the travel and subsistence costs of trainees).

20.7 Prices for Recurrent Costs beyond the scope of warranty services to be incurred during the Warranty Period, defined in Volume 3- GCC Clause 1.1 and prices for Recurrent Costs to be incurred during the Post-Warranty Services Period, defined in PC Clause

1 shall be quoted as Service prices in accordance with ITB 20.6 on the Recurrent Costs Form in detail, and on the Recurrent Costs Summary Form in currency total. Recurrent costs are all-inclusive of the costs necessary items such as spare parts, software license renewals, labor, etc., needed for the continued and proper operation of the Products and Services and, if appropriate, of the Bidder's own allowance for price increases.

- 20.8 The prices shall be either fixed or adjustable as specified in the BDS.
- 20.9 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.
- 20.10 In the case of **Adjustable Price**, prices quoted by the Bidder shall be subject to adjustment during performance of the Contract to reflect changes in the cost elements such as labor, material, transport and Contractor's equipment in accordance with the procedures specified in the corresponding Appendix to the Contract Agreement. A Bid submitted with a fixed price quotation will not be rejected, but the price adjustment will be treated as zero. Bidders are required to indicate the source of labor and material indices in the corresponding Form in Section IV (Bidding Forms).
- 20.11 If so indicated in the BDS, Bids are being invited for individual lots (Contracts) or for any combination of lots (packages). Bidders wishing to offer any price reduction (discount) for the award of more than one Contract shall specify in their Letter of Bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package, and the manner in which the price reductions will apply.

20.12 If the BDS 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 responsive price of the lot (Contract) combinations, including any discounts offered in the Letter of Bid, is specified in Section III (Evaluation and Qualification Criteria).

21. Currencies of Bid and Payment

21.1 The currency(ies) of the Bid shall be, as specified in the BDS.

21.2 Bidders may be required by the Employer to justify, to the Employer's satisfaction, their local and foreign currency requirements.

22. Period of Validity of Bids

22.1 Bids shall remain valid for the period specified in the BDS after the Bid submission deadline date prescribed by the Employer. A Bid valid for a shorter period less than the period specified shall be rejected by the Employer as non-responsive.

22.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB 23, the Bidder granting the request shall also extend the Bid Security for twenty- eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its Bid security. A Bidder granting the request shall not be required or permitted to modify its Bid.

23. Bid Security

23.1 The Bidder shall furnish as part of its Bid, either a Bid-Securing Declaration or a Bid Security as specified in the BDS, in original form and in the amount and currency specified in the BDS.

23.2 The Bid Security shall be a demand guarantee in any of the following forms at the Bidder's option:

- (a) an unconditional bank guarantee;
- (b) an irrevocable letter of credit; or

(c) a cashier's or certified check;

from a reputable source from an eligible country. The Bid security shall be submitted either using the Bid Security Form included in Section IV (Bidding Forms) or in another substantially similar format approved by the Employer prior to Bid submission. In either case, the form must include the complete name of the Bidder. The Bid security shall 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 22.2.

23.3 Any Bid not accompanied by an enforceable and compliant Bid security shall be rejected by the Employer as non-responsive.

23.4 The Bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB 49.

23.5 The Bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security.

23.6 The Bid security may be forfeited:

(a) if a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder on the Letter of Bid

or

(b) if the successful Bidder fails to:

(i) Sign the Contract in accordance with ITB 48;
or

(ii) Furnish a performance security in accordance with ITB 49.

23.7 The Bid Security of a JV shall be in the name of the JV that submits the Bid. If the JV has not been legally constituted at the time of Bidding, the Bid Security shall be in the names of all future partners as named

in the letter of intent referred to in ITB 4.1.

- 23.8 If a Bid security is not required in the BDS, and
- (a) a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder on the Letter of Bid, except as provided in ITB 22.2, or
 - (b) the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB 48; or
 - (ii) furnish a performance security in accordance with ITB 49;
- the Employer may, if provided for in the BDS declare the Bidder disqualified to be awarded a contract by the Employer for a period of time as stated in the BDS.

24. Format and Signing of Bid

- 24.1 The Bidder shall prepare one original of the documents comprising the Bid as described in ITB 14 and clearly mark it —ORIGINAL. In addition, the Bidder shall submit copies of the Bid, in the number specified in the BDS and clearly mark them —COPY. In the event of any discrepancy between the original and the copies, the original shall prevail.
- 24.2 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 BDS and shall be attached to the Bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the original Bid where entries or amendments have been made shall be signed or initialed by the person signing the Bid.
- 24.3 A Bid submitted by a JV shall be signed so as to be legally binding on all partners.
- 24.4 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

D. Submission and Opening of Bids

25. Submission, Sealing and Marking of Bids

25.1 Bidders may always submit their Bids by mail or by hand. When so specified in the BDS, Bidders shall have the option of submitting their Bids electronically. 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 16, 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 25.2 and 25.3.

(b) Bidders submitting the Bids electronically shall follow the electronic Bid submission procedures specified in the BDS.

25.2 The inner and outer envelopes shall:

- (a) Bear the name and address of the Bidder;
- (b) Be addressed to the Employer in accordance with ITB 25.1;
- (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.

25.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.

26. Deadline for Submission of Bids

26.1 Bids must be received by the Employer at the address and no later than the date and time indicated in the BDS.

26.2 The Employer may, at its discretion, extend the

deadline for the submission of Bids by amending the Bidding Document in accordance with ITB 11, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

27. Late Bids

27.1 The Employer shall not consider any Bid that arrives after the deadline for submission of Bids, in accordance with ITB 26. Any Bid received by the Employer after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.

28. Withdrawal, Substitution, and Modification of Bids

28.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 24.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be:

- (a) Prepared and submitted in accordance with ITB 24 and ITB 25 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL”, “SUBSTITUTION”, “MODIFICATION” and;
- (b) Received by the Employer prior to the deadline prescribed for submission of Bids, in accordance with ITB 26.

28.2 Bids requested to be withdrawn in accordance with ITB 28 shall be returned unopened to the Bidders.

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

29. Bid opening

29.1 The Employer shall conduct the opening of Technical Bids in the presence of Bidders’ designated

representatives who choose to attend, and at the address, date and time specified in the BDS. Any specific electronic Bid opening procedures required if electronic Bidding is permitted in accordance with ITB Sub-clause 25.1 shall be as specified in the BDS. The Price Bids will remain unopened and will be held in custody of the Employer until the specified time of their opening. If the Technical Bid and the Price Bid are submitted together in one envelope, the Employer may reject the entire Bid. Alternatively, the Price Proposal may be immediately resealed by the bid opening committee for evaluation.

- 29.2 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 “SUBSTITUTION” shall be opened. The inner envelopes containing the Substitution Technical Bid and/or Substitution Price Bid shall be exchanged for the corresponding envelopes being substituted, which are to be returned to the Bidder unopened. Only the Substitution Technical Bid, if any, shall be opened, read out, and recorded. Substitution Price Bid will remain unopened in accordance with ITB Sub-Clause 29.1. No envelope shall be substituted unless the corresponding Substitution Notice contains a valid authorization to request the substitution and is read out and recorded at Bid opening. Envelopes marked “MODIFICATION” shall be opened. No Technical Bid and/or Price Bid shall be modified unless the corresponding Modification Notice contains a valid authorization to request the modification and is read out and recorded at the opening of Technical Bids. Only the Technical Bids, both Original as well as Modification are to be opened, read out, and recorded at the opening. Price Bids, both Original as well as Modification, will remain unopened in accordance

with ITB Sub-Clause 29.1.

- 29.3 All other envelopes holding the Technical Bids shall be opened one at a time, reading out: the name of the Bidder, and indicating whether there is a modification or substitution; the presence or absence of a Bid security and any other details as the Employer may consider appropriate. Only Technical Bids and alternative Technical Bids read out and recorded at Bid opening shall be considered for evaluation. No Bid shall be rejected at Bid opening except for late Bids, in accordance with ITB 27.1.
- 29.4 The Employer shall prepare a record of the opening of Technical Bids that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification and the presence or absence of a Bid security or a Bid securing declaration, if one was required. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted Bids in time.
- 29.5 At the end of the evaluation of the Technical Bids, the Employer will invite Bidders who have submitted substantially responsive Technical Bids and who have been determined as being qualified for award to attend the opening of the Price Bids. The date, time, and location of the opening of Price Bids will be advised in writing by the Employer. Bidders shall be given reasonable notice of the opening of Price Bids.
- 29.6 The Employer will notify Bidders in writing who have been rejected on the grounds of their Technical Bids being substantially non-responsive to the requirements of the Bidding Document and return their Price Bids unopened.
- 29.7 The Employer shall conduct the opening of Price Bids of all Bidders who submitted substantially responsive Technical Bids, in the presence of Bidders`

representatives who choose to attend at the address, date and time specified by the Employer. The Bidder's representatives who are present shall be requested to sign a register evidencing their attendance

- 29.8 All other envelopes holding Price Bids shall be opened one at a time, reading out: the name of the Bidder, and indicating whether there is a modification or substitution; the Bid Prices, including any discounts and alternative offers, and any other details as the Employer may consider appropriate. Only Price Bids, discounts, and alternative offers read out and recorded during the opening of Price Bids shall be considered for evaluation. No Bid shall be rejected at Bid opening.
- 29.9 The Employer shall prepare a record of the opening of Price Bids that shall include, as a minimum: the name of the Bidder, the Bid Price (per lot if applicable), any discounts, and alternative offers. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted Bids in time.

E. Evaluation and Comparison of Bids

30. Confidentiality

- 30.1 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 the publication of Contract award.
- 30.2 Any attempt by a Bidder to influence the Employer in the evaluation of the Bids or Contract award decisions may result in the rejection of its Bid.
- 30.3 Notwithstanding ITB 30.2, from the time of Bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the Bidding process, it should do so in writing.

- 31. Clarification of Bids**
- 31.1 To assist in the examination, evaluation, and comparison of the Technical and Price Bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change in the Technical Bid or prices in the Price Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids, in accordance with ITB 39.
- 31.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Employer's request for clarification, its Bid may be rejected.
- 32. Deviations, Reservations, and Omissions**
- 32.1 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.
- 33. Preliminary Examination of Technical Bids**
- 33.1 The Employer shall examine the Technical Bid to confirm that all documents and technical documentation referenced in ITB Sub-Clause 14.2 have been provided, and to determine the completeness of each document submitted. If any of these documents or information is missing, the Bid may be rejected.
- 33.2 The Employer shall confirm that the following documents and information have been provided in the Technical Bid. If any of these documents or

information is missing, the offer shall be rejected.

- (a) Letter of Technical Bid;
- (b) written confirmation of authorization to commit the Bidder;
- (c) Bid Security, if applicable; and
- (d) Technical Proposal in accordance with ITB 19.

34. Responsiveness of Technical Bid

34.1 The Employer's determination of a Bid's responsiveness is to be based on the contents of the Bid itself, as defined in ITB 14.

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

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

34.3 The Employer shall examine the technical aspects of the Bid submitted in accordance with ITB 19, Documents Establishing Conformity of the Products and Services, in particular, to confirm that all requirements of Section VI (Schedule of Requirements) have been met without any material deviation, reservation, or omission.

34.4 If a Bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material

deviation, reservation, or omission.

**35. Nonmaterial
Nonconformities**

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

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

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

**36. Evaluation of
Bids**

36.1 The Employer will evaluate and compare the Bids that have been determined to be substantially responsive, pursuant to ITB 32, 33, 34 and 35. The evaluation will be performed assuming either that:

- (a) the Contract will be awarded to the lowest evaluated responsive Bidder for the entire Products and Services required by the Employer; or
- (b) if specified in the Section III (Evaluation and Qualification Criteria), Contracts will be awarded to the Bidders for each individual lot, or slice defined in Section VI (Schedule of Requirements) whose Bids result in the lowest

combined evaluated price for the entire Products and Services required by the Employer.

- 36.2 The Employer shall use the criteria and methodologies indicated in ITB 36 to ITB 43. No other evaluation criteria or methodologies shall be permitted.
- 36.3 The Employer's evaluation of a Bid will be made on the basis of prices quoted in accordance with ITB 20.

37. Detailed Evaluation of Technical Bids

37.1 The Employer will carry out a detailed technical evaluation of the Bids not previously rejected as being substantially non-responsive, in order to determine whether the technical aspects are in compliance with the Bidding Document. In order to reach such a determination, the Employer will examine and compare the technical aspects of the Bids on the basis of the information supplied by the Bidders.

37.2 If the Employer has chosen to give weight to important technical factors (i.e., the price weight, X, is less than 100 in the evaluation), that cannot be reduced to life-cycle costs or pass/fail criteria, the Total Technical Points assigned to each Bid in the Evaluated Bid Formula will be determined by adding and weighting the scores assigned by an evaluation committee to technical features of the Bid in accordance with the criteria set forth below.

(a) The categories of technical features that could be evaluated are generally defined below and specifically identified in Section III (Evaluation and Qualification Criteria):

(i) Performance, capacity, or functionality features such as those that either exceed levels specified as mandatory or desirable in Section VI (Schedule of Requirements); meet the Employer's business requirements, reduce the Employer's level of risk, or influence the life-

cycle cost and effectiveness of the Products and Services

(ii) Usability features, such as ease of use, ease of administration and implementation, or ease of expansion, compatibility with existing infrastructure, systems and applications, which influence life-cycle cost and effectiveness of the Products and Services.

(iii) The thoroughness, reasonableness, and responsiveness of the Bidder's preliminary plans such as the project plan, implementation plan, and transition plan in assisting the Employer to successfully achieve its requirements.

(iv) The thoroughness, reasonableness, and responsiveness of the proposed arrangements for support such as management and coordination, training, quality assurance, technical support, logistics, problem resolution, and transfer of knowledge, and other such activities as specified in the Volume 2- Section VI (Schedule of Requirements).

(v) Other relevant factors, if any, listed in Section III (Evaluation and Qualification Criteria).

(b) As specified in the Section III (Evaluation and Qualification Criteria), appropriate features within these technical categories will be identified and given a weighting as part of the technical evaluation.

37.3 Where alternative technical solutions have been allowed in accordance with ITB 16, and offered by the Bidder, the Employer will make a similar evaluation of the alternatives. Where alternatives have not been allowed but have been offered, they shall be ignored.

38. Eligibility and Qualification of the Bidder

38.1 The Employer shall determine to its satisfaction during the evaluation of Technical Bids whether a Bidder meets the eligibility and qualifying criteria specified in Section III (Evaluation and Qualification Criteria).

- 38.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 18.
- 38.3 An affirmative determination shall be a prerequisite for the opening and evaluation of a Bidder's Price Bid. A negative determination shall result into the disqualification of the Bid, in which event the Employer shall return the unopened Price Bid to the Bidder.
- 38.4 The capabilities of the manufacturers and Sub Contractors proposed in its Bid to be used by the Bidder will also be evaluated for acceptability in accordance with Section III (Evaluation and Qualification Criteria). Their participation should be confirmed with a letter of intent between the parties, as needed. Should a manufacturer or Sub Contractor be determined to be unacceptable, the Bid will not be rejected, but the Bidder will be required to substitute an acceptable manufacturer or Sub Contractor without any change to the Bid price. Prior to signing the Contract, the corresponding Appendix to the Contract Agreement shall be completed, listing the approved manufacturers or Sub Contractors for each item concerned.

**39. Correction of
Arithmetical
Errors**

- 39.1 During the evaluation of Price Bids, the Employer shall correct arithmetical errors on the following basis:
- 1) if there is a discrepancy between the unit price and the total price, which is obtained by multiplying the unit price and quantity, or between added or subtracted subtotals and totals, the unit or subtotal price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit or subtotal prices, in which case the line item total as quoted shall govern and the unit price or subtotal shall be corrected.

-) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) above.
- 39.2 If the Bidder that submitted the lowest evaluated substantially responsive Bid does not accept the correction of errors, its Bid shall be declared non-responsive.
- 40. Conversion to Single Currency** 40.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as specified in the BDS.
- 41. Margin of Preference** 41.1 Unless otherwise specified in the BDS, no margin of preference shall apply.
- 42. Evaluation of Price Bids** 42.1 The Evaluated Bid Price (P) for each responsive Bid will be determined as the sum of the Adjusted Bid Price (AP) plus the Recurrent Costs (R); where the Adjusted Bid Price (AP) is determined as:
- (a) The price of the Products offered from within or from outside the Employer's country, in accordance with ITB 20.5; plus
 - (b) The total price for all Services such as software development, transportation, insurance, installation, customization, integration, commissioning, testing, acceptance, training, technical support, repair, and any other Services.
 - (c) With adjustments for:
 - (i) Products and Services that are left out or are necessary to correct minor deviations of the Bid will be added to the total Bid price using costs taken from the highest prices from other responsive Bids for the same Products and Services, or in the absence of such information, the cost will be estimated at prevailing list prices. If the missing Products and Services are scored as a technical failure, the relevant score will be set at zero

- (ii) Price adjustment due to quantifiable non material nonconformities in accordance with ITB 35.
 - (iii) Corrections to errors in arithmetic, in accordance with ITB 39
 - (iv) Converting the amount resulting from applying (i) to (iii) above, if relevant, to a single currency in accordance with ITB 40.
 - (v) The evaluation factors indicated in Section III (Evaluation and Qualification Criteria).
- (d) The Recurrent Costs (R) are reduced to net present value and determined using the following formula:

$$R = \sum_{x=1}^{N+M} \frac{R_x}{(1+I)^x}$$

Where,

N = number of years of the Warranty Period, defined in PC Clause 29.2 (C)

M = number of years of the Post-Warranty Services Period, as defined in PC Clause 1

X = an index number 1, 2, 3, ... N + M representing each year of the combined Warranty Service and Post-Warranty Service Periods

R_x = total Recurrent Costs per year “x,” as recorded in the Recurrent Cost Form

I = discount rate to be used for the Net Present Value calculation, as specified in **BDS**.

- 42.2 If price adjustment is allowed in accordance with ITB 20.8, the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in Bid evaluation.
- 42.3 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 of the lot (Contract) combinations, including any discounts offered in the Letter of Bid, is specified in Section III (Evaluation and Qualification Criteria).

42.4 If the Bid, which results in the Lowest Evaluated substantially responsive Bid, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer 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 analysis, taking into consideration the terms of payment, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

43. Comparison of Bids

43.1 The Employer shall compare all substantially responsive Bids in accordance with ITB 42.1 to determine the lowest evaluated substantially responsive Bid.

44. Employer's Right to Accept Any Bid, and to Reject Any or All Bids

44.1 The Employer reserves the right to accept or reject any Bid, and to annul the Bidding process and reject all Bids at any time prior to Contract award, without thereby incurring any liability to Bidders without specifying any reason. In case of annulment, all Bids submitted and specifically, Bid securities, shall be promptly returned to the Bidders.

F. Award of Contract

- 45. Employer’s Right to Vary Quantities at Time of Award** 45.1 The Employer reserves the right at the time of Contract award to increase or decrease, by the percentage(s) indicated in the BDS, any of the following:
- (a) the quantity of substantially identical Products and Services; or
 - (b) the quantity of individual Hardware, Software, related equipment, Materials, products, and other Goods that are components of the Project to which this procurement applies; or
 - (c) the quantity of Installation or other Services to be performed,
- From that originally specified in Section VI (Schedule of Requirements) (as amended by any Addenda issued pursuant to ITB Clause 11), without any change in unit prices or other items and conditions.
- 46. Award Criteria** 46.1 The Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated responsive Bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be eligible and qualified to perform the Contract satisfactorily.
- 47. Notification of Award** 47.1 Prior to the expiration of the period of Bid validity, the Employer shall notify the successful Bidder, in writing, that its Bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the -Letter of Acceptance^{ll}) shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Products and Services (hereinafter and in the Conditions of Contract and Contract Forms called Contract Price
- 47.2 At the same time, the Employer shall also notify all other Bidders of the results of the Bidding, and shall publish the results identifying the Bid and lot numbers 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 (and Bid

score if weighted scoring system was used) 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 it offered, as well as the duration and summary scope of the Contract awarded.

- 47.3 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 47.4 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance to ITB 47.2, requests in writing the grounds on which its Bid was not selected.
- 48. Signing of Contract**
- 48.1 Promptly upon notification, the Employer shall send the successful Bidder the Contract Agreement.
- 48.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return the Contract Agreement to the Employer.
- 49. Performance Security**
- 49.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the performance security in accordance with the General Conditions, subject to ITB 42.4, using for that purpose the Performance Security Form included in Section IX (Contract Forms), or another form acceptable to the Employer.
- 49.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid security or execution of the Bid Securing Declaration. In that event the Employer may award the Contract to the next lowest evaluated substantially responsive Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

50. Adjudicator

50.1

Unless the BDS states otherwise, the Employer proposes that the person named in the BDS be appointed as Adjudicator under the Contract to assume the role of informal Contract dispute mediator, as described in GC Clause 52. In this case, a resume of the named person is attached to the BDS. The proposed hourly fee of the Adjudicator is specified in the BDS. The expenses that would be considered reimbursable to the Adjudicator are also specified in the BDS. If a Bidder does not accept the Adjudicator proposed by the Employer, it should state its non-acceptance in its Bid Submission Form and make a counterproposal of an Adjudicator and an hourly fee, attaching a resume of the alternative. If the successful Bidder and the Adjudicator nominated in the BDS happen to be from the same country, and this is not the country of the Employer too, the Employer reserves the right to cancel the Adjudicator nominated in the BDS and propose a new one. If by the day the Contract is signed, the Employer and the successful Bidder have not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed, at the request of either party, by the Appointing Authority specified in the PC clause relating to GC Clause 52.1(e), or if no Appointing Authority is specified there, the Contract will be implemented without an Adjudicator.

Section II – Bid Data Sheet

| A. Introduction | |
|--|--|
| ITB 1.1 | <p>The Employer is: Department of Immigration and Emigration</p> <p>The name of the Procurement Activity is:</p> <p>Procurement of Supply of Five (5) Million e-Passports to the Department of Immigration and Emigration - Sri Lanka</p> <p>The identification number of the Procurement Activity is: IFB No: PS/03/PB/PR/05/28/23</p> |
| ITB 2.1 | Source of Funds: Government of Sri Lanka |
| ITB 7.1 | Sub Contracts are not allowed |
| ITB 7.5 | Not Applicable |
| B. Contents of Bidding Document | |
| ITB 10.1 | <p>For clarification purposes only, the Employer’s address is:</p> <p>Attention: Chief Accountant, Ministry of Public Security, 14th floor, Suhurupaya Sri Subhuthipura Road, Battaramulla, Sri Lanka. Telephone : +94 11 2887697 Fax: + 94 11 2887784 E-mail : ca@pubsec.gov.lk.</p> |
| ITB 10.2 | A site visit will not be organized by the Employer. |
| ITB 10.4 | <p>A Pre-Bid meeting will be held:</p> <p>Date: November 23. 2023</p> <p>Time: 11.00 hrs (Sri Lankan Time)</p> <p>Location : Auditorium, Ministry of Public security , 14th Floor, “Suhurupaya”, Sri Subhuthipura Road, Battaramulla, Sri Lanka</p> |
| ITB 14.3 Documents | Any other documents |

| | |
|-------------------------------|--|
| Comprising the Bid | <ol style="list-style-type: none"> I. Certified Business Registration /in the case of JV, JVCA should be submitted or t letter of Intent from all the JV partners are to be submitted II. Copy of VAT/GST Registration Certificate III. Immediately preceding 03 Years Audited Financial Statements (all the partners in the case of JV) IV. experience in the relevant field and Detail of similar projects V. Articles & Memorandum of Association VI. Letter of intent to form JV or JV agreement, in case of JV VII. All ISO, ICAO, etc certificates. VIII. Documents being comply with Public Contract act no act number 03 of 1987 |
| C. Preparation of Bids | |
| ITB 16.1 | Alternative Bids shall be permitted for the following Software, Products and/or Services. None. |
| ITB 19.7 | The use of specific item brand names and/or standards is not prohibited . |
| ITB 20.1 | Bidder shall quote for the entire Quantity of five million (5,000,000) passport: "No exceptions" |
| ITB 20.5 | The Incoterms edition is —Incoterms 2020 |
| ITB 20.5(a) | For (foreign) Goods, System Software and Services supplied outside Sri Lanka shall be quoted on Delivered Duty Paid (DDP), inclusive of all taxes, stamps, custom duties, levies & fees imposed in Sri Lanka only except VAT for the Goods at the time of invoicing or sales transaction, if the contract is awarded. |
| ITB 20.5(c) | Inland transportation, insurance and related local costs incidental to the delivery of the Products to the designated Project Sites must be included to the Bid Price. Not required to mention separately |
| ITB 20.8 | The prices quoted by the Bidder shall be Fixed |
| ITB 20.11 | Not Applicable (<i>Bids are not being invited for lots basis</i>) |
| ITB 21.1 | Bid prices shall be quoted only in United States Dollar or Euro |
| ITB 22.1 | The bid validity period shall be 119 days after the Deadline for Submission of Bids, as specified below in reference to ITB Clause 26. The bid shall be valid until and inclusive of April 18, 2024 |

| | |
|-----------------|--|
| ITB 23.1 | <p>Bids shall include a Bid Security issued by bank using the form included in Section IV (Bidding Forms).</p> <p>The amount and currency of the bid security shall be ;</p> <p>Lankan Rupees Two Hundred Million (LKR 200 million) or the equivalent amount in a freely convertible currency in Sri Lanka</p> <p>The Bid Security shall be issued in favour of Controller General Department of Immigration and Emigration</p> |
| ITB 23.2 | <p>Bid Security in the form of a unconditional Bank Guarantee (as per the format given in the Bidding Document)</p> <p>If the Bid Security is to be issued by a bank outside Sri Lanka, it shall be from a bank that has a correspondent bank in Sri Lanka. Banks in Sri Lanka issuing the bank guarantee shall be a licensed commercial bank under the Banking Act No. 30 of 1988 and supervised by the Central Bank of Sri Lanka. The Bid security shall be enforceable in Sri Lanka.</p> <p>Bid Security shall be valid for 28 days beyond the original validity period of the bid i.e May 16, 2024.</p> |
| ITB 24.1 | <p>In addition to the original copy of the bid, the number of copies is:</p> <p>For Technical proposals one (1) Copy.</p> <p>In addition, one softcopy of the technical proposals must also be submitted in PDF format.</p> <p>However, bidder shall not include any cost/financial proposals in technical proposals. <u>If the bidder includes any financial proposals with technical proposals or inside the technical proposals envelop its bid will be rejected.</u></p> <p>For Financial proposals only original in a separate envelope. Please note that only financial proposals such as Bid Form, Price Schedule Forms, Grand Summary Cost Table and all other relevant cost tables should be included.</p> <p>NOTE;</p> <p>(As this Procurement is -Two envelops system, the Technical and Financial proposals should be in two separate sealed envelopes and both should be put in to one outer cover).</p> |
| ITB 24.2 | <p>The written confirmation of authorization to sign on behalf of the Bidder shall consist of:</p> <ol style="list-style-type: none"> a. If a bid submitted by a Limited liability company or a corporation; Power of Attorney (either notarized or attested by an appropriate authority in the Bidder's home country) or a Board resolution certified by the company secretary. b. If a bid is submitted by a partnership: Power of Attorney shall be either notarized or attested by an appropriate authority in the Bidder's home country. |

| | |
|--|---|
| | <p>c. If a bid is submitted by a Single Proprietor: Power of Attorney shall be required only if the bid is signed by (i) person other than the single proprietor who is the bidder ; or (ii) a person other than the owner of a single Proprietorship who is the bidder.</p> <p>d. If a bid is submitted by a Joint Venture (JV): Power of Attorney (either notarized or attested by an appropriate authority in the bidder’s home country). It shall include an undertaking signed by all parties (i) stating that all parties shall be jointly and severally liable, and (ii) nominating a representative who shall have the authority to conduct all business for and on behalf of any and all the parties of JV during the bidding process. And in the event the JV is awarded the contract, during contract execution.</p> |
| D. Submission and Opening of Bids | |
| ITB 25.1 | Bidders will not have the option of submitting their bids electronically . Only by hand. |
| ITB 25.1 (b) | Not Applicable (<i>No electronic Bid submission process</i>) |
| ITB 26.1 | <p>For <u>bid submission purposes</u> only, the Employer’s address is Attention: Chairman, Cabinet Appointed Procurement Committee (CAPC) Ministry of Public Security 14th Floor, Sri Subhuthipura Road, Battaramulla, Sri Lanka.</p> <p>The deadline for bid submission is Date: December 21, 2023 Time: 14.00 hrs. (Sri Lankan Time)</p> |
| ITB 29.1 | <p>The opening of technical bids shall take place immediately after bid closing at Ministry of Public Security 14th Floor, “Suhurupaya”, Sri Subhuthipura Road, Battaramulla, Sri Lanka.</p> <p>Date: December 21, 2023 Time: 14.00 hrs. (Sri Lankan Time) Electronic bid submission is not permitted.</p> |

| E. Evaluation and Comparison of Bids | |
|---|---|
| ITB 40.1 | <p>The currency that shall be used for Bid evaluation and comparison purposes to convert all Bid prices expressed in various currencies into a single currency is: <i>Sri Lankan Rupees</i> (LKR)</p> <p>The source of exchange rate shall be: <i>Central Bank in the Sri Lanka</i></p> <p>The date for the exchange rate shall be: Selling rate on December 7, 2023(14 days Prior to the Deadline for Submission Bids) as published by the <i>Central Bank of Sri Lanka</i></p> |
| ITB 41.1 | A margin of preference shall not apply . |
| ITB 42.1.(d) | The Net Present Value (NPV) discount rate (I) is –Not Applicable |
| ITB 45 | The Employer reserves the right to vary the quantities in Section IV (Schedule of Requirements) by plus or minus 20% |
| ITB 50 | Not Applicable Refer Section VIII – Particular Conditions 52.2 (c) for Dispute Resolution Mechanism Arbitration proceedings |

Section III – Evaluation and Qualification Criteria

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Section III – Evaluation and Qualification Criteria

3. Evaluation of Bids

This section contains the criteria that the Employer will use to evaluate and qualify bidders. The bidder shall provide all the information request in the forms included in Section IV- Bidding Forms.

3.1. Preliminary Examination of Technical Bids

The Employer shall confirm that the following documents and information have been provided in the Technical Bid. If any of these documents or information is missing, the offer shall be rejected.

- (a) Letter of Technical Bid;
- (b) Written confirmation of authorization to commit the Bidder;
- (c) Bid Security, if applicable; and
- (d) Technical Proposal in accordance with ITB 19.

3.2. Eligibility and Qualification of the Bidder

The Employer will review all Technical Bids submitted to determine whether the Bidder is eligible and qualified (as per the Bidder's Qualification Criteria specified in this Section III) and whether each Bid is responsive using the following criteria pursuant to ITB Clause 34 & 38.

- a) The Bidders must meet the Eligibility and Qualification Requirements outlined in Bidder's Qualification Criteria specified in this Section III –3.7: Eligibility and Qualification Requirements of the Bidder
- b) The Bid is substantially complete in that it provides the information outlined in the Bidder Response Format Section IV – Bidding Forms
- c) All Bids that satisfy the above criteria in item (a) and (b) will be considered for the detailed technical evaluation.

3.3. Detailed Evaluation of Technical Bids

The Employer will evaluate the Technical Bids pursuant to ITB Clause 37 using the following criteria:

- a) In order to evaluate the quality aspects of the Technical Bid, Bidder must state comprehensively with sufficient details, how their Bid meets the Technical Requirements specified in Section VI (Schedule of Requirements) Sufficient documentary evidence shall be provided where applicable.
- b) Bidder's Technical Bid must meet all the requirements stipulated in Section VI (Schedule of Requirements) of this Bidding Document.

3.3.1. Evaluation components and applicable ratings

The technical evaluation shall be carried out based on 'PASS' 'FAIL' criteria in accordance with information given in following table

Table 3.1: Pass Fail criteria

| Technical Proposal Evaluation Criteria | | |
|---|--|---|
| Criteria | Pass | Fail |
| 1. Compliance with Mandatory Eligibility and Qualification Requirements | | |
| Bidders must meet all Eligibility and Qualification requirements outlined in 3.7 Eligibility and Qualification Requirements of Section III | The proposal meets all mandatory requirements | The proposal does not meet one or more mandatory requirements |
| 2. Compliance with Technical & Delivery Requirements | | |
| The Bidder must meet all Technical Specifications in section VI Schedule of Requirements including Delivery Schedule | the bidder demonstrates a high level of fulfilment of Employer's requirement | The bidder's responses on schedule of requirements do not meet the purchase's requirement |
| 3. Comprehensiveness of Proposal | | |
| The proposal should be clear, complete, and provide all required information | The proposal is comprehensive and includes all necessary information | he proposal is incomplete or lacks required information |
| 4. Adherence to Submission Guidelines | | |
| Bidders must follow the submission guidelines outlined in Bidding Document | The proposal adheres to all submission guidelines | The proposal does not follow the specified submission guidelines |
| 5. Accuracy and Consistency | | |
| The proposal should be free from errors, inconsistencies, and contradictions. | The proposal is accurate and consistent | The proposal contains errors, inconsistencies, or contradictions |

Note: Bidders must comply with all the above mentioned Criteria otherwise Bid will be Non-Responsive and Rejected.

3.3.1.1. Determining Bidder’s Technical Responsiveness

The Technical Proposals received will be evaluated based on the criteria stipulated in 3.31 in this section Proposals that meet all mandatory requirements and pass the technical evaluation will proceed to the next stage of the evaluation process.

3.4. Price Evaluation

The Lowest Evaluated Bid Price will be identified by the Employer pursuant to ITB Clause 42 based on the following criteria:

The Adjusted Bid Price will be calculated as follows;

- (a) Supply Cost
- (b) Adjustments made for:
 - (i) Arithmetic corrections

The Price Schedules, in which the above information must be presented, are given in Section IV- Bidding Forms.

3.4.1. Quantifiable Deviations and Omissions

Quantifiable Deviations and Omissions from the contractual obligations: the evaluation shall be based on the evaluated cost of fulfilling the contract in compliance with all contractual obligations under this bidding document. The Employer will assess the cost of such a deviation for the purpose of ensuring fair comparison of bids.

3.4.2. Time Schedule

No credit will be given for earlier delivery in the bid evaluation purposes.

3.4.3. Domestic Preference

Not Applicable

3.5 Combined Evaluation

- I. Only the Technical Proposals that have been determined **technically responsive** will be considered for financial evaluation. Qualified bidders will be notified of the date, time, and location of the financial proposal opening. This notification will be communicated to all technically qualified bidders in writing and the opening of financial proposals will take place in the presence of authorized representatives of the technically qualified bidders. Bidders or their authorized representatives are encouraged to attend the opening.

- II. The Price Bids will be evaluated based on the price quoted by technically qualified bidders. The based on the value of Price Bids the bidders will be ranked **from lowest Price Bid to highest Price Bids and at the end of the evaluation Technically responsive lowest Evaluated bid** will be selected for the contract award subject to the below 3.6 Post Qualification (Due Diligence)

3.6. Post Qualification (Due Diligence)

Pursuant to ITB 38, the Employer may, at its own expense, and to the satisfaction of the Employer, require the Bidder with the Lowest Evaluated Bid to provide further information on the request to substantiate claims and information included in its Bid. This information may be subject to audit and review by the Employer and may involve site visits/inspections, interview with the bidder's clients referenced in the bid, and any other measures to verify if the bidder is capable of performing the contract.

An affirmative post-qualification determination will be a prerequisite for award of the Contract to the Lowest Evaluated Bidder. A negative determination will result in rejection of the Bidder's bid, in which event the Employer will proceed to the next lowest evaluated Bidder to make a similar determination of that Bidder's capabilities to perform satisfactorily.

3.7. Eligibility and Qualification Requirements of the Bidder

Bidders shall demonstrate they are qualified to bid as part of the bidding process and complete the forms set out in following Table 1 under Bid Submission Form and Qualification of the Bidder. The detailed forms are found in Section IV Bidding Forms.

| Criteria | Compliance Requirement | | | | Documents | |
|---|------------------------|---|-----------------------------------|-----------------------------------|-------------------------|-------------------------|
| | Bidder | | | | | |
| | Single Entity | Joint Venture (existing or intended) | | | | Submission requirements |
| All members combined | | Each member | At least one member | | | |
| 3.7.1. Debarment | | | | | | |
| No- conflicts of interest as described in ITB 4.3. | must meet requirement | existing or intended JVCA must meet requirement | must meet requirement | N/A | Letter of Technical Bid | |
| 3.7.2. Debarment | | | | | | |
| Not having been declared ineligible as described in ITB 4.4. | must meet requirement | existing or intended JVCA must meet requirement | must meet requirement | N/A | Letter of Technical Bid | |
| 3.7.3. Average Annual Turnover | | | | | | |
| Minimum average annual turnover of USD 17 Million calculated as total certified payments received for contracts in progress or completed, within the last 3 years | Must meet requirement | Must meet requirement | Must meet 15 % of the requirement | Must meet 50 % of the requirement | Form 4.3 | |
| 3.7.4. Financial Resources | | | | | | |
| The bidder must demonstrate access to or availability of financial resources such as liquid assets, un-encumbered real assets, line of credit and other financial means, | Must meet requirement | Must meet requirement | Not Applicable | Not Applicable | Form 4.4/4.4.1 | |

| Criteria | Compliance Requirement | | | | Documents |
|---|------------------------|--------------------------------------|----------------|------------------------|-------------------------|
| Requirement | Bidder | | | | Submission requirements |
| | Single Entity | Joint Venture (existing or intended) | | | |
| | | All members combined | Each member | At least one member | |
| other than any contractual advance payments to meet the cash flow requirement of not less than USD 1 Million , and net of the bidder's other commitments for this project | | | | | |
| 3.7.5. Experience | | | | | |
| 3.7.5.1. General Experience | | | | | |
| Bidder should have general experience in manufacturing Passports in the role of contractor, subcontractor or management contractor during at least last Ten (10) years prior to the bid submission deadline | Must meet requirement | Lead Partner must meet requirements | Not Applicable | Lead Partner must meet | Form 4.5 |
| 3.7.5.2. Specific Experience in Contracts of a Similar Nature | | | | | |
| Bidder should have manufactured and successfully completed at least one (1) e-Passport project with a minimum number of Three (3) million within the last Ten (10) years prior to the Bid submission Deadline | Must meet requirement | Lead Partner must meet requirements | N/A | Lead Partner must meet | Form 4.6 |
| 3.7.6. Quality and Security Requirements: | | | | | |
| The production factory of the e-Passport shall be certified with ISO 14298-Intergraf - Government level or higher and shall be | Must meet requirement | Lead Partner must meet requirements | N/A | Lead Partner must meet | Form 4.2 |

Section III – Evaluation and Qualification Criteria

| Criteria | Compliance Requirement | | | | Documents |
|------------------------------|------------------------|--------------------------------------|-------------|---------------------|-------------------------|
| Requirement | Bidder | | | | Submission requirements |
| | Single Entity | Joint Venture (existing or intended) | | | |
| | | All members combined | Each member | At least one member | |
| certified with ISO 9001:2015 | | | | | |

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Section IV – Bidding Forms

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Section IV – Bidding Forms

4. BID SUBMISSION FORMS - TECHNICAL BID

Bidder Response Format – Technical Bid

Table 1: Bidder Response Format – Technical Bid

| Order in Bid | Document Number and Information Required | Check Y/N | Page No. |
|--------------|--|-----------|----------|
| I | Bidder's Front Page (Bidder's name. Bid details) | | |
| II | Bidder Response Format – Technical Bid (as a table of contents/checklist) | | |
| | 1. Bid Submission Form | | |
| 1. | 1.1 Letter of Technical Bid – Ref 4.1 | | |
| | 2. Qualification of the Bidder | | |
| 2. | 2.1 Bidder Information Sheet – Ref 4.2 | | |
| 3. | 2.2 Average Annual Turnover – Ref 4.3 | | |
| 4. | 2.3 Financial Resources – Ref 4.4/4/4/1 | | |
| 5. | 2.4 General Experience in Information Software, Products and/or Services – Ref 4.5 | | |
| 6. | 2.5 Specific Experience in Contracts of a Similar Nature – Ref 4.6 | | |
| | 5. Guarantees and Declarations | | |
| 7. | 5.1 Bid Security (Bank Guarantee) – Ref 4.7 | | |
| 8. | 5.3 Manufacturer's Authorization – Ref 4.8 | | |
| 9. | Technical Specification & Compliance – Ref Section VI: Schedule of Requirements | | |
| 10. | Any other documents Listed ITB 14 and Bidding Document | | |

Note:

Bidders must submit the Technical Proposal as per the "Table 1: Bidder Response Format – Technical Bid" and must clearly indicate the Page numbers in the entire Technical Proposal. Bidders are required to read all the sections and contents of the bidding document and are required to submit any documentation that is asked for in the bidding document, whether or not it is listed in the table above or not. It is the responsibility of the bidders to ensure that the proposals/bids submitted by them fully address the requirements stated in all the sections of the bidding document.

4.1. Letter of Technical Bid

Date:[Bidder: *date of bid*]

IFB No: PS/03/PB/PR/05/28/23

Project: Procurement of Supply of Five (5) Million e-Passports to the Department of Immigration and Emigration -Sri Lanka

To: Controller General,
Department of Immigration and Emigration,
5th Floor,
“Suhurupaya”
Sri Subhuthipura Road,
Battaramulla.

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including Addenda issued in accordance with Instructions to Bidders (ITB) 11.
- (b) We offer to *Procurement of Supply of Five (5) Million e-Passports to the Department of Immigration and Emigration (DIE)-Sri Lanka Government of Sri Lanka*, in conformity with the Bidding Document.
- (c) Our bid consisting of the Technical Bid and the Price Bid shall be valid for a period of **119** days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (d) We meet the eligibility requirements and have no conflict of interest in accordance with ITB 4;
- (e) We, do not have any conflict of interest in accordance with ITB-4.3;
- (f) Our firm, has not been declared blacklisted in accordance with ITB 4.4;
- (g) We undertake, if our bid is accepted, to commence work on the Products and/or Services and to achieve Acceptance within the respective times stated in the Bidding Documents;
- (h) We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (i) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

Name _____ In the capacity of _____

Signed _____

Duly authorized to sign the bid for and on behalf of _____

Dated on _____ day of _____, _____

4.2. Bidder Information Sheet

All Bidders whether they be individual firms, each partner of a Joint Venture for highly specialized components of Products and/or Services, which are bidding, must complete the information in this form. All Bidders that complete this sheet should also complete the further Qualification Forms provided in this section.

Date: _____

Invitation for Bid No.: IFB No: PS/03/PB/PR/05/28/23

Page _____ of _____ pages

Please note that a written authorization needs to be attached to this sheet as required by ITB 24.2.

| <input type="checkbox"/> Bidder's Information | |
|--|--|
| Bidder's legal name | |
| In case of JV, legal name of each partner | |
| Bidder's actual or intended country of registration | |
| Bidder's year of registration | |
| Bidder's legal address in country of registration | |
| Bidder's authorized representative (name, address, telephone numbers, fax numbers, e-mail address) | |
| <p>Attached are copies of the following original documents.</p> <p>(a) In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2.</p> <p>(b) Authorization to represent the firm or JV named in above, in accordance with ITB 24.2.</p> <p>(c) In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1.</p> <p>(d) In case of a government-owned entity, any additional documents not covered under (a) above required to comply with ITB 4.5.</p> <p>(e) Copy of VAT/ GST Registration Certificate</p> <p>(f) ISO certification</p> <p>(g) ICAO certification</p> | |

4.3. Average Annual Turnover

All Bidders whether they be individual firms, each partner of a Joint Venture for highly specialized components of Products and/or Services, which are bidding, must complete the information in this form. All Bidders that complete this sheet should also complete the further Qualification Forms provided in this section.

Bidder's Legal Name: _____

Date: _____

JVCA Partner Legal Name: _____

Invitation for Bid No.: IFB No: PS/03/PB/PR/05/28/23

Page _____ of _____ pages

| Annual Turnover Data | |
|--------------------------|-----------------|
| Year | US\$ Equivalent |
| 2020- 2021 | |
| 2021- 2022 | |
| 2022-2023 | |
| Average Annual Turnover* | |

Note:

Calculated as total certified payments received for contracts in progress or completed, within the last 3 years

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4.4. Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total cash flow demands of the subject contract or contracts as indicated in Section III, Evaluation and Qualification Criteria. Bidder shall submit the Financial Resources requirements exclusively for this project and provide bank contact details for verification.

| Financial Resources | | |
|---------------------|---------------------|--------------------------|
| No. | Source of financing | Amount (US\$ equivalent) |
| 1 | | |
| 2 | | |
| 3 | | |
| | | |

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4.4.1. Evidence of Access to or Availability of Credit Facilities

To be completed by the Bidder and, if *JVCA*, by each partner as appropriate to demonstrate that they meet the requirements stated in the **Section III Evaluation and Qualification Criteria**.

Date:

BANK CERTIFICATE

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

If the contract for the work, namely

..... is awarded to the above firm, we shall be able to provide overdraft/credit facilities to the extent of USD. to meet their working capital requirements for executing to the above contract during the contract period.

.....
(Signature)

Name of Bank

Senior Bank Manager

Address of the Bank

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4.5. General Experience in Passport Projects

All Bidders whether they be individual firms, each partner of a Joint Venture for highly specialized components of Products and/or Services, which are bidding, must complete the information in this form. All Bidders that complete this sheet should also complete the further Qualification Forms provided in this section.

| General Experience (3.7.5.1 Section III) | | | |
|--|-------|---|----------------|
| Starting and Ending Month/Year | Years | Contract Identification | Role of Bidder |
| | | Contract name: Brief Description of the Products/Services supplied by the Bidder: Name of <i>Employer</i> : Address: Email: Telephone: | |
| | | Contract name: Brief Description of the Products/Services supplied by the Bidder: Name of <i>Employer</i> : Address: Email: Telephone: | |
| | | Contract name: Brief Description of the Products/Services supplied by the Bidder: Name of <i>Employer</i> : Address: Email: Telephone: | |
| | | Contract name: Brief Description of the Products/Services supplied by the Bidder: Name of <i>Employer</i> : Address: Email: Telephone: | |

4.6. Specific Experience in Contracts of a Similar Nature

Use a separate sheet for each contract.

| Size and Nature (3.7.5.2 Section III) | | Contract of Similar |
|---|--|---|
| Contract No of | Contract Identification | |
| Award Date | Completion Date: <i>Bidder shall submit completion certificates with this form</i> | |
| Role in Contract | <input type="checkbox"/> Contractor <input type="checkbox"/> Management Contractor <input type="checkbox"/> Joint Venture Partner <input type="checkbox"/> Subcontractor | |
| Total Contract Amount | LKR | |
| Number of e-passports Delivered | Nos | |
| If partner in a JV or subcontractor, specify participation of total contract amount | Percent of Total | Amount |
| Performance | Contract was completed _____ months ahead/behind original schedule (if behind, provide explanation). | Contract was completed LKR _____ equivalent under/over original contract amount (if over, provide explanation). |
| Subcontracting | Approximate percent of total contract value undertaken by subcontract: _____ % Nature of the subcontracted Information Software, Products and/or Services: | |
| Employer's Name Address Telephone/Fax Number E-mail | | |
| ISO/ ICAO information | | |

4.7. Bid Security (Bank Guarantee)

_____ [Bank's Name, and Address of Issuing Branch or Office]

Beneficiary:

**Controller General
Department of Immigration and Emigration**

Date: _____

BID GUARANTEE No.: _____

We have been informed that _____ [name of the Bidder] (hereinafter called "the Bidder") has submitted to you its bid dated _____ (hereinafter called "the Bid") for the execution of _____ [name of contract] under Invitation for Bids No. _____ ("the IFB").

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

At the request of the Bidder, we _____ [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ [amount in figures] (_____) [amount in words] upon receipt 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 *Employer* during the period of bid validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

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

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

[signatures]

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

4.8. Manufacturer’s Authorization

Invitation for Bids Title and No.:

To:

**Controller General
Department of Immigration and Emigration**

WHEREAS _____ who are official producers of _____ and having production facilities at _____ do hereby authorize _____ located at _____ (hereinafter, the “Bidder”) to submit a bid and subsequently negotiate and sign a Contract with you for resale of the following Software, Products and/or Services produced by us:

We hereby confirm that, in case the bidding results in a Contract between you and the Bidder, the above-listed products will come with our full standard warranty/license.

Name _____ In the capacity of _____

Signed _____

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

Dated on _____ day of _____, _____.

Note: This authorization should be written on the letterhead of the Manufacturer and be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. Manufacturer's Authorizations for Technologies – except for those technologies which the Bidder itself manufactures – are required for the following types/categories: *[specify, for example: "none" / "all" / "all active (i.e. powered) equipment and all software"]*.

4.9. BID SUBMISSION FORMS - PRICE BID
Bidder Response Format – Price Bid

| Order in Bid | Document Number and Information Required | Check Y/N | Page No. |
|--------------|---|-----------|----------|
| 1. | Bidder's Front Page (Bidder's name. Bid details) | | |
| 2. | Bidder Response Format – Price Bid (as a table of contents/checklist) Ref 4.9 | | |
| | Bid Submission Form | | |
| 3. | 1 Letter of Price Bid – Ref 4.10 | | |
| | 2 Bidder's Price Schedules | | |
| 4. | 2.1 Design, Manufacture and Delivery e-Passports Ref 4.11 | | |

4.10. Letter of Price Bid

Date: [Bidder: *date of bid*]

IFB No: PS/03/PB/PR/05/28/23

Project: Procurement of Supply of Five (5) Million e-Passports to the Department of Immigration and Emigration (DIE)-Sri Lanka

To: Controller General,
Department of Immigration and Emigration,
5th Floor,
“Suhurupaya”
Sri Subhuthipura Road,
Battaramulla.

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including Addenda issued in accordance with Instructions to Bidders (ITB) 11.
- (b) We offer to **Procurement of Supply of Five (5) Million e-Passports to the Department of Immigration and Emigration -Sri Lanka**, in conformity with the Bidding Document.
- (c) The price of our Bid **without VAT**, including any discounts offered is the sum of: *[insert the total Bid Price in words and figures]*
- (d) The price of our Bid **with VAT**, including any discounts offered is the sum of: *[insert the total Bid Price in words and figures]*
- (e) Our bid shall be valid for a period of **119** days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) If our bid is accepted, we commit to obtain a performance security in accordance with the Bidding Document.
- (g) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and
- (h) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

Name _____ In the capacity of _____

Signed _____

Duly authorized to sign the bid for and on behalf of _____

Dated on _____ day of _____, _____

4.11. Price Schedules

Design, Manufacture and Delivery e-Passports

| Item | Description | Unit | Qty | Unit Rate (Currency) | Amount/ exclusive of VAT (Currency) | Amount of VAT (Currency) | Amount/ with VAT (Currency) |
|---|---|------|-----------|-------------------------|--|--------------------------------|-----------------------------------|
| 01 | Design, Manufacture and delivery e-Passports | Nos | 5,000,000 | | | | |
| Total Prices: Design and Supply e-Passports (for entry in Price Bid) Currency..... | | | | | | | |

Name _____ In the capacity of _____
 Signed _____
 Duly authorized to sign the bid for and on behalf of _____
 Dated on _____ day of _____, _____

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SECTION V. Eligible Countries

Not Applicable

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Section VI. Schedule of Requirements

Refer Volume 2

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Section VII – General Conditions

Inspection Only

Section VII – General Conditions

Inspection Only

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| A. CONTRACT AND INTERPRETATION | | |
| 1. Definitions | 1.1 | <p>The following words and expressions shall have the meanings hereby assigned to them:</p> <ul style="list-style-type: none"> • “Adjudicator” means the person named in Appendix 2 (Adjudicator) of the Contract, or otherwise appointed by agreement between the Employer and the Contractor to make a decision on or to settle any dispute or difference between the Employer and the Contractor referred to him or her by the parties, pursuant to GC Clause 52 (Disputes and Arbitration). • “Agreed and Finalized Project Plan” means the project plan that has been approved by the Employer in accordance with GC Clause 19 (Project Planning and Performance) and is included at Appendix 8 of the Contract. • “Arbitration” means the application of judicial methods to the settlement of disputes. • “Bidding Documents” refers to the collection of documents issued by the Employer to instruct and inform potential Contractors of the processes for bidding, selection of the winning bid, and Contract information, as well as the contractual conditions governing the relationship between the Employer and the Contractor. • Government of Sri Lanka (GoSL) means the government of the Employer’s Country and includes the Employer. • “Commissioning” means operation of the Products and/or Services or any part thereof by the Contractor following Completion, which operation is to be carried out by the Contractor as provided in GC Sub- Clause 27.1 (Commissioning) hereof, for the purpose of carrying out Operational Acceptance Test(s). • “Completion” means that the Facilities (or a specific part thereof where specific parts are specified in the Contract) have been completed operationally, that all work in respect of Pre-commissioning and Installation of the Facilities or such specific part thereof has been completed, that all Documentation has been supplied, and that the Facilities or specific part thereof are ready for Commissioning as provided in GC Clause 26 (Completion) hereof. • “Contract” means the contract entered into between the Employer and the Contractor, and constituted by the Contract Documents. • “Contract Documents” means the documents listed in Article 1.1 (Contract Documents) of the Contract (including any amendments thereto). • “Contract Period” is the time period during which this Contract governs the relations and obligations of the Employer and Contractor in relation to the Products and/or Services, as specified in the PC. • “Contract Price” means the sum specified in Article 2.1 |

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| | | <p>(Contract Price) of the Contract, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.</p> <ul style="list-style-type: none"> • “Contractor” means the party named as the Contractor in the Contract, and includes the legal successors or permitted assigns of the Contractor. • “Contractor’s Country” is the country in which the Contractor is legally organized, as named in the Contract. • “Contractor’s Equipment” means all equipment, tools, apparatus, or things of every kind required in or for installation, completion and maintenance of the System that are to be provided by the Contractor, but excluding the Products and/or Services, or other items forming part of the System. • “Contractor’s Representative” means any person nominated by the Contractor and approved by the Employer in the manner provided in GC Clause 18 (Representatives) hereof to perform the duties delegated to the Contractor. • “Coverage Period” means the Days of the Week and the hours of those Days during which maintenance, operational and/or technical support services (if any) must be available. • “Custom Documentation” means Documentation identified as such in Appendix 5 of the Contract and such other Documentation as the parties may agree in writing to be Custom Documentation. • “Custom Software” means Software identified as such in Appendix 4 of the Contract and such other Software as the parties may agree in writing to be Custom Software. • “Day” means calendar day. • “Defect” means an imperfection or flaw that impairs worth or utility of the Product. • “Defect Liability Period” means the period of validity of the warranties given by the Contractor commencing at Commissioning 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 GC Clause 29 (Defect Liability) hereof. • “Delivery” means the transfer of the Products from the Contractor to the Employer in accordance with the current edition Incoterms specified in the Contract. • “Deliverables” means delivery of expected objectives elaborated in schedule of requirements without limiting to the deliverables listed out therein. • “Designated Operating Environment” means the particular hardware and software environment in which the Software is designed to be used, which environment is specified in the SOR. • “Documentation” means all documentation in printed or printable form and all instructional and informational aides in any form (including audio, video, and text) and on any |
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| | | <p>medium, provided to the Employer under the Contract. See also Standard Documentation and Custom Documentation.</p> <ul style="list-style-type: none"> • “Effective Date” means the date of fulfillment of all conditions specified in Article 3 (Effective Date) of the Contract, from which the Time for Completion shall be counted. • “Employer” means the person named as such in the PC and includes the legal successors or permitted assigns of the Employer. • “Employer’s Country” means the country named in the PC. • “Facilities” means the Products to be supplied and installed, as well as all Installation Services to be carried out by the Contractor under the Contract. • “Functional Guarantees” means the guarantees specified in the Appendix to the Contract titled Functional Guarantees. • “GC” means the General Conditions. • “General-Purpose Software” means Software that supports general- purpose office and software development activities and is identified as such in Appendix 4 of the Contract and such other Software. Such General-Purpose Software may include, but is not restricted to, word processing, spreadsheet, generic database management, and application development software. • “Hardware” means all equipment, furnishings, and other tangible items outlined in the SOR that the Contractor is required to supply or to supply and install under the Contract, including, without limitation, the Products and/or Services and documentation, but excluding the Contractor’s Equipment. • “Implementation Schedule” means the Implementation Schedule as specified in the Agreed and Finalized Project Plan. • “Installation” means the preparation and placement of the System for use. • “Installation Services” means all Services required to achieve Installation. • “Intellectual Property Rights” means any and all copyright, moral rights, trademark, patent, and other intellectual and proprietary rights, title and interests worldwide, whether vested, contingent, or future, including without limitation all economic rights and all exclusive rights to reproduce, fix, adapt, modify, translate, create derivative works from, extract or re-utilize data from, manufacture, introduce into circulation, publish, distribute, sell, license, sublicense, transfer, rent, lease, transmit or provide access electronically, broadcast, display, enter into computer memory, or otherwise use any portion or copy, in whole or in part, in any form, directly or indirectly, or to authorize or assign others to do so. • “Month” means calendar month. |
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| | <ul style="list-style-type: none"> • “Operational Acceptance” means the acceptance by the Employer of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts), which certifies the Contractor’s fulfillment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of GC Clause 30 (Functional Guarantees) hereof and shall include deemed acceptance in accordance with GC Clause 27 (Commissioning and Operational Acceptance) hereof. • “Operational Acceptance Certificate” or Operational Acceptance Certification” means the written certification provided by the Employer to the Contractor after Operational Acceptance. • “Operational Acceptance Test” and Operational Acceptance Testing” mean the process of determining whether the criteria for Operational Acceptance have been satisfied. • “Origin” means the place where the Products were produced or from which the Services are supplied. Products are produced when, through manufacturing, processing, software development, or substantial and major assembly or integration of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components. The Origin of Products and Services is distinct from the nationality of the Contractor and may be different. • “Packaged Software” means the software Product, the subject of the License, specified in the SOR including any updates or new releases, modifications, enhancements, Documentation, flow charts, logic diagrams and listings. • “Party” means the Employer or the Contractor, as the context requires, and Parties” means both of them. • “PC” means the Particular Conditions. • “Pre-commissioning” means the testing, checking and other requirements specified in the Schedule of Requirements that are to be carried out by the Contractor in preparation for Commissioning as provided in GC Clause 8 (Time for Commencement and Completion) hereof. • “Preventive Maintenance” means the care and servicing by personnel for the purpose of maintaining Hardware in satisfactory operating condition by providing for systematic inspection, detection, and correction of incipient failures either before they occur or before they develop into major defects. Preventive Maintenance is usually cost as a fixed fee over the maintenance period. • “Post-Warranty Services Period” means the number of years defined in the PC (if any), following the expiration of the Warranty Period during which the Contractor is obligated to provide Software licenses, maintenance, and/or technical support services for the System, either under this Contract or under separate contract(s). • “Procurement Guidelines” refers to the GoSL Procurement |
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| | | <p>Guidelines.</p> <ul style="list-style-type: none"> • “Product” means a product deliverable specified in the Schedule of Requirements which is to be supplied to the Employer by or on behalf of the Contractor, including but not limited to all information processing and communications-related Hardware, Software, consumable items, plans and/or any supporting documentation, and including such integrations and configurations as are required to perform its function. • “Project Manager” means the person appointed by the Employer in the manner provided in GC Clause 18.1 (Representatives) hereof and named as such in the PC to perform the duties delegated by the Employer. • “Project Plan” means the set of tasks required to achieve Completion, Operational Acceptance and Commissioning, as described in the Agreed and Finalized Project Plan. • “Project Site(s)” means the place(s) specified in the PC for delivery of the Products and/or Services. • “Rental Items” means the Hardware rented or leased by the Employer from the Contractor under a lease agreement for a rental fee. • “Schedule of Requirements (SOR)” means the Schedule of Requirements Section of the Bidding Documents as amended and appended to the Contract including to the extent relevant, but not limited to, the following: <ul style="list-style-type: none"> (a) Background and Procurement Objectives; (b) Scope of works, including Technical Requirements; (c) Agreed and Finalized Project Plan; (d) Implementation Schedule; (e) Service Level Agreement. • “Services” means all technical, logistical, management, consultancy and any other Services as specified in the Schedule of Requirements to be provided by the Contractor under the Contract to supply, install, customize, integrate, and make operational the Products provided. Such Services may include, but are not restricted to, activity management and quality assurance, design, development, customization, documentation, transportation, insurance, inspection, expediting, site preparation, Installation, integration, training, data migration, Pre-commissioning, Commissioning, maintenance, and technical support. • “Site” means the place(s) specified in the PC for Installation and Commissioning of the Products and/or Services. • “Software” means the items to be supplied under this Contract as specified at Appendix 4 to this Contract. • “Software Support Services” means the Services specified in the SOR to be provided by the Contractor to the Employer in respect of the Packaged Software. • “Source Code” means the database structures, dictionaries, |
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| | | <p>definitions, program source files, and any other symbolic representations necessary for the compilation, execution, and subsequent maintenance of the Software (typically, but not exclusively, required for Custom Software).</p> <ul style="list-style-type: none"> • “Standard Documentation” means all Documentation not specified as Custom Documentation. • “Standard Software” means Software identified as such in Appendix 4 of the Contract and such other Software as the parties may agree in writing to be Standard Software. • “Sub-Contractor” means any third-party provider with whom the Contractor contracts for the supply or execution of any part of the Products and/or Services to be provided by under the Contract and includes its legal successors or permitted assigns. • “System” or "Sub-system" means a combination of Products which are integrated so as to operate together. • “Time for Operational Acceptance” means the time within which Operational Acceptance of the Facilities as a whole (or of a part of the Facilities where a separate Time for Operational Acceptance of such part has been prescribed) is to be achieved, as referred to in GC Sub- Clause 27.2 (Operational Acceptance) and in accordance with the relevant provisions of the Contract. • “Time for Completion” means the time within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained, as referred to in GC Sub-Clause 8.2 (Time for Commencement and Completion) and in accordance with the relevant provisions of the Contract. • “Training Schedule” means the programme of training including dates and training topics to be provided by the Contractor to the Employer’s personnel. • “Warranty Period” means the period defined in the SOR by which the Contractor warrants its Products will remain defect-free, and any remediation of any defect that arises in this period will be the responsibility of the Contractor and costs of such remediation will be borne by the Contractor. • “Week” means seven (7) consecutive Days, beginning the day of the week as is customary in the Employer’s Country. • “Year” means 365 days. • “Live Run” means Go live |
| <p>2. Contract Documents</p> | <p>2.1</p> | <p>Subject to Article 1.2 (Order of Precedence) of the Contract, 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.</p> |

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| | 2.2 | <p>In the event and to the extent of any inconsistency between two or more documents that form part of this Contract, those documents will be interpreted in the following order of precedence:</p> <p>(a) Appendix 15 (Minutes of Contract Finalization Discussions and Agreed Contract Amendments) attached to the Contract;</p> <p>(b) the Contract and Appendices 1 to 7 and 9 to 14 attached to the Contract;</p> <p>(c) the PC and its Appendices;</p> <p>(d) all GCs (including documents incorporated by reference in these terms and conditions);</p> <p>(e) Appendix 8 (Agreed and Finalized Project Plan) attached to the Contract;</p> <p>(f) the Contractor’s bid and original Price Schedules; and</p> <p>(g) the remaining appendixes to these GCs (including documents incorporated by reference in any Appendix).</p> |
| 3. Interpretation | 3.1 | <p>In the Contract, except where the context requires otherwise:</p> <p>(a) words indicating one gender include all genders;</p> <p>(b) words indicating the singular also include the plural and words indicating the plural also include the singular;</p> <p>(c) provisions including the word —agree, —agreed, —agreement require the agreement to be recorded in writing;</p> <p>(d) —written or —in writing means hand-written, type-written, printed or electronically made, and resulting in a permanent record.</p> <p>The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.</p> |
| | 3.2 | <p><u>Incoterms</u></p> <p>Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of Parties there-under shall be as prescribed by Incoterms.</p> <p>Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1er, 75008 Paris, France.</p> |
| | 3.3 | <p><u>Entire Agreement</u></p> <p>Subject to GC Sub-Clause 17.6 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.</p> |
| | 3.4 | <p><u>Amendment</u></p> <p>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.</p> |
| | 3.5 | <p><u>Independent Contractor</u></p> |

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| | | 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 Sub-Contractors 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 Sub-Contractors and the Employer. |
| | 3.6 | <u>Non-Waiver</u> |
| | 3.6.1 | Subject to GC Sub-Clause (b) below, no relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other shall prejudice, affect or restrict the rights of that Party under the Contract, nor shall any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract. |
| | 3.6.2 | Any waiver of a Party's rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived. |
| | 3.7 | <u>Severability</u> 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. |
| 4. Communications | 4.1 | Wherever these General Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be: (a) in writing and delivered against receipt; and (b) delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract. |
| | 4.2 | 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. |
| | 4.3 | Communications shall be deemed to include any approvals, consents, instructions, orders, and certificates to be given under the Contract. |
| 5. Law and Language | 5.1 | The Contract shall be governed by and interpreted in accordance with laws of the country specified in the PC. |
| | 5.2 | The ruling language of the Contract shall be that stated in the PC. |

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| | 5.3 | The language for communications shall be the ruling language unless otherwise stated in the PC. |
| 6. Corrupt Practices | 6.1 | <p>It is the policy of the GoSL that the officials of the procuring entity, as well as bidders, Contractors and contractors under GoSL financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, GoSL:</p> <p>(a) defines, for the purposes of this provision, the terms set forth below as follows:</p> |

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| | <ul style="list-style-type: none"> (i) —corrupt practice means the offering, giving receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any party in the procurement process or the execution of a contract; (ii) —fraudulent practice means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract; (iii) —collusive practices means a scheme or arrangement between two or more bidders, with or without the knowledge of the employer, designed to influence the action of any party in a procurement process or the execution of a contract (iv) —coercive practices means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract; <p>(b) will sanction a party or its successor, including declaring ineligible, either indefinitely or for a stated period of time, to participate in GoSL-financed activities if it at any determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, a GoSL-financed contract; and</p> <p>(c) will have the right to require Contractors and contractors to permit GoSL or its representative to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by GoSL.</p> |
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B. SUBJECT MATTER OF CONTRACT

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| <p>7. Scope of Facilities</p> | <p>7.1</p> | <p>Unless otherwise expressly limited in the SOR, the Contractor shall:</p> <p>provide the Products and Services as specified in the SOR;</p> <p>(a) be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach a mutually Agreed and Finalized Project Plan pursuant to GC Clause 19 (Project Planning and Performance) within the time schedule specified in the Implementation Schedule. Failure to provide such resources, information, and decision making may constitute grounds for termination pursuant to GC Clause 47 (Termination for Contractor’s Default);</p> <p>(b) provide all Documentation and Products as well as the performance of all Products and Services, in accordance with the plans, procedures, specifications, drawings, codes, and any other documents specified in the SOR and/or the Agreed and Finalized Project Plan;</p> <p>(c) 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 Products and Services as if such work and/or items and materials were expressly mentioned in the Contract; and</p> <p>(d) provide Products and Services as implied by the Recurrent Cost Form of the Contractor’s bid, such as consumables, spare parts, and technical services (e.g., maintenance, technical assistance, and operational support), such as are specified in the SOR, including the relevant terms, characteristics, and timings.</p> |
| <p>8. Time for Commencement and Completion</p> | <p>8.1</p> | <p>The Contractor shall commence work on the Facilities within the period specified in the PC and without prejudice to GC Sub-Clause 26.2 (Completion) hereof, the Contractor shall thereafter proceed with the Facilities in accordance with the time schedule specified in the Implementation Schedule and any refinements made in the Agreed and Finalized Project Plan.</p> |
| | <p>8.2</p> | <p>The Contractor shall attain Completion of the Facilities or of a part where a separate time for Completion of such part is specified in the Contract, within the time stated in the PC or within such extended time to which the Contractor shall be entitled under GC Clause 44 (Extension of Time for Completion) hereof.</p> |

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| 9. Contractor's Responsibilities | 9.1 | The Contractor shall conduct all activities with due care and diligence, in accordance with the Contract and with the skill and care expected of a competent provider of Products and/or Services, information systems, support, maintenance, training, and other related services, or in accordance with best industry practices. When completed, the Products and/or Services should be fit for the purposes for which they are intended as defined in the Contract. |
| | 9.2 | The Contractor confirms that it has entered into this Contract on the basis of a proper examination of the Employer's existing equipment, installations and including reviewing any hardware, software and data interfaces as provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site if access thereto was available and of other data readily available to it relating to the Facilities as of the date twenty-eight (28) days prior to bid submission. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Contract. |
| | 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 Sub-Contractor'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 GC Clause 10 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 Products and/or Services are to be installed. 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 Sub-Contractors and their personnel, but without prejudice to GC Clause 10 (Employer's Responsibilities) hereof |
| | 9.5 | Any Products and/or Services that will be incorporated in or be required for the Facilities and other supplies shall have as their origin an Eligible Country. Any Sub-Contractors retained |

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| | | by the Contractor shall have as their origin an Eligible Country |
| | 9.6 | The Contractor shall permit GoSL to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by GoSL, if so required by GoSL. |
| | 9.7 | If the Contractor is a joint venture or consortium of two or more parties, all such parties shall be jointly and severally bound to the Employer for the fulfillment of the provisions of the Contract and shall designate one of such parties to act as a leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Employer. |
| | 9.8 | The Contractor shall, in all dealings with its labor and the labor of its Sub-Contractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs, and all local laws and regulations pertaining to the employment of labor. |
| | 9.9 | Other Contractor responsibilities, if any, are as stated in the SOR. |
| 10. Employer's Responsibilities | 10.1 | The Employer shall ensure the accuracy of all information and/or data to be supplied by the Employer to the Contractor, except when otherwise expressly stated in the Contract. |
| | 10.2 | The Employer shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach an Agreed and Finalized Project Plan (pursuant to GC Sub-Clause 19.2 (Project Planning and Performance) within the time schedule specified in the Implementation Plan in the SOR. Failure to provide such resources, information, and decision making may constitute grounds for termination pursuant to GC Clause 48 (Termination by Contractor). |
| | 10.3 | The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access to it, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract. |
| | 10.4 | 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 |

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| | | 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 SOR. |
| | 10.5 | If requested by the Contractor, the Employer shall use its best endeavors to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Sub-Contractors or the personnel of the Contractor or Sub-Contractors, as the case may be, to obtain. |
| | 10.6 | In such cases where the responsibilities of specifying and acquiring or upgrading telecommunications and/or electric power services falls to the Contractor, as specified in the SOR, PC, Agreed and Finalized Project Plan, or other parts of the Contract, the Employer shall use its best endeavors to assist the Contractor in obtaining such services in a timely and expeditious manner. |
| | 10.7 | The Employer shall be responsible for timely provision of all resources, access, and information necessary for the provision of the Products and/or Services (including, but not limited to, any required telecommunications or electric power services), as identified in the Agreed and Finalized Project Plan, except where provision of such items is explicitly identified in the Contract as being the responsibility of the Contractor. Delay by the Employer may result in an appropriate extension of the Time for Operational Acceptance, at the Contractor's discretion. |
| | 10.8 | Unless otherwise specified in the Contract or agreed upon by the Employer and the Contractor, the Employer shall provide sufficient, properly qualified operating and technical personnel as required by the Contractor to properly carry out the provision of the Products and/or Services at or before the time specified in the Implementation Schedule and the Agreed and Finalized Project Plan. |
| | 10.9 | The Employer will designate appropriate staff for the training courses to be given by the Contractor and shall make all appropriate logistical arrangements for such training as specified in the SOR, PC, the Agreed and Finalized Project Plan, or other parts of the Contract. |
| | 10.10 | The Employer assumes primary responsibility for the Operational Acceptance Test(s) for the Products and/or Services, in accordance with GC Sub-Clause 27.2 (Operational Acceptance Test), and shall be responsible for the continued operation of the Products after Operational Acceptance. However, this shall not limit in any way the |

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| | | Contractor's responsibilities after the date of Operational Acceptance otherwise specified in the Contract. |
| | 10.11 | During the development of the Products and/or Services, the Contractor is responsible for performing and safely storing timely and regular backups of its data and Software in accordance with accepted data management principles. Following Commissioning and Acceptance, the Employer is responsible for backups. |
| | 10.12 | All costs and expenses involved in the performance of the obligations under this GC Clause 10 shall be the responsibility of the Employer, save those to be incurred by the Contractor with respect to the performance of the Operational Acceptance Test(s), in accordance with GC Sub-Clause 27.2. |
| | 10.13 | In the event that the Employer shall be in breach of any of its 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. |
| | 10.14 | Other Employer responsibilities, if any, are as stated in the SOR. |

Inspection ONLY

| C. PAYMENT | | |
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| 11. Contract Price | 11.1 | The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract. |
| | 11.2 | Unless an adjustment clause is provided for in the PC, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the SOR or as otherwise provided in the Contract. |
| | 11.3 | Subject to GC Sub-Clauses 9.2, 10.1 and 39 (Unforeseen Conditions) hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract. |
| 12. Terms of Payment | 12.1 | The Contractor's request for payment shall be made to the Employer in writing, accompanied by <ul style="list-style-type: none"> (a) an invoice describing, as appropriate, <ul style="list-style-type: none"> a. the Products and/or Services provided; b. when the Products and/or Services were supplied and (if applicable) accepted; and c. the amount payable in respect of each item, and (b) documents submitted pursuant to GC Sub-Clause 22.5 (Transport and Delivery) and upon fulfillment of other obligations stipulated in the Contract. |
| | 12.2 | The Contract Price shall be paid as specified in Appendix 7 (Terms and Procedures of Payment) to the Contract. |
| | 12.3 | No payment made by the Employer herein shall be deemed to constitute acceptance by the Employer of the Products and/or Services or any part(s) thereof. |
| | 12.4 | Payments shall be made promptly by the Employer, but in no case later than forty-five (45) days after submission of a valid invoice by the Contractor. In the event that the Employer fails to make any payment by its respective due date or within the period set forth in the Contract, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate(s) specified in Appendix 7 (Terms and Procedures of Payment) to the Contract for the period of delay until payment has been made in full, whether before or after judgment or arbitration award. |
| | 12.5 | All payments shall be made in the currency (ies) specified in the Contract, pursuant to GC Clause 11. For Products and/or Services supplied locally, payments shall be made in the currency of the Employer's Country, unless otherwise |

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| | | specified in Appendix 7 (Terms and Procedures of Payment) to the Contract. |
| | 12.6 | Unless otherwise specified in Appendix 7 (Terms and Procedures of Payment), to the Contract, payment of the foreign currency portion of the Contract Price for Products supplied from outside the Employer's Country shall be made to the Contractor through the irrevocable letter of credit opened by an authorized bank in the Contractor's Country and will be payable on presentation of the appropriate documents. It is agreed that the letter of credit will be subject to Article 10 of the latest revision of Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce, Paris |
| 13. Securities | 13.1 | <u>Issuance of Securities</u> The Contractor shall provide the securities specified below in favor of the Employer at the times, and in the amount, manner and form specified below. |
| | 13.2 | <u>Advance Payment Security</u> (a) If specified in the PC, the Contractor shall, within twenty-eight (28) days of the notification of Contract award, provide a security equal in the amount and currency to the advance payment, and valid until the Products and/or Services achieve Operational Acceptance (b) The security shall be in the form provided in the Bidding Documents or in another form acceptable to the Employer. The amount of the security shall be reduced in proportion to the value of the Products and/or Services executed by and paid to the Contractor from time to time, and shall automatically become null and void when the full amount of the advance payment has been recovered by the Employer. The way the value of the security is deemed to become reduced and, eventually, voided is as specified in the PC. The security shall be returned to the Contractor immediately after its expiration. |
| | 13.3 | <u>Performance Security</u> (a) The Contractor shall, within twenty-eight (28) days of the notification of Contract award, provide a security for the due performance of the Contract in the amount specified in the PC. (b) The security shall be a bank guarantee in the form provided in Section IX (Contract Forms) or it shall be in another form acceptable to the Employer. (c) The performance security shall automatically become null and void once all the obligations of the Contractor under the Contract have been fulfilled, including, but not limited to, any obligations during the Warranty Period and any |

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| | | <p>extensions to the period. The security shall be returned to the Contractor no later than twenty-eight (28) days after its expiration.</p> <p>(d) Upon Operational Acceptance of the Products and/or Services, the security shall be reduced to the amount specified in the PC, on the date of such Operational Acceptance, so that the reduced security would only cover the remaining warranty obligations of the Contractor.</p> <p>(e) The Employer shall not make a claim under the performance security, except for amounts to which the Employer is entitled under the Contract. The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the performance security to the extent to which the Employer was not entitled to make the claim.</p> |
| 14. Taxes and Duties | 14.1 | <p>For Products and/or Services supplied from outside the Employer's country, the Contractor shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies, payable in the Employer's country. Any duties, such as importation or customs duties, and taxes and other levies, payable in the Employer's country for the supply of Products and Services from outside the Employer's country are the responsibility of the Employer unless these duties or</p> |

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| | | <p>taxes have been made part of the Contract Price in Article 2 of the Contract and the Price Schedule to which it refers, in which case the duties and taxes will be the Contractor's responsibility.</p> |
| | 14.2 | <p>For Products and/or Services supplied locally, the Contractor shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Products or Services to the Employer. The only exceptions are taxes or duties, such as value-added or sales tax or stamp duty as apply to, or are clearly identifiable, on the invoices and provided they apply in the Employer's country, and only if these taxes, levies and/or duties are also excluded from the Contract Price in Article 2 of the Contract and the Price Schedule to which it refers.</p> |
| | 14.3 | <p>If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the country where the Site is located, the Employer shall use its best endeavors to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.</p> |

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| | 14.4 | For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract is based on the taxes, duties, levies and charges prevailing at the date fourteen (14) days prior to the date of bid submission in the country where the Site is located (hereinafter called -Tax in this GC 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, Sub-Contractors or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction there from, as the case may be, in accordance with GC Clause 40 (Change in Laws and Regulations) hereof. |
| D. INTELLECTUAL PROPERTY | | |
| 15. Intellectual Property and Copyright | 15.1 | The Intellectual Property Rights in all Products and/or Services Documentation and Software shall remain vested in the owner of such rights where it existed prior to commencement of this Contract. After the manufacturing , the Intellectual Property Rights in all Products and/or Services Documentation and Software shall remain vested in the Employer |
| 16. Software Services and License Agreements | 16.1 | Except to the extent that the Intellectual Property Rights in the Software (Chip) vest in the Employer, the Contractor hereby grants to the Employer license to access and use the Software, including all inventions, designs, and marks embodied in the Software. |
| 17. Confidential Information | 17.1 | The Employer (-the Disclosing Party) and the Contractor (-the Receiving Party) shall keep confidential and shall not, without the written consent of the other Party hereto, divulge to any third Party any documents, data or other information furnished directly or indirectly by the other Party hereto in connection with the Contract (Confidential Information), whether such information has been furnished prior to, during or following termination of the Contract. |
| | 17.2 | For the purposes of GC Sub-Clause 17.1, the Contractor is also deemed to be the Receiving Party of Confidential Information generated by the Contractor itself in the course of the performance of its obligations under the Contract and relating to the businesses, finances, contractors, employees, or other contracts of the Employer or the Employer's use of the Products and/or Services. |
| | 17.3 | Notwithstanding GC Sub-Clauses 17.1 and 17.2: |

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| | | <p>(a) the Contractor may furnish to its Sub-Contractor Confidential Information of the Employer to the extent reasonably required for the Sub-Contractor to perform its work under the Contract; and</p> <p>(b) the Employer may furnish Confidential Information of the Contractor: (i) to support service contractors and their sub- contractors to the extent reasonably required for them to perform their work under their support service contracts; and (ii) to its affiliates and subsidiaries, in which event the Receiving Party shall ensure that the person to whom it furnishes Confidential Information of the Disclosing Party is aware of and abides by the Receiving Party's obligations under this GC Clause 17 as if that person were party to the Contract in place of the Receiving Party.</p> |
| | 17.4 | <p>The Employer shall not, without the Contractor's prior written consent, use any Confidential Information received from the Contractor for any purpose other than the operation, maintenance and further development of the Products and/or Services. Similarly, the Contractor shall not, without the Employer's prior written consent, use any Confidential Information received from the Employer for any purpose other than those that are required for the performance of the Contract.</p> |
| | 17.5 | <p>The obligation of a party under GC Sub-Clauses 17.1 through 17.4 above, however, shall not apply to that information which:</p> <p>(a) now or hereafter enters the public domain through no fault of the Receiving Party;</p> <p>(b) can be proven to have been possessed by the Receiving Party at the time of disclosure and that was not previously obtained, directly or indirectly, from the Disclosing Party</p> <p>(c) otherwise, lawfully becomes available to the Receiving Party from a third party that has no obligation of confidentiality.</p> |
| | 17.6 | <p>The above provisions of this GC Clause 17 shall not in any way modify any undertaking of confidentiality given by either of the parties to this Contract prior to the date of the Contract in respect of the System or any part thereof.</p> |
| | 17.7 | <p>The provisions of this GC Clause 17 shall survive the termination, for whatever reason, of the Contract for three (3) Years.</p> |

E. EXECUTION OF THE FACILITIES

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| 18. Representatives | 18.1 | <u>Project Manager</u> If the Project Manager is not named in the Contract, then within fourteen (14) days of the Effective Date, the Employer shall appoint and notify the Contractor in |
| | | writing of the name of the Project Manager. The Employer may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Employer at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided. All notices, instructions, information and other communications given by the Contractor to the Employer under the Contract shall be given to the Project Manager, except as herein otherwise provided. |
| | 18.2 | <u>Contractor's Representative</u> |
| | 18.2.1 | If the Contractor's Representative is not named in Appendix 1 (Contractor's Representative) of 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. The request must be accompanied by a detailed curriculum vitae for the nominee, as well as description of any other responsibilities the nominee would retain while performing the duties of the Contractor's Representative. If the Employer does not object 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, in accordance with this GC Sub-Clause 18.2.1. |
| | 18.2.2 | Subject to the extensions and/or limitations specified in the SOR (if any), the Contractor's Representative shall have the authority to represent the Contractor on all day-to-day matters relating to |

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| | | | the System or arising from the Contract. The Contractor's Representative shall give to the Project Manager all the Contractor's notices, instructions, information, and all other communications under the Contract. |
| | 18.3 | | 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 otherwise provided for in this Contract. |
| | | 18.3.1 | 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 to such an action, the Contractor shall appoint another person of equal or superior qualifications as the Contractor's Representative, pursuant to the procedure set out in GC Sub-Clause 18.2.1. |
| | | 18.3.2 | The Contractor's Representative and staff are obliged to work closely with the Project Manager and staff, act within their own authority, and abide by directives issued by the Employer that are consistent with the terms of the Contract. The Contractor's Representative is responsible for managing the activities of its personnel and any subcontracted personnel. |
| | | 18.3.3 | 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. |
| | | 18.3.4 | Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GC Sub-Clause 18.3.4 shall be deemed to be an act or exercise by the Contractor's Representative. |
| | 18.4 | | <u>Objections and Removals</u> |
| | | 18.4.1 | The Employer may by notice to the Contractor |

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| | | | 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 have behaved inappropriately, be incompetent, or be negligent. The Employer shall provide evidence of the same, whereupon the Contractor shall remove such person from work on the System. |
| | | 18.4.2 | If any representative or person employed by the Contractor is removed in accordance with GC Sub-Clause 18.4.1 above, the Contractor shall, where required, promptly appoint a replacement. |
| 19. Project Planning and Performance | 19.1 | | If specified in the SOR, the Contractor shall develop, in close cooperation with the Employer, and based on the Preliminary Project Plan included in the Contractor's bid, an Agreed and Finalized Project Plan encompassing the activities specified in the SOR. |
| | 19.2 | | The Agreed and Finalized Project Plan will be prepared by the Contractor and approved by the Employer in accordance with the procedure specified in the SOR. |
| | 19.3 | | If required, the impact on the Implementation Schedule of modifications agreed during finalization of the Agreed and Finalized Project Plan shall be incorporated in the Contract by amendment, in accordance with GC Clause 44 (Extension Time for Completion). |
| | 19.4 | | The Contractor shall undertake to supply, install, test, and commission the Products and/or Services in accordance with the SOR and Agreed and Finalized Project Plan. |
| | 19.5 | | The progress report and other reports specified in the SOR shall be prepared by the Contractor and submitted to the Employer in the format and frequency specified in the SOR. |
| | 19.6 | | If at any time the Contractor's actual progress falls behind the project schedule described in the Agreed and Finalized Project Plan, 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 project schedule, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under GC Sub-Clause 8.2, any extension thereof entitled under GC Sub-Clause 44.1 (Extension of Time for Completion), or any extended period as may otherwise be agreed upon between the Employer and the Contractor. |

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| 20. Subcontracting | 20.1 | Appendix 3 (List of Approved Sub-Contractors) to the Contract specifies critical items of supply or services and a list of Sub- Contractors for each item that are considered acceptable by the Employer. If no Sub-Contractors are listed for an item, the Contractor shall prepare a list of Sub-Contractors it considers qualified and wishes to be added to the list for such items. The Contractor may from time to time propose additions to or deletions from any such list. The Contractor shall submit any such list or any modification to the list to the Employer for its approval in sufficient time so as not to impede the progress of work on the System. The Employer shall not withhold such approval unreasonably. Such approval by the Employer of a Sub-Contractor(s) shall not relieve the Contractor from any of its obligations, duties, or responsibilities under the Contract. |
| | 20.2 | The Contractor may, at its discretion, select and employ Sub-Contractors for such critical items from those Sub-Contractors listed pursuant to GC Sub-Clause 20.1. If the Contractor wishes to employ a Sub-Contractor not so listed, or subcontract an item not so listed, it must seek the Employer's prior approval under GC Sub-Clause 20.3. |
| | 20.3 | For items for which pre-approved Sub-Contractor lists have not been specified in Appendix 3 to the Contract, the Contractor may employ such Sub-Contractors as it may select, provided: (i) the Contractor notifies the Employer in writing at least twenty-eight (28) days prior to the proposed mobilization date for such Sub- Contractor; and (ii) by the end of this period either the Employer has granted its approval in writing or fails to respond. The Contractor shall not engage any Sub-Contractor to which the Employer has objected in writing prior to the end of the notice period. The absence of a written objection by the Employer during the above specified period shall constitute formal acceptance of the proposed Sub- Contractor. Except to the extent that it permits, the deemed approval of the Employer of Sub-Contractors not listed in the Contract, nothing in this Clause, however, shall limit the rights and obligations of either the Employer or Contractor as they are specified in GC Sub-Clauses 20.1 and 20.2 or in Appendix 3 of the Contract. |
| | 20.4 | Each sub-contract shall include provisions which would entitle the Employer to require the sub-contract to be assigned to the Employer under GC Sub-Clause 20.5 (if and when applicable), or in event of termination by the Employer under GC Clause 46. |
| | 20.5 | If a Sub-Contractor's obligations extend beyond the expiry date of the relevant Defect 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 |

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| | | Contractor shall do so. | |
| 21.Design and Engineering | 21.1 | <u>Technical Specifications and Drawings</u> | |
| | | 21.1.1 | <p>The Contractor shall execute the basic and detailed design and the implementation activities necessary for successful provision of the Products and/or Services in compliance with the provisions of the Contract or, where not so specified, in accordance with good industry practice.</p> <p>The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings, and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors, or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer.</p> |
| | | 21.1.2 | <p>The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification, or other document, or any modification of such design, drawings, specification, or other documents provided or designated by or on behalf of the Employer, by giving a notice of such disclaimer to the Project Manager.</p> |
| | 21.2 | <u>Codes and Standards</u> <p>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 in the SOR. During Contract execution, any changes in such codes and standards shall be applied after approval by the Employer and shall be treated in accordance with GC Sub-Clause 43.3 (Changes Originating From Contractor).</p> | |
| | 21.3 | <u>Approval/Review of Technical Documents by Project Manager</u> | |
| | | 21.3.1 | <p>The Contractor shall prepare or cause its Sub-Contractors to prepare, and furnish to the Project Manager the documents listed in the Appendix to the Contract titled List of Documents for Approval or Review, for its approval or review as specified and in accordance with the requirements of GC Sub-Clause 19.1.</p> |

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| | | 21.3.2 | Any part of the Products and/or Services 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. |
| | | 21.3.3 | GC Sub-Clause 21.5 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only. |
| | 21.4 | | Any part of the Products and/or Services covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval of these documents. |
| | 21.5 | | GC Sub-Clauses 21.3.2 through 21.3.3 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only. |
| | | 21.5.1 | Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GC Sub-Clause 21.4, the Project Manager shall either return one copy of the document to the Contractor with its approval endorsed on the document or shall notify the Contractor in writing of its disapproval of the document and the reasons for disapproval and the modifications that the Project Manager proposes. If the Project Manager fails to take such action within the fourteen (14) days, then the document shall be deemed to have been approved by the Project Manager. |
| | | 21.5.2 | The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with the Contract or that it is contrary to good engineering practice. |
| | | 21.5.3 | If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with GC Sub-Clause 21.4. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), and the document shall be deemed to have been approved. |
| | | 21.5.4 | If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) to a document that cannot be settled between the Parties within a reasonable period, then, in case the Contract |

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| | | includes and names an Adjudicator, such dispute may be referred to the Adjudicator for determination in accordance GC 52 (Disputes and Arbitration). If such dispute is referred to an Adjudicator, 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 Adjudicator upholds the Contractor's view on the dispute and if the Employer has not given notice under GC Clause 52, 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 Adjudicator shall decide, and the Time for Operational Acceptance shall be extended accordingly. |
| | 21.5.5 | The Project Manager's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager or inaccurate information furnished in writing to the Contractor by or on behalf of the Employer. |
| | 21.5.6 | 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 of the document, pursuant to the provisions of this GC Sub-Clause 21.5. If the Project Manager requests any change in any already approved document and/or in any document based on such an approved document, the provisions of GC Clause 43 (Change in the Facility) shall apply to such request. |
| 22. Transport and Delivery | 22.1 | Subject to GC Clauses 9 and 14, the Contractor shall manufacture or procure and transport all Products and/or Services in an expeditious and orderly manner to the Project Site. |
| | 22.2 | Delivery of the Products and/or Services shall be made by the Contractor in accordance with the SOR. |
| | 22.3 | Early or partial deliveries require the explicit written consent of the Employer, which consent shall not be unreasonably withheld. |

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| | 22.4 | Transportation |
| | 22.4.1 | The Contractor shall provide such packing of the Products and/or Services as is required to prevent their damage or deterioration during shipment. The packing, marking, and documentation within and outside the packages shall comply strictly with the Employer's instructions to the Contractor. |
| | 22.4.2 | The Contractor shall bear responsibility for and cost of transport to the Project Sites in accordance with the terms and conditions used in the specification of prices in Appendix 6 (Revised Price Schedules) to the Contract, including the terms and conditions of the associated Incoterms. |
| | 22.4.3 | Unless otherwise specified in the PC, the Contractor shall be free to use transportation through carriers registered in any Eligible Country and to obtain insurance from any Eligible Country |
| | 22.5 | <p>Unless otherwise specified in the PC, the Contractor shall provide the Employer with shipping and other documents, as specified below:</p> <p>For Products supplied from outside the Employer's Country:</p> <p>(a) Upon shipment, the Contractor shall notify the Employer and the insurance company contracted by the Contractor to provide cargo insurance by cable, facsimile, electronic mail, or Electronic Data Interchange (EDI) with the full details of the shipment. The Contractor shall promptly send the following documents to the Employer by facsimile and email and hard copies Air mail and/or courier, as appropriate, with a copy to the cargo insurance company:</p> <p>(i) two copies of the Contractor's invoice showing the description of the Products, quantity, unit price, and total amount;</p> <p>(ii) usual transportation documents;</p> <p>(iii) insurance certificate;</p> <p>(iv) certificate(s) of origin; and</p> <p>(v) estimated time and point of arrival in the Employer's Country and at the Project Sites.</p> <p>For Products supplied locally (i.e. from within the Employer's Country):</p> <p>(b) Upon shipment, the Contractor shall notify the Employer by cable, facsimile, electronic mail, or EDI with the full details of the shipment. The Contractor shall promptly send the following documents to the Employer by mail or</p> |

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| | | <p>courier, as appropriate:</p> <p>(i) two copies of the Contractor's invoice showing the</p> <p>(ii) Products' description, quantity, unit price, and total amount;</p> <p>(iii) delivery note, railway receipt, or truck receipt;</p> <p>(iv) certificate of insurance;</p> <p>(v) certificate(s) of origin; and</p> <p>(vi) estimated time of arrival at the Project Sites</p> |
| | 22.6 | Customs clearance |
| | 22.6.1 | The Employer shall bear responsibility for, and cost of, customs clearance into the Employer's Country in accordance with the particular Incoterm(s) used for Products supplied from outside the Employer's Country in the Price Schedules referred to by Article 2 of the Contract. |
| | 22.6.2 | <p>At the request of the Employer, the Contractor shall make available a representative or agent during the process of customs clearance in the Employer's Country for Products supplied from outside the Employer's Country. In the event of delays in customs clearance that are not the fault of the Contractor:</p> <p>(a) the Contractor shall be entitled to an extension in the Time for Achieving Operational Acceptance, pursuant to GC Clause 44 (Extension of Time for Completion);</p> <p>(b) the Contract Price shall be adjusted to compensate the Contractor for any additional storage charges that the Contractor may incur as a result of the delay.</p> |
| 23. Product Upgrades | 23.1 | At any point during performance of the Contract, should technological advances be introduced by the Contractor for the Products and/or Services originally offered by the Contractor in its bid and still to be delivered, the Contractor shall be obligated to offer to the Employer the latest versions of the available information technologies having equal or better performance or functionality at the same or lesser unit prices, pursuant to GC Clause 43 (Change in the Facility). |
| | 23.2 | At any point during performance of the Contract, for Products and/or Services still to be delivered, the Contractor will also pass on to the Employer any cost reductions and additional and/or improved support and facilities that it offers to other clients of the Contractor in the Employer's Country, pursuant to GC Clause 43. |

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| | 23.3 | During performance of the Contract, the Contractor shall offer to the Employer all new versions, releases, and updates of Standard Software, as well as related documentation and technical support services, within thirty (30) days of their availability from the Contractor to other clients of the Contractor in the Employer's Country, and no later than twelve (12) months after they are released in the country of origin. In no case will the prices for this Software exceed those quoted by the Contractor in the Recurrent Costs tables in its bid. |
| | 23.4 | During the Warranty Period, unless otherwise specified in the PC, the Contractor will provide at no additional cost to the Employer all new versions, releases, and updates for all Standard Software that are used in with the Products and/or Services, within thirty (30) days of their availability from the Contractor to other clients of the Contractor in the Employer's country, and no later than twelve (12) months after they are released in the Country of Origin of the Software. |
| | 23.5 | The Employer shall introduce all new versions, releases or updates of the Software within eighteen (18) months of receipt of a production-ready copy of the new version, release, or update, provided that the new version, release, or update does not adversely affect System operation or performance or require extensive reworking of the System. In cases where the new version, release, or update adversely affects System operation or performance, or requires extensive reworking of the System, the Contractor shall continue to support and maintain the version or release previously in operation for as long as necessary to allow introduction of the new version, release, or update. In no case shall the Contractor stop supporting or maintaining a version or release of the Software less than twenty-four (24) months after the Employer receives a production-ready copy of a subsequent version, release, or update. The Employer shall use all reasonable endeavors to implement any new version, release, or update as soon as practicable, subject to the twenty four-month-long stop date. |

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| 24. Products and/or Services | 24.1 | Prices charged by the Contractor for Products and/or Services, that are not included in the Contract, shall be agreed upon in advance by the parties (including, but not restricted to, any prices submitted by the Contractor in the Recurrent Cost Schedules of its Bid) and shall not exceed the prevailing rates charged by the Contractor to other Employers in the Employer's Country for similar Products and/or Services. |
| 25. Inspection and Testing | 25.1 | The Employer or its representative shall have the right to inspect and/or test any components of the Products and/or Services, as specified in the SOR, or specify such tests to be executed by the Contractor, to confirm their good working order and/or conformity to the Contract at the point of delivery and/or at the Project Site. |
| | 25.2 | The Employer and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Employer shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses. |
| | 25.3 | Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third Party or manufacturer any necessary permission or consent to enable the Employer and the Project Manager or their designated representatives to attend the test and/or inspection. |
| | 25.4 | The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection. |
| | 25.5 | 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. |
| | 25.6 | 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 |

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| | | in respect of the Time for Completion and the other obligations so affected. |
| | 25.7 | If any component of the Products and/or Services fails to pass any test and/or inspection, the Contractor shall either rectify or replace such component and shall repeat the test and/or inspection upon giving a notice under GC Sub-Clause 25.3. |
| | 25.8 | If any dispute shall arise between the parties in connection with or caused by an inspection and/or with regard to any component to be incorporated in the Products and/or Services that cannot be settled amicably between the parties within a reasonable period of time, either party may invoke the process pursuant to GC Clause 52 (Disputes and Arbitration), starting with referral of the matter to the Adjudicator in case an Adjudicator is included and named in the Contract. |
| 26. Completion | 26.1 | <p>As soon as the Products and Services have, in the opinion of the Contractor, been delivered, testing made ready for Commissioning and Operational Acceptance Testing in accordance with the Schedule of Requirements, and the Agreed and Finalized Project Plan, the Contractor shall so notify the Employer in writing.</p> <p>The User Acceptance Testing shall be carried out by employer as per the timelines indicated in the implementation schedule in Section VI (Schedule of Requirements) or as per the timelines agreed during the project planning stage. In case of any unforeseen delays identified by the employer in completion of the acceptance testing or issuing acceptance certificate, employer shall notify the contractor within reasonable time period with the specific reasons for delays and accordingly a revised timeline shall be agreed for completion of acceptance testing or issuing the installation certificate.</p> <p>The Project Manager shall, within fourteen (14) days after receipt of the Contractor's notice under GC Sub-Clause 26.1, either issue an Acceptance Certificate</p> |
| 27. Commissioning and Operational Acceptance | 27.1 | <u>Commissioning and Operational Acceptance</u> |
| | 27.1.1 | <p>Commissioning of the all Products of the Passports and/or Services shall be commenced by the Contractor:</p> <p>(a) immediately after issue of the Installation Certificate (ISO, ICAO, etc) is issued by the Project Manager, pursuant to GC Sub- Clause 26.2, or</p> <p>(b) as otherwise specified in the Technical Requirements (specified in the SOR) or the Agreed and Finalized Project Plan; or</p> |

F. GUARANTEES AND LIABILITIES

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| <p>28. Completion Time Guarantee</p> | <p>28.1</p> | <p>The Contractor guarantees that it shall complete the supply, Installation, Commissioning, and achieve Operational Acceptance of the Products and/or Services within the time periods specified in the Implementation Schedule and/or Agreed and Finalized Project Plan pursuant to GC Sub-Clause 8.2, or within such extended time to which the Contractor shall be entitled under GC Clause 44 (Extension of Time for Completion).</p> |
| | <p>28.2</p> | <p>If the Contractor fails to supply, install, commission, and achieve Operational Acceptance of the Products and/or Services within the time for achieving Operational Acceptance specified in the Implementation Schedule or the Agreed and Finalized Project Plan, or any extension of the time for achieving Operational Acceptance previously granted under GC Clause 44 (Extension of Time for Completion), the Contractor shall pay to the Employer liquidated damages at the rate specified in the PC as a percentage of the Contract Price, or the relevant part of the Contract Price if a major component of the Products and/or Services has not achieved Operational Acceptance. The aggregate amount of such liquidated damages shall in no event exceed the amount specified in the PC (-the Maximum). Once the Maximum is reached, the Employer may consider termination of the Contract, pursuant to GC Sub-Clause 47 (Termination for Contractor’s Default).</p> |
| | <p>28.3</p> | <p>Unless otherwise specified in the PC, liquidated damages payable under GC Sub-Clause 28.2 shall apply only to the failure to achieve Operational Acceptance of the Products and/or Services as specified in the Implementation Schedule and/or Agreed and Finalized Project Plan. This GC Sub-Clause 28.3 shall not limit, however, any other rights or remedies the Employer may have under the Contract for other delays.</p> |
| | <p>28.4</p> | <p>If liquidated damages are claimed by the Employer for the Products and/or Services, the Contractor shall have no further liability whatsoever to the Employer in respect to the Operational Acceptance time guarantee for the System (or Subsystem). However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Products and/or Services or from any other of its obligations and liabilities under the Contract.</p> |

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| <p>29. Defect Liability</p> | <p>29.1</p> | <p>The Contractor warrants that for the period specified in the SOR, all Products, including Documentation, and/or Services (to the extent relevant) to be delivered under this contract:</p> <ul style="list-style-type: none"> (a) shall be free from defects in the design, engineering, and workmanship; (b) are newly manufactured, unused, and incorporate all recent material improvements in design; and (c) complies with or exceeds the Technical Specifications in the SOR. <p>Exceptions and/or limitations, if any, to this warranty with respect to Software (or categories of Software), shall be as specified in the PC. Commercial warranty provisions of products supplied under the Contract shall apply to the extent that they do not conflict with the provisions of this Contract.</p> |
| | <p>29.2</p> | <p>In addition, the Contractor warrants that:</p> <ul style="list-style-type: none"> (a) all Products components to be incorporated into the System form part of the Contractor's and/or Sub-Contractor's current product lines, (b) they have been previously released to the market, and (c) those specific items identified in the PC (if any) have been in the market for at least the minimum periods specified in the PC. |
| | <p>29.3</p> | <p>The Warranty Period shall commence from the date of Operational Acceptance of the Products and/or Services and shall extend for the length of time specified in the PC.</p> |
| | <p>29.4</p> | <p>If during the Warranty Period any defect as described in GC Sub- Clause 29.1 should be found in the design, engineering, Documentation, and workmanship of the Products and/or Services provided by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its sole cost, repair, replace, or otherwise make good (as the Contractor shall, at its discretion, determine) such defect as well as any damage to the Products and/or Services caused by such defect. Any defective Products and/or Services that have been replaced by the Contractor shall remain the property of the Contractor.</p> |
| | <p>29.5</p> | <p>The Contractor shall not be responsible for the repair, replacement, or making good of any defect or of any damage to the Products and/or Services arising out of or resulting from any of the following causes:</p> <ul style="list-style-type: none"> (a) improper operation or maintenance of the Product and/or Service by the Employer; (b) normal wear and tear; (c) use of the Products and/or Services with items not supplied by the Contractor, unless otherwise identified in the Schedule of Requirements, or approved by the |

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| | | <p>Contractor; or</p> <p>(d) modifications made to the Products and/or Services by the Employer, or a third party, not approved by the Contractor.</p> |
| | 29.6 | <p>The Contractor's obligations under this GC Clause 29 shall not apply to:</p> <p>(a) any materials that are normally consumed in operation or have a normal life shorter than the Warranty Period; or</p> <p>(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 in writing and has been accepted by the Employer.</p> |
| | 29.7 | <p>The Employer shall give the Contractor a notice promptly following the discovery of such defect, stating the nature of any such defect together with all available evidence</p> |
| | 29.8 | <p>The Contractor may, with the consent of the Employer, remove from the Site any Products and/or Services that are defective, if the nature of the defect, and/or any damage to the Products and/or Services caused by the defect, is such that repairs cannot be expeditiously carried out at the Site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the Products and/or Services, the Employer may give the Contractor notice requiring that tests of the defective part be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such tests.</p> |
| | 29.9 | <p>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 IT Product and/or Service passes such tests. The tests shall be agreed upon by the Employer and the Contractor.</p> |
| | 29.10 | <p>If the Contractor fails to commence the work necessary to remedy such defect or any damage to the IT Product and/or Service caused by such defect within the time period specified in the PC, the Employer may, following notice to the Contractor, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by the Employer in connection with such work shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due the Contractor or claimed under the performance security (refer GC Sub-Clause 13.3 (Performance Security)).</p> |
| | 29.11 | <p>If the Products and/or Services cannot be used by reason of such defect and/or making good of such defect, the Warranty Period for the Products and/or Services shall be extended by</p> |

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| | | a period equal to the period during which the Products and/or Service could not be used by the Employer because of such defect and/or making good of such defect. |
| | 29.12 | Items substituted for defective parts of the IT Product and/or Service during the Warranty Period shall be covered by the Defect Liability Period for the remainder of the Warranty Period applicable for the part replaced or three (3) months, whichever is greater. |
| | 29.13 | At the request of the Employer and without prejudice to any other rights and remedies that the Employer may have against the Contractor under the Contract, the Contractor will offer all possible assistance to the Employer to seek warranty services or remedial action from any subcontracted third-party producers or licensor of Products and/or Services including without limitation assignment or transfer in favour of the Employer of the benefit of any warranties given by such producers or licensors to the Contractor. |
| 30. Functional Guarantees | 30.1 | The Contractor guarantees that during the Operational Acceptance, the Products and/or Services and all parts thereof shall attain the Functional Guarantees, subject to and upon the conditions therein specified. |
| | 30.2 | If, for reasons attributable to the Contractor, the minimum level of the Functional Guarantees are not met either in whole or in part, the Contractor shall at its cost and expense make such changes, modifications and/or additions to the Products and/or Services or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Contractor shall notify the Employer upon completion of the necessary changes, modifications and/or additions, and shall request the Employer to repeat the Operational Acceptance 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 GC Clause 47 (Termination for Contractor's Default). |
| | 30.3 | If, for reasons attributable to the Contractor, the Functional Guarantees are not attained either in whole or in part, but the minimum level of the Functional Guarantees is met, the Contractor shall, at the Contractor's option, either (a) make such changes, modifications and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Employer to repeat the Operational Acceptance Test; or (b) pay liquidated damages to the Employer in respect of the failure to meet the Functional Guarantees. |

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| | 30.4 | <p>The payment of liquidated damages under GC Sub-Clause 30.3, up to the limitation of liability specified in the Appendix to the Contract titled Functional Guarantees, shall completely satisfy the Contractor's guarantees under GC Sub-Clause 30.3, and the Contractor shall have no further liability whatsoever to the Employer in respect thereof. Upon the payment of such liquidated damages by the Contractor, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which the liquidated damages have been so paid.</p> |
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| <p>31. Intellectual Property Rights Warranty</p> | <p>31.1</p> | <p>The Contractor hereby represents and warrants that:</p> <ul style="list-style-type: none"> (a) the Products and/or Services as supplied, installed, tested and accepted; (b) use of the Products and/or Services in accordance with the Contract; and (c) copying of the Software and Documentation provided to the Employer in accordance with the Contract <p>do not and will not infringe any Intellectual Property Rights held by any third party and that it has all necessary rights or at its sole expense shall have secured in writing all transfers of rights and other consents necessary to make the assignments, licenses, and other transfers of Intellectual Property Rights and the warranties set forth in the Contract, and for the Employer to own or exercise all Intellectual Property Rights as provided in the Contract. Without limitation, the Contractor shall secure all necessary written agreements, consents, and transfers of rights from its employees and other persons or entities whose services are used for development of the Products and/or Services.</p> |
| <p>32. Intellectual Property Rights Indemnity</p> | <p>32.1</p> | <p>The Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability), that the Employer or its employees or officers may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights.</p> |
| | <p>32.2</p> | <p>Such indemnity shall not cover any use of the Products and/or Services, including the Documentation, other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Products and/or Services, or any secondary Products and/or Services that result thereby in association or combination with any Products and/or Services not supplied by the Contractor, where the infringement arises because of such association or combination and not because of use of the Products and/or Services in its own right.</p> |
| | <p>32.3</p> | <p>Such indemnities shall also not apply if any claim or infringement:</p> <ul style="list-style-type: none"> (a) is asserted by a parent, subsidiary, or affiliate of the Employer's organization; (b) is a direct result of a design mandated by the Employer's SOR and the possibility of such infringement was duly noted in the Contractor's bid; or (c) results from the alteration of the Products and/or Services, including the Documentation, by the Employer or any persons other than the Contractor or a person authorized |

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| | | by the Contractor. |
| | 32.4 | <p>If a claim of infringement of Intellectual Property Rights is made or threatened by a third party, the Employer will allow the Contractor, at the Contractor's expense, to either:</p> <p>(a) obtain for the Employer the right to continued use of the Products and/or Services; or</p> <p>(b) replace or modify the Products and/or Services so that the alleged infringement ceases so long as the Products and/or Services continue to provide the Customer with equivalent functionality and performance as required in the SOR</p> |
| | 32.5 | <p>The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Sub-Contractors from and against any and all losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Contractor or its employees, officers, or Sub-Contractors may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights arising out of or in connection with any design, data drawing, specification, or other documents or materials provided to the Contractor in connection with this Contract by the Employer or any persons (other than the Contractor) contracted by the Employer, except to the extent that such losses, liabilities, and costs arise as a result of the Contractor's breach of GC Sub-Clause 32.8.</p> |
| | 32.6 | <p>Such indemnity shall not cover any use of the design, data, drawing, specification, or other documents or materials, other than for the purpose indicated by or to be reasonably inferred from the Contract, or any infringement resulting from the use of the design, data, drawing, specification, or other documents or materials, or any products produced thereby, in association or combination with any other Products and/or Services not provided by the Employer or any other person contracted by the Employer, where the infringement arises because of such association or combination and not because of the use of the design, data, drawing, specification, or other documents or materials in its own right.</p> |
| | 32.7 | <p>Such indemnities shall also not apply:</p> <p>(a) if any claim of infringement is asserted by a parent, subsidiary, or affiliate of the Contractor's organization;</p> <p>(b) to the extent that any claim of infringement caused by the alteration, by the Contractor, or any persons contracted by the Contractor, of the design, data, drawing, specification, or other documents or materials provided to the Contractor by the Employer or any persons contracted by the Employer</p> |

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| | 32.8 | <p>If any proceedings are brought or any claim is made against the Contractor arising out of the matters referred to in GC Sub-Clause 32.5, the Contractor shall promptly give the Employer notice of such proceedings or claims, and the Employer may at its own expense and in the Contractor's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Employer fails to notify the Contractor within twenty- eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Contractor shall be free to conduct the same on its own behalf. Unless the Employer has so failed to notify the Contractor within the twenty-eight (28) days, the Contractor shall made no admission that may be prejudicial to the defense of any such proceedings or claim. The Contractor shall, at the Employer's request, afford all available assistance to the Employer in conducting such proceedings or claim and shall re reimbursed by the Employer for all reasonable expenses incurred in so doing.</p> |
| <p>33. Limitation of Liability</p> | 33.1 | <p>Except in cases of criminal negligence or willful misconduct, and</p> <p>Intellectual Property Rights Indemnity claims pursuant to Clause 32:</p> <p>(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</p> <p>(b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the amount resulting from the application of the multiplier specified in the PC, to the Contract Price or, if a multiplier is not so specified, the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.</p> |
| <p>34. Criminal Charges and Convictions</p> | 34.1 | <p>The Contractor warrants that it has disclosed and will continue to disclose during the term of this Contract full details of all criminal convictions and all pending criminal charges against it or any of its personnel, associates or Sub-Contractors that would reasonably be expected to adversely affect the Contractor or the Contractor's capacity to fulfill its obligations under this Contract. The Contractor is not required to provide information to the Contractor in a form or in a manner which would cause the Contractor to breach</p> |

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| | | <p>the privacy of the individual but the Contractor will take all reasonable steps to either:</p> <p>provide sufficient information to enable the Employer to assess the level of any risk or conflict posed to it by the existence of such conviction or pending charge; or</p> <p>take such steps as necessary to ensure that the person who is the subject of the conviction or pending charge ceases to be directly or indirectly involved with this Contract.</p> |
| | 34.2 | A failure to make any such disclosure will be treated as a material breach of this Contract. |

G. RISK DISTRIBUTION

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| 35. Transfer of Ownership | 35.1 | With the exception of any Software and Documentation, the ownership of the Products and/or Services shall be transferred to the Employer at the time of Delivery or otherwise under terms that may be agreed upon and specified in the Contract. |
| | 35.2 | Ownership and the terms of usage of any Software and Documentation supplied under the Contract shall be governed by GC Clause 15 (Intellectual Property and Copyright), and any elaboration in the SOR. |
| | 35.3 | Ownership of the Contractor's Equipment used by the Contractor and its Sub-Contractors in connection with the Contract shall remain with the Contractor or its Sub-Contractors. |
| 36. Care of Products and/or Services | 36.1 | <p>The Contractor shall be responsible for the care and custody of the Products and/or Services or any part thereof until the date of Completion of the Products and/or Services pursuant to GC Clause 26 (Completion</p> <p>) or, where the Contract provides for Completion of the Products and/or Services 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 Products and/or Services 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 Products and/or Services caused by the Contractor or its Sub-Contractors in the course of any work carried out, pursuant to GC Clause 29 (Defect Liability). Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Products and/or Services or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GC Sub-Clauses 36.2 and 42.1 (War Risks).</p> |
| | 36.2 | If any loss or damage occurs to the Products and/or Services or any part thereof or to the Contractor's temporary Products and/or Services by reason of |

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| | | <p>) insofar as they relate to the country where the Site is located, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under GC Clause 38 (Insurance) hereof; or</p> <p>) any use or occupation by the Employer or any third Party other than a Sub-Contractor, authorized by the Employer of any part of the Products and/or Services; or</p> <p>) 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,</p> <p>the Employer shall pay to the Contractor all sums payable in respect of the Products and/or Services 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 Products and/or Services thereby occasioned, the Contractor shall make good the same at the cost of the Employer in accordance with GC Clause 43 (Change in the Facilities). If the Employer does not request the Contractor in writing to make good any loss or damage to the Products and/or Services thereby occasioned, the Employer shall either request a change in accordance with GC Clause 43, excluding the performance of that part of the Products and/or Services thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Products and/or Services, the Employer shall terminate the Contract pursuant to GC Sub-Clause 46.1 hereof</p> |
| | 36.3 | <p>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 Products and/or Services, except</p> <p>(a) as mentioned in GC Sub-Clause 36.2 with respect to the Contractor's temporary Products and/or Services, and</p> <p>(b) where such loss or damage arises by reason of any of the matters specified in GC Sub-Clauses 36.2 (b) and (c) and 42.1 (War Risks)</p> |
| | 36.4 | <p>With respect to any loss or damage caused to the Products and/or Services or any part thereof or to the Contractor's Equipment by reason of any of the matters specified in GC</p> |

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| | | Sub-Clause 42.1, the provisions of GC Sub-Clause 42.3 shall apply. |
| 37. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification | 37.1 | The Contractor and each and every Sub-Contractor shall abide by the job safety, insurance, customs, and immigration measures prevalent and laws in force in the Employer's Country. |
| | 37.2 | Subject to GC Sub-Clause 37.3, 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 Products and/or Services whether accepted or not, arising in connection with the supply and installation of the Products and/or Services and by reason of the negligence of the Contractor or its Sub-Contractors, 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 |
| | 37.3 | If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GC Sub- Clause 37.2, the Employer shall promptly give the Contractor a notice thereof and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing. |
| | 37.4 | The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Sub-Contractors from any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Contractor or its employees, officers, or Sub-Contractors may suffer as a result of the death or personal injury of any person or loss of or damage to property of the Employer, other than the Products and/or Services not yet achieving Operational Acceptance, that is caused by fire, explosion, or any other perils, in excess of the amount |

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| | | recoverable from insurances procured under GC Clause 38 (Insurance), provided that such fire, explosion, or other perils were not caused by any act or failure of the Contractor. |
| | 37.5 | If any proceedings are brought or any claim is made against the Contractor that might subject the Employer to liability under GC Sub- Clause 37.4, the Contractor shall promptly give the Employer notice of such proceedings or claims, and the Employer may at its own expense and in the Contractor's name conduct such proceedings or claim and any negotiations for the settlement of any such proceeding or claim. If the Employer fails to notify the Contractor within twenty- eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Contractor shall be free to conduct the same on its own behalf. Unless the Employer has so failed to notify the Contractor within twenty-eight (28) days, the Contractor shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Contractor shall, at the Employer's request, afford all available assistance to the Employer in conducting such proceedings or claim and shall be reimbursed by the Employer for all reasonable expense incurred in so doing. |
| | 37.6 | The Party entitled to the benefit of an indemnity under this GC Clause 37 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 |
| 38. Insurance | 38.1 | To the extent specified in the Appendix to the Contract titled Insurance Requirements, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval. |
| | 38.1.1 | <u>Cargo Insurance During Transport</u> As applicable, 110 percent of the price of the Products covering the Products at the Site from all risks of physical loss or damage (excluding only perils commonly excluded under —all risks insurance policies of this type of reputable insurers) occurring prior to Operational Acceptance of the Products and/or Services |
| | 38.1.2 | <u>Installation All Risks Insurance</u> Covering physical loss or damage to the Products and/or Services at the Site, occurring prior to |

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| | | | Completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the Defect Liability Period while the Contractor is on the Site for the purpose of performing its obligations during the Defect Liability Period. |
| | | 38.1.3 | <u>Third Party Liability Insurance</u> Covering bodily injury or death suffered by third Parties including the Employer's personnel, and loss of or damage to property occurring in connection with the supply and installation of the Products and/or Services. |
| | | 38.1.4 | <u>Automobile Liability Insurance</u> Covering use of all vehicles used by the Contractor or its Sub- Contractors, whether or not owned by them, in connection with the execution of the Contract. |
| | | 38.1.5 | <u>Workers' Compensation</u> In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed. |
| | | 38.1.6 | <u>Employer's Liability</u> In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed |
| | | 38.1.7 | <u>Other Insurances</u> Such other insurances as may be specifically agreed upon by the Parties hereto as listed in the Appendix to the Contract titled Insurance Requirements. |
| | 38.2 | | The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 38.1, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Sub-Contractors shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 38.1 except for the Cargo Insurance During Transport, Workers' Compensation and Employer's Liability Insurances. All insurers' rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies. |
| | 38.3 | | The Contractor shall, in accordance with the provisions of the Appendix to the Contract titled Insurance Requirements, deliver to the Employer certificates of insurance or copies of |

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| | | the insurance policies as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy. |
| | 38.4 | The Contractor shall ensure that, where applicable, its Sub-Contractor(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 Sub-Contractors are covered by the policies taken out by the Contractor. |
| | 38.5 | The Employer shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the Appendix to the Contract titled Insurance Requirements, in the sums and with the deductibles and other conditions specified in the said Appendix. The Contractor and the Contractor's Sub-Contractors shall be named as co-insured under all such policies. All insurers' rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Employer shall deliver to the Contractor satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than twenty-one (21) days' notice shall be given to the Contractor by all insurers prior to any cancellation or material modification of the policies. If so requested by the Contractor, the Employer shall provide copies of the policies taken out by the Employer under this GC Sub-Clause 38.5. |
| | 38.6 | If the Contractor fails to take out and/or maintain in effect the insurances referred to in GC Sub-Clause 38.1, 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 GC Sub-Clause 38.5, the Contractor may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Employer under the Contract any premium that the Contractor shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Employer. If the Contractor fails to or is unable to take out and maintain in effect any such insurances, the Contractor shall nevertheless have no liability or responsibility towards the Employer, and the Contractor shall have full recourse against the Employer for any and all liabilities of the Employer herein. |
| | 38.7 | Unless otherwise provided in the Contract, the Contractor |

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| | | <p>shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GC Clause 38, and all monies payable by any insurers shall be paid to the Contractor. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.</p> |
| <p>39. Unforeseen Conditions</p> | <p>39.1</p> | <p>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 by an experienced contractor on the basis of reasonable examination of the data relating to the Products and/or Services 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 Products and/or Services, 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 Contractor's Equipment, notify the Project Manager in writing of:</p> <ul style="list-style-type: none"> (a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen; (b) the additional work 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. <p>On receiving any notice from the Contractor under this GC Sub- Clause 39.1, 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 obstruction encountered. Following such consultations, the Project Manager shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.</p> |
| | <p>39.2</p> | <p>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</p> |

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| | | obstructions referred to in GC Sub- Clause 39.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price. |
| | 39.3 | If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GC Sub-Clause 39.1, the Time for Completion shall be extended in accordance with GC Clause 44 (Extension of Time for Completion). |

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| <p>40. Change in Laws and Regulations</p> | <p>40.1</p> | <p>If, after the date twenty-eight (28) days prior to the date of bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed which shall be deemed to include any change in interpretation or application by the competent authorities, that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligation under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the PC pursuant to GC Sub-Clause 11.2.</p> |
| <p>41. Force Majeure</p> | <p>41.1</p> | <p>Force Majeure shall mean any event beyond the reasonable control of the Employer or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the Party affected, and shall include, without limitation, the following:</p> <ul style="list-style-type: none"> (a) war, hostilities or warlike operations whether a state of war be declared or not, invasion, act of foreign enemy and civil war (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts (c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority (d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster (f) shortage of labor, materials or utilities where caused by circumstances that are themselves Force Majeure. |
| | <p>41.2</p> | <p>If either Party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.</p> |

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| | 41.3 | The Party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such Party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GC Clause 8. |
| | 41.4 | The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either Party's right to terminate the Contract under GC Clauses 45 (Suspension), 46 (Termination for Employer's Convenience), 47 (Termination for Contractor's Default), and 48 (Termination by Contractor). |
| | 41.5 | No delay or nonperformance by either Party hereto caused by the occurrence of any event of Force Majeure shall (a) constitute a default or breach of the Contract, or (b) give rise to any claim for damages or additional cost or expense occasioned thereby, subject to GC Sub-Clauses 36.2 (Care of Products and/or Services), 41.3, and 42.4 (War Risks) if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure |
| | 41.6 | If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other, but without prejudice to either Party's right to terminate the Contract under GC Sub-Clause 42.5 (War Risks). |
| | 41.7 | In the event of termination pursuant to GC Sub-Clause 41.6, the rights and obligations of the Employer and the Contractor shall be as specified in GC Sub-Clauses 46.2 and 46.3. |
| | 41.8 | Notwithstanding GC Sub-Clause 41.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein. |

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| <p>42. War Risks</p> | <p>42.1</p> | <p>“War Risks” shall mean any event specified in paragraphs (a) and (b) of GC Sub-Clause 41.1 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</p> |
| | <p>42.2</p> | <p>Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to</p> <ul style="list-style-type: none">) destruction of or damage to Facilities, or any part thereof;) destruction of or damage to property of the Employer or any third Party; or) injury or loss of life <p>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.</p> |
| | <p>42.3</p> | <p>If the Products and/or Services or any other property of the Contractor used or intended to be used for the purposes of the Products and/or Services shall sustain destruction or damage by reason of any War Risks, the Employer shall pay the Contractor for</p> <ul style="list-style-type: none"> (a) any part of the Products and/or Services 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 Products and/or Services or any part thereof. <p>If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Products and/or Services, the Employer shall either request a change in accordance with GC Clause 43, excluding the performance of that part of the Products and/or Services thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Products and/or Services, shall terminate the Contract, pursuant to GC Clause 46.</p> <p>If the Employer requires the Contractor to replace or make good on any such destruction or damage to the Products and/or Services, the Time for Completion shall be extended in accordance with GC 44</p> |

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| | 42.4 | 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. |
| | 42.5 | 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 Sub-Contractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other. |
| | 42.6 | In the event of termination pursuant to GC Sub-Clauses 42.3 or 42.5, the rights and obligations of the Employer and the Contractor shall be specified in GC Sub-Clauses 26.2 and 46.3 (Termination for Employer's Convenience). |

H. CHANGE IN CONTRACT ELEMENTS

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| 43. Change in the Facilities | 43.1 | <u>Introducing a Change</u> | |
| | | 43.1.1 | Either Party may seek to vary any obligation of the Contract by making application to the other Party. 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 to the Contract |
| | | 43.1.2 | Subject to GC Sub-Clauses 43.2.5 and 43.2.7, the Employer shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the SOR (interchangeably called —Change), provided that such Change falls within the general scope of the SOR and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the work against the Agreed and Finalized Project Plan and the technical compatibility of the Change envisaged with the |

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| | | | <p>nature of the SOR as originally specified in the Contract.</p> <p>A Change may involve, but is not restricted to, the substitution of updated Products and/or Services and related Services in accordance with GC Clause 23 (Product Upgrades).</p> |
| | | 43.1.3 | <p>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 or efficiency. The Employer may at its discretion approve or reject any Change proposed by the Contractor.</p> |
| | | 43.1.4 | <p>Notwithstanding GC Sub-Clauses 43.1.2, and 43.1.3, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Operational Acceptance.</p> |
| | | 43.1.5 | <p>The procedure on how to proceed with and execute Changes is specified in GC Sub-Clauses 43.2 and 43.3 (Changes Originating from Employer and Contractor) and further details and forms are provided in the Sample Forms Section in the Bidding Documents.</p> |
| | | 43.1.6 | <p>Moreover, the Employer and Contractor will agree, during development of the Agreed and Finalized Project Plan, to a date prior to the scheduled date for Operational Acceptance after which the SOR shall be -frozen. Any Change initiated after this time will be dealt with after Operational Acceptance.</p> |
| | 43.2 | <u>Changes Originating from Employer</u> | |
| | | 43.2.1 | <p>If the Employer proposes a Change pursuant to GC Sub-Clause 43.1.2, it shall send to the Contractor a —Request for Change Proposal, requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a —Change Proposal, which shall include the following:</p> <ul style="list-style-type: none"> (a) brief description of the Change; (b) impact on the Time for Operational Acceptance; (c) detailed estimated cost of the Change; (d) effect on Functional Guarantees (if any); |

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| | | | (e) effect on any other provisions of the Contract |
| | | 43.2.2 | <p>Prior to preparing and submitting the —Change Proposal, the Contractor shall submit to the Project Manager a —Change Estimate Proposal, which shall be an estimate of the cost of preparing and submitting the Change Proposal, plus a first approximation of the suggested approach and cost for implementing the changes. Upon receipt of the Contractor’s Change Estimate Proposal, the Employer shall do one of the following:</p> <p>(a) accept the Contractor’s estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal;</p> <p>(b) advise the Contractor of any part of its Change Estimate Proposal that is unacceptable and request the Contractor to review its estimate;</p> <p>(c) advise the Contractor that the Employer does not intend to proceed with the Change</p> |
| | | 43.2.3 | <p>Upon receipt of the Employer’s instruction to proceed under GC Sub-Clause 43.2.2(a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GC Sub-Clause 43.2.1. The Contractor, at its discretion, may specify a validity period for the Change Proposal, after which if the Employer and Contractor have not reached agreement in accordance with GC Sub-Clause 43.2.6, then GC Sub-Clause 43.2.7 shall apply.</p> |
| | | 43.2.4 | <p>The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If the nature of the Change is such that the Contract rates and prices are inequitable, the parties to the Contract shall agree on other specific rates to be used for valuing the Change.</p> |
| | | 43.2.5 | <p>If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance with the Request for Change Proposal and with all other Change Orders that have already become binding upon the Contractor under this GC Clause would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract by more than the percentage stated in the ITB Clause 42, the Contractor may give a written notice of objection to this Request for Change Proposal prior to furnishing the Change Proposal. If the Employer accepts the Contractor’s</p> |

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| | | <p>objection, the Employer shall withdraw the proposed Change and shall notify the Contractor in writing of its acceptance.</p> <p>The Contractor's failure to so object to a Request for Change Proposal shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.</p> |
| | | <p>43.2.6 Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters contained in the Change Proposal. Within fourteen (14) days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor a Change Order. If the Employer is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.</p> <p>If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Change Estimate Proposal submitted in accordance with GC Sub- Clause 43.2.2.</p> |
| | | <p>43.2.7 If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Operational Acceptance, or any other matters identified in the Change Proposal, the change will not be implemented. However, this provision does not limit the rights of either party under GC Clause 52 (Disputes and Arbitration).</p> |
| | 43.3 | <u>Changes Originating from Contractor</u> |

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| | | <p>43.3.1 If the Contractor proposes a Change pursuant to GC Sub-Clause 43.1.3, 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 GC Sub-Clause 43.1.3. Upon receipt of the Application for Change Proposal, the Parties shall follow the procedures outlined in GC Clauses 43.2.6 and 43.2.7 except that the words —Change Proposal shall be read, for the purposes of this GC Sub-Clause 43.3 as —Application for Change Proposal. However, should the Employer choose not to proceed or the Employer and the Contractor cannot come to agreement on the change during any validity period that the Contractor may specify in its Application for Change Proposal, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal, unless subject to an agreement between the Employer and the Contractor to the contrary.</p> |
| <p>44. Extension of Time for Completion</p> | <p>44.1</p> | <p>The Time(s) for Completion specified in the PC pursuant to GC 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:</p> <ul style="list-style-type: none"> (a) any Change in the SOR as provided in GC Clause 43; (b) any occurrence of Force Majeure as provided in GC Clause 41, unforeseen conditions as provided in GC Clause 39, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b), and (c) of GC Sub-Clause 36.2; (c) any suspension order given by the Employer under GC Clause 45 hereof or reduction in the rate of progress pursuant to GC Sub-Clause 45.2;or (d) any changes in laws and regulations as provided in GC Clause 40; or |

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| | | <p>(e) any default or breach of the Contract by the Employer, or any activity, act or omission of the Employer, or the Project Manager, or any other contractors employed by the Employer; or</p> <p>(f) 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</p> <p>(g) delays attributable to the Employer or caused by customs; or</p> <p>(h) any other matter specifically mentioned in the Contract</p> <p>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.</p> |
| | 44.2 | <p>Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor shall be entitled to refer the matter to an Arbitrator, pursuant to GC Sub-Clause 52.1.</p> |
| | 44.3 | <p>The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.</p> |
| | 44.4 | <p>In all cases where the Contractor has given a notice of a claim for an extension of time under GC 44.2, 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 GC 44.1, the amount of such extra costs shall be added to the Contract Price.</p> |

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| <p>45. Suspension</p> | <p>45.1</p> | <p>The Employer may request the Project Manager, by notice to 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 therefore. The Contractor shall thereupon suspend performance of such obligation, except those obligations necessary for the care or preservation of the Facilities, until ordered in writing to resume such performance by the Project Manager.</p> <p>If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GC Clause 43 (Change in the Facilities), excluding the performance of the suspended obligations from the Contract.</p> <p>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 GC Clause 43 or, where it affects the whole of the Facilities, as termination of the Contract under GC Clause</p> |
| | <p>45.2</p> | <p>If</p> <p>(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 titled Terms and Procedures of Payment, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice or</p> <p>(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</p> |

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| | | <p>failure to provide possession of or access to the Site or other areas in accordance with GC Sub-Clause 10.2 (Employer's Responsibilities), or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,</p> <p>then the Contractor may by fourteen (14) days' notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.</p> |
| | 45.3 | <p>If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GC Clause 45, then the Time for Completion shall be extended in accordance with GC Sub- Clause 44.1 (Extension of Time for Completion), and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.</p> |
| | 45.4 | <p>During the period of suspension, the Contractor shall not remove from the Site any Products and/or Services or part thereof, or any Contractor's Equipment, without the prior written consent of the Employer.</p> |
| 46. Termination for Employer's Convenience | 46.1 | <p>The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GC Clause 46.</p> |
| | 46.2 | <p>Upon receipt of the notice of termination under GC Sub-Clause 46.1, the Contractor shall either as soon as practical or upon the date specified in the notice of termination:</p> <ul style="list-style-type: none"> (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 SOR 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 GC Sub-Clause 46.2(d)(ii) below; (c) remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Sub-Contractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind; and (d) subject to the payment specified in GC Sub-Clause 46.3, shall: <ul style="list-style-type: none"> (i) deliver to the Employer the parts of the SOR executed by the Contractor up to the date of termination; (ii) to the extent legally possible, assign to the Employer |

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| | | <p>all right, title and benefit of the Contractor to the Products and/or Services, as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Sub- Contractors; and</p> <p>(iii) deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Sub-Contractors as of the date of termination in connection with the Products and/or Services.</p> |
| | 46.3 | <p>In the event of termination of the Contract under GC Sub-Clause 46.1, the Employer shall pay to the Contractor the following amounts:</p> <p>(a) the Contract Price, properly attributable to part or whole of the Products and/or Services executed by the Contractor as of the date of termination;</p> <p>(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 Sub-Contractors' personnel;</p> <p>(c) any amounts to be paid by the Contractor to its Sub-Contractors in connection with the termination of any subcontracts, including any cancellation charges;</p> <p>(d) costs incurred by the Contractor in protecting the Products and/or Services and leaving the Site in a clean and safe condition pursuant to GC Sub-Clause 47.1 (Termination for Contractor's Default); and</p> <p>(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 GC Sub-Clauses 46.3(a) through (d) above</p> |

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| <p>47. Termination for Contractor's Default</p> | <p>47.1</p> | <p>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 therefore to the Contractor, referring to this GC Sub-Clause 47.1:</p> <ul style="list-style-type: none"> (a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up, (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt; (b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GC Clause 49 (Assignment); or (c) if the Contractor, in the judgment of the Employer has engaged in corrupt, fraudulent, coercive or collusive practices in competing for or in executing the Contract, including but not limited to willful misrepresentation of facts concerning ownership of Intellectual Property Rights in, or proper authorization and/or licenses from the owner to offer the hardware, software, or materials provided under the Contract. |
| | <p>47.2</p> | <p>If the Contractor</p> <ul style="list-style-type: none"> (a) has abandoned or repudiated the Contract; (b) has without valid reason failed to commence work on the Products and/or Services promptly; (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause (d) refuses or is unable to provide sufficient Documentation, Services, or labor to execute and complete the Products and/or Services in the manner specified in the Agreed and Finalized Project Plan furnished under GC Clause 19 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain Operational Acceptance of the Products and/or Services by the Time for Operational Acceptance as extended; <p>then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GC Sub-Clause</p> |

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| | | 47.2. |
| | 47.3 | <p>Upon receipt of the notice of termination under GC Sub-Clauses 47.1 or 47.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,</p> <p>(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 Products and/or services already executed, or any work required to leave the Site in a clean and safe condition;</p> <p>(b) terminate all subcontracts, except those to be assigned to the Employer pursuant to GC Sub-Clause 47.3(d) below;</p> <p>(c) deliver to the Employer the parts of the Products and/or Services executed by the Contractor up to the date of termination;</p> <p>(d) to the extent legally possible, assign to the Employer all rights, title and benefit of the Contractor to the Products and/or Services or Subsystems as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Sub-Contractors;</p> <p>(e) deliver to the Employer all drawings, specifications, and other documents prepared by the Contractor or its Sub-Contractors as of the date of termination in connection with the Products and/or Services.</p> |
| | 47.4 | <p>The Employer may enter upon the Site, expel the Contractor, and complete the Products and/or Services itself or by employing any third Party. Upon completion of the Products and/or Services 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.</p> |
| | 47.5 | <p>Subject to GC Sub-Clause 47.6, the Contractor shall be entitled to be paid the Contract Price attributable to the portion of the Products and/or Services executed as of the date of termination, and the costs, if any, incurred in protecting the Products and/or Services and in leaving the Site in a clean and safe condition pursuant to GC Sub- Clause 47.3. 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.</p> |
| | 47.6 | <p>If the Employer completes the Products and/or Services, the cost of completing the Products and/or Services by the</p> |

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| | | <p>Employer shall be determined.</p> <p>If the sum that the Contractor is entitled to be paid, pursuant to GC Sub-Clause 47.5, plus the reasonable costs incurred by the Employer in completing the Products and/or Services, exceeds the Contract Price, the Contractor shall be liable for such excess.</p> <p>If such excess is greater than the sums due the Contractor under GC Sub-Clause 47.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under GC Sub-Clause 47.5, 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.</p> |
| <p>48. Termination by Contractor</p> | <p>48.1</p> | <p>If</p> <p>(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 titled Terms and Procedures of Payment, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GC Sub-Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice, or</p> <p>(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</p> |

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| | | <p>access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Products and/or Services;</p> <p>then the Contractor may give a notice to the Employer of such events, 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 GC Sub-Clause 48.1(b), forthwith terminate the Contract.</p> |
| | 48.2 | <p>The Contractor may terminate the Contract forthwith by giving a notice to the Employer to that effect, referring to this GC Sub-Clause 48.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.</p> |
| | 48.3 | <p>If the Contract is terminated under GC Sub-Clauses 48.1(b) or 48.2, then the Contractor shall immediately:</p> <ul style="list-style-type: none"> (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Products and/or Services 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 GC Sub-Clause 48.3(d)(ii); (c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Sub-Contractors' personnel from the Site; and (d) subject to the payment specified in GC Sub-Clause 48.4, shall: <ul style="list-style-type: none"> (i) deliver to the Employer the parts of the Products and/or Services executed by the Contractor up to the date of termination; (ii) to the extent legally possible, assign to the Employer all rights, title and benefit of the Contractor to the Products and/or Services, or Subsystems as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Sub- |

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| | | Contractors, and (iii) to the extent legally possible, deliver to the Employer all drawings, specifications, and other documents prepared by the Contractor or its Sub-Contractors as of the date of termination in connection with the Products and/or Services. |
| | 48.4 | If the Contract is terminated under GC Sub-Clauses 48.1 or 48.2, the Employer shall pay to the Contractor all payments specified in GC Sub-Clause 46.3, 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. |
| | 48.5 | Termination by the Contractor pursuant to this GC Clause 48 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 GC Clause 48. |
| | 48.6 | In GC Clauses 46 to 48, the expression —portion of the Products and/or Services executed shall include all work executed, Services provided, and all Products and/or Services, 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 Contractor and used or intended to be used for the purpose of the Products and/or Services, up to and including the date of termination. |
| | 48.7 | In GC Clauses 46 to 48, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to the Appendix to the Contract titled Terms and Procedures of Payment. |

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| 49. Assignment | 49.1 | Neither the Employer nor the Contractor shall, without the express prior written consent of the other Party, which consent shall not be unreasonably withheld, assign to any third Party the Contract or any part thereof, or any right, benefit, obligation or interest therein or there under, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract. |
| 50. Export Restrictions | 50.1 | 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 Products and/or Services to be supplied which arise from trade regulations from a country supplying those Products and/or Services, and which substantially impede the Contractor from meeting its obligations under the Contract, shall release the Contractor from the obligation to provide deliveries or services, always provided, however, that the Contractor can demonstrate to the satisfaction of the Employer and of GoSL that it has completed all formalities in a timely manner, including applying for permits, authorizations, and licenses necessary for the export of the Products and/or Services under the terms of the Contract. Termination of the Contract on this basis shall be for the Employer's convenience pursuant to GC Clause 46. |

I. CLAIMS, DISPUTES AND ARBITRATION

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| 51. Contractor's Claims | 51.1 | If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any clause of these General 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 twenty-eight (28) days after the Contractor became aware, or should have become aware, of the event or circumstance. |
| | 51.2 | <p>If the Contractor fails to give notice of a claim within such period of twenty-eight (28) days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.</p> <p>(a) 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.</p> |

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| | | <p>(b) The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Employer's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.</p> <p>(c) Within forty-two (42) days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:</p> <ul style="list-style-type: none"> (i) this fully detailed claim shall be considered as interim; (ii) 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 (iii) the Contractor shall send a final claim within twenty-eight (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. <p>(d) Within forty-two (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. The Project Manager may also request any necessary further particulars, but shall nevertheless give his/her response on the principles of the claim within such time.</p> <p>(e) 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.</p> <p>(f) The Project Manager shall agree with the Contractor or estimate:</p> <ul style="list-style-type: none"> (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with GC |
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| | | <p>Clause 44 (Extension of time for Completion), and/or</p> <p>(ii) the additional payment (if any) to which the Contractor is entitled under the Contract.</p> <p>(g) 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.</p> <p>(h) 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 and Arbitration procedures pursuant to GC Clause 52 hereof.</p> |
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Inspection Only

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| <p>52. Disputes and Arbitration</p> | <p>52.1</p> | <p><u>Adjudication</u></p> <p>(a) The parties, within fourteen (14) days of the Effective Date, will agree and appoint an Adjudicator.</p> <p>If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity or termination, or the operation of the Products and/or Services (whether during the progress of implementation or after its achieving Operational Acceptance and whether before or after the termination, abandonment, or breach of the Contract), the Parties shall seek to resolve any such dispute or difference by mutual consultation. If the Parties fail to resolve such a dispute or difference by mutual consultation, within fourteen (14) days after one Party has notified the other in writing of the dispute or difference, then, if the Contract in Appendix includes, and names an Adjudicator, the dispute shall be referred in writing by either Party to the Adjudicator, with a copy to the other Party. If there is no Adjudicator specified in the Contract, the mutual consultation period stated above shall last twenty-eight (28) days (instead of 14), upon expiry of which either Party may move to the notification of arbitration pursuant to GC Sub- Clause 52.2(a).</p> <p>(b) The Adjudicator shall give his or her decision in writing to both Parties within twenty-eight (28) days of a dispute being referred to the Adjudicator. If the Adjudicator has done so, and no notice of intention to commence arbitration has been given by either the Employer or the Contractor within fifty-six (56) days of such reference, the decision shall become final and binding upon the Employer and the Contractor. Any decision that has become final and binding shall be implemented by the Parties forthwith.</p> <p>(c) The Adjudicator shall be paid an hourly fee at the rate specified in Appendix 2 (Adjudicator) to the Contract, plus reasonable expenditures incurred in the execution of duties as Adjudicator, and these costs shall be divided equally between the Employer and the Contractor.</p> <p>(d) Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not fulfilling his or her function in accordance with the provision of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. Failing agreement between the Parties within twenty-eight (28) days, the new Adjudicator</p> |
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| | | <p>shall be appointed at the request of either Party by the Appointing Authority specified in the Appendix to the Contract titled Adjudicator, or, if no Appointing Authority is specified in the Contract, shall, from this point onward and until the Parties may otherwise agree on an Adjudicator or an Appointing Authority, be implemented as if there is no Adjudicator.</p> |
| | 52.2 | <p><u>Arbitration</u></p> <p>(a) If either the Employer or the Contractor is dissatisfied with the Adjudicator’s decision, or if the Adjudicator fails to give a decision within twenty-eight (28) days of a dispute being referred to him or her, then the Employer or the Contractor may, within fifty-six (56) days of such reference, give notice to the other Party, with a copy for information to the Adjudicator, of its intention to commence arbitration, as provided below, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.</p> <p>(b) Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GC Sub-Clause 52.2(a), shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Products and/or Services.</p> <p>(c) Arbitration proceedings shall be conducted in accordance with the rules of procedures specified in the PC</p> |
| | 52.3 | <p>Notwithstanding any reference to the Adjudicator or arbitration in this clause,</p> <p>(a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree;</p> <p>(b) the Employer shall pay the Contractor any money due to the Contractor.</p> |

SECTION VIII: Particular Conditions

Inspection Only

Section VIII: Particular Conditions

PARTICULAR CONDITIONS

The following Particular Conditions (PC) shall supplement or amend the General Conditions (GC). Whenever there is a conflict, the provisions in PC shall prevail over those in GC. For the purposes of clarity, any referenced GC Clause numbers are indicated in the left column of PC.

| 1. Definitions | |
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| Effective Date: | Date of both parties sign the Contract Agreement and also specified in Article 3.1 |
| Contract Period is | Contract Period is Five Years or the date of delivery and acceptance of Five million e-passports (whichever comes first) |
| The Employer is: | Department of Immigration and Emigration, "Suhurupaya" Sri Subhuthipura Road, Battaramulla, Sri Lanka. Telephone : +94 11 2101550 Fax: + 94 11 2885358 E-mail : cg@immigration.gov.lk |
| The Employer's Country is | Sri Lanka |
| The Post-Warranty Services Period is | Not Applicable |
| The Project Manager is: | To be nominated |
| The Project Sites are | Project site is Department of Immigration and Emigration, Ground Floor, "Suhurupaya" Sri Subhuthipura Road, Battaramulla, Sri Lanka |
| 5. Law and Language | |
| 5.1 | The Contract shall be interpreted in accordance with the laws of the Democratic Socialist Republic of Sri Lanka |
| 5.2 | The ruling language is English |

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| 5.3 | The language for communications is English |
| 8. Time for Commencement | |
| 8.1 | Date of Commencement: Seven Days from the Effective Date The Contractor shall Complete work within Ten Years from the Effective Date |
| 11. Contract Price | |
| 11.2 | The Contract Price is not adjustable |
| 13. Securities | |
| 13.2 (a) | The Contractor shall provide, within Fourteen (14) days of the signing of Contract, an Advance Payment Security in the amount and currency of the Advance Payment specified in Appendix 7, Terms and Procedure for Payment Schedule of the Contract Agreement. |
| 13.2 (b) | Full Amount of the Advance Payment will be recovered from the payment of first Three (million) Passports. |
| 13.3(a) | The Performance Security shall be denominated in the currency quoted by the contractors in its price schedule or in Sri Lanka Rupees for an amount equal to Ten percent (10%) of the Contract Price. Performance Security shall be submitted within fourteen (14) days of the notification of contract award. |
| 13.3(d) | The Performance Security will not be reduced and valid until satisfactory delivery of Five (5) Million Passports. |
| 15. Intellectual Property and Copyright | |
| 15.1 | The following clause is added under this clause Technical documents and manuals can be duplicated by the Employer for non-commercial and internal use. |
| 16. Software Services and License agreements | |
| 16.1 | Software Licenses: All software should be royalty free and licensed to the Employer, Democratic Socialist Republic of Sri Lanka on a perpetual basis and should be valid for use at any location specified by the government. Complete set of source code/scripts developed for this project (custom software) should be provided to the Employer. Any updates, modifications carried to the source code as a result of servicing/maintenance should be provided to the Employer. |

| | |
|--------------------------------------|--|
| 23. Product Upgrades | |
| 23.4 | The Contractor shall provide the Employer with all new versions, releases, and updates and upgrades to all Standard Software relating to Chip during the Warranty Period, at no additional cost, as specified in the GC |
| 26. Completion | |
| 28. Completion Time Guarantee | |
| 28.2 | Liquidated damages shall be assessed at one 1% per week of the total contract price. The maximum liquidated damages are Ten percent (10%) of the Contract Price, |
| 28.3 | Liquidated Damages: If the Contractor fails to deliver any or all of the milestones and related Services within the period specified in the Implementation Schedule of the Section VI Schedule of Requirement , deduct from the Contract Price, as liquidated damages to each and every milestones, a sum equivalent to the amount indicated in the Clause 28.2 of Particular Conditions |
| 29. Defect Liability | |
| 29.1 | For Software, exceptions or limitations to the Contractor’s warranty obligations shall be as follows; None |
| 29.2(c) | The Contractor warrants that the following items have been released to the market for the following specific minimum time periods: No specific minimum time requirements are established for this Contract other than that the Information Technologies must have been previously released to the market |
| 29.3 | The Warranty Period shall begin from the date of Acceptance Passports extend for the period of Ten (10) years. |
| 29.10 | During the Support and Maintenance Period, the Contractor must commence the work necessary to remedy defects or damage within the times specified in the “Service Level Agreement (SLA)” Annex D: Section VI Schedule of Requirements. |
| 38. Insurance | |
| 38.1.1 | Insurance cover referred to herein, should also cover “All Risks” basis including War Risks and Strikes |
| 38.1.3 | Third Party liability insurance, with a minimum coverage of Rs.2,000,000 per event with unlimited number of events |
| | If any dispute of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract, including |

| | |
|----------|---|
| 52.2 (c) | <p>without prejudice to the generality of the foregoing, any question regarding its existence, validity, or termination, or the operation of the subject matter of this contract (whether during the progress of implementation or after achieving Operational Acceptance and whether before or after the termination, abandonment, or breach of the Contract), the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to resolve such a dispute or difference by mutual consultation, within fourteen (14) days after one party has notified the other in writing of the dispute or difference, either party may give Notice to the other party, of its intention to commence arbitration, as provided below, indicating the matter in dispute. No arbitration in respect of this matter may be commenced unless such notice is given.</p> <p>Any dispute, in respect of which a notice of intention to commence arbitration has been given, in accordance with the above, shall be finally settled by arbitration. Arbitration may be commenced prior to or after installation of the Information Technologies.</p> <p>The following rules of procedure for mediation and arbitration shall be applicable (a) <u>if the Contractor is foreign (including a Joint Venture when at least one partner is foreign)</u> or (b) <u>if the Contractor is a national of the Employer's country</u></p> <p>(a) Dispute for resolution by arbitration shall be in accordance with the UNCITRAL Arbitration Rules as at present in force.</p> <p>(b) The arbitration shall be heard in Sri Lanka before an arbitrator mutually agreeable to the parties; provided, that if the parties cannot agree on the choice of arbitrator within 10 days after the first party seeking arbitration has given written notice, then the arbitration shall be heard by three arbitrators, one chosen by each party, and the third chosen by those two arbitrators. The arbitrators will be selected from a panel of persons having experience with and knowledge of information technology and at least one of the arbitrators selected will be an attorney. A hearing on the merits of all claims for which arbitration is sought by either party shall be commenced not later than 60 days from the date demand for arbitration is made by the first party seeking arbitration. The arbitrator(s) must render a decision within 10 days after the conclusion of such hearing. Any award in such arbitration shall be final and binding upon the parties and the judgment thereon may be entered in any court of competent jurisdiction</p> <p>The arbitrators shall apply the substantive laws of Sri Lanka, without reference to provisions relating to conflict of laws. The arbitrators shall not have the power to alter, modify, amend, add to, or subtract from any term or provision of this Agreement, nor to rule upon or grant any extension, renewal, or continuance of this Agreement. The arbitrators shall have the authority to grant any legal remedy available had the parties submitted the dispute to a judicial proceeding.</p> |
|----------|---|

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SECTION IX: Contract Forms

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1. Contract Agreement

THIS CONTRACT AGREEMENT is made the *[nth]* day of *[month & Year]*. BETWEEN

- (1) *[Name of Employer]*, a corporation incorporated under the laws of *[country of Employer]* and having its principal place of business at *[address of Employer]* (hereinafter called “the Employer”), and
- (2) *[Name of Contractor]*, a corporation incorporated under the laws of *[country of Contractor]* and having its principal place of business at *[address of Contractor]* (hereinafter called “the Contractor”).

WHEREAS the *Employer* desires to engage the Contractor to supply, install, achieve Operational Acceptance of, and support the following Information Technology Products and /or Services *[brief description of the Information Technology Software, Products and/or Services]* (“the IT Software, Products and/or Services”), and the Contractor has agreed to such engagement upon and subject to the terms and conditions appearing below in this Contract Agreement.

NOW IT IS HEREBY AGREED

as follows:

1. Definitions

1.1 Contract Documents (Reference GCC Clause 2)

Contract Documents

The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:

- a) This Contract Agreement and the Appendices attached to the Contract Agreement
- b) Schedule of Requirements (including Implementation Schedule)
- c) Particular Conditions of Contract
- d) General Conditions of Contract
- e) The Contractor’s bid and original Price Schedules
- f) Addenda/clarifications issued by the employer

[Add here: any other documents. Check consistency with GC 2.2 and amend as appropriate]

1.2 Order of Precedence (Reference GCC Clause 2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above, provided that Appendix 14 shall prevail over all provisions of the Contract Agreement and the other Appendices attached to the Contract Agreement and all the other Contract Documents listed in Article 1.1 above.

1.3 Definitions (Reference GCC Clause 1)

Capitalized words and phrases used in this Contract Agreement shall have the same meanings as are ascribed to them in the General Conditions of Contract.

Article 2

2.1 Contract Price (GCC Clause 11)

Contract Price and Terms of Payment

The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by Contractor of its obligations under the Contract. The Contract Price shall be the aggregate of: *[: amount of local currency in words], [: amount in figures],* as specified in the Grand Summary Price Schedule.

The Contract Price shall be understood to reflect the terms and conditions used in the specification of prices in the detailed price schedules, including the terms and conditions of the associated Incoterms, and the taxes, duties and related levies if and as identified.

2.2 Terms of Payment (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.

2.3 In the event that the amount payable under 2.2 is adjusted in accordance with GC 11.2 or with any of the other terms of the Contract, the Employer shall arrange for the documentary credit to be amended accordingly.

Article 3.

3.1 Effective Date (GCC Clause 1.1)

Effective Date for Determining Time for Operational Acceptance

The time allowed for supply, installation, and achieving Operational Acceptance of the IT Software, Products and/or Services shall be determined from 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 advance payment security and performance security, in accordance with GCC Clause 13.2 and GCC Clause 13.3;
- (c) The Employer has paid the Contractor the advance payment, in accordance with GCC Clause 13.2;

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

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

Article 4.

4.1 The address of the Employer for notice purposes, pursuant to GC 4.1 is: *[Insert address]*.

Communication

4.2 The address of the Contractor for notice purposes, pursuant to GC 4.1 is: *[Insert address]*

Article 5.

5.1 The applicable Appendixes listed below shall be deemed to form an integral part of this Contract Agreement.

5.2 Reference in the Contract to any Appendix shall mean the applicable Appendixes listed below and attached to this Contract Agreement, and the Contract shall be read and construed accordingly.

Section IX – Contract Forms

APPENDIXES *[Employer to list all Appendices and add the statement (not applicable) if that particular Appendix does not apply to this contract]*

Appendix 1. Contractor’s Representative [refer GC 18.2(b)]

Appendix 2. Adjudicator [refer GC 52(b)]

Appendix 3. List of Approved Sub-Contractors [refer GC 20.1]

Appendix 4. Categories of Software [refer GC Definition & Section IV Form]

Appendix 5. Custom Materials [refer GC Definition & Section IV Form]

Appendix 6. Revised Price Schedules (if any)

Appendix 7. Terms and Procedures for Payment [refer GC 12.1]

Appendix 8. Agreed and Finalized Project Plan [refer GC 19.1]

Appendix 9. List of Documents for Approval and Review [refer GC 21.3(a)]

Appendix 10. Functional Guarantees [refer GC 30.1]

Appendix 11. Insurance Requirements [refer GC 38.1]

Appendix 12. Price Adjustment [refer ITB GC 11.2]

Appendix 13. Software License Agreement [refer GC 16.3]

Appendix 14. Schedule of Requirements [refer GC 19.1]

Appendix 15. Minutes of Contract Finalization Discussions and Agreed-to Contract Amendments

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.

For and on behalf of the Employer

For and on behalf of the Contractor

Signed:

Signed:

in the capacity of [*: title or other appropriate designation*]

in the capacity of [*: title or other appropriate designation*]

in the presence of

in the presence of

CONTRACT AGREEMENT dated the [*: number*] day of [*: month*], [*: year*]

BETWEEN [*: name of Employer*], -the Employer

And

[*: name of Contractor*], -the Contractor

Appendix 1. Contractor’s Representative

In accordance with GCC Clause 1.1 (b) (iv), the Contractor’s Representative is:

Name: *[: name and provide title and address further below or state “to be nominated within fourteen (14) days of the Effective Date”]*

Title: *[if appropriate, : title]*

In accordance with GCC Clause 4.3, the Contractor's addresses for notices under the Contract are: Address of the

Contractor's Representative: *[as appropriate, : personal delivery, postal, cable, telegraph, telex, facsimile, electronic mail, and/or EDI addresses.]*

Fullback address of the Contractor: *[as appropriate, : personal delivery, postal, cable, telegraph, telex, facsimile, electronic mail, and/or EDI addresses.]*

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Appendix 2. Adjudicator

Specified in Particular Conditions 52

Appendix 3. List of Approved Sub-Contractors

Not Applicable

Appendix 4. Categories of Software

Not Applicable

Inspection Only

Appendix 6. Revised Price Schedules

The attached Revised Price Schedules (if any) shall form part of this Contract Agreement and, where differences exist, shall supersede the Price Schedules contained in the Contractor's Bid. These Revised Price Schedules reflect any corrections or adjustments to the Contractor's bid price, pursuant to the ITB Clauses 22.3, 34.4, and 42.1.1

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Appendix 7. Terms and Procedures for Payment

Subject to the provisions of GCC Clause 12 (Terms of Payment), the Employer shall pay the Contract Price to the Contractor according to the categories and in the manner specified below. The Currency of the Payment will be the currency indicated in the Price Schedule.

1. Advance Payment

| No | Deliverables | Duration | Payment/ Contract Price |
|----|--|----------|-------------------------|
| 1 | Advance Payment : Ten (10) percent of the Contract Price excluding Recurrent Cost will be made to the Contractor upon submission of Advance Payment Security in the form of a bank guarantee | | 5% |

Note : Above 10% Advance Payment shall be recovered from first five(5) Batches

2. Deliverable Payment

Payment will be made after the delivery of acceptance of the e passports as per the following schedule

| Batches of Delivery | Quantity | Delivery Date/ From Date of Commencement |
|---------------------|------------------|--|
| 1st | 500,000 | 8 months |
| 2nd | 1,000,000 | 10 months |
| 3rd | 500,000 | 15 Months |
| 4th | 500,000 | 20 Months |
| 5th | 500,000 | 30 Months |
| 6th | 500,000 | 36 months |
| 7th | 500,000 | 40 months |
| 8th | 500,000 | 50 Months |
| 9th | 500,000 | 60 Months |
| | 5,000,000 | |

If the Contractor fails to deliver any or all of the Goods or perform the Related Services within the period specified above, the Employer may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the amount specified in Particular Conditions (PC) Clause 28.2

Please refer Implementation Schedule in Section VI: Schedule of Requirements

If the Contractor fails to deliver any or all of the milestones and related Services within the period specified in the above table, the Employer may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages to each and every milestones, a sum equivalent to the amount indicated in the **Particular Conditions**.

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Appendix 8. Agreed and Finalized Project Plan

[Agreed and Finalized Plan to be inserted]

Inspection Only

Appendix 9. List of Documents for Approval and Review

Pursuant to GC Sub-Clause 21.3, the Contractor shall prepare, or cause its Sub-Contractor to prepare, and present to the Project Manager the following documents for:

Stipulated in Clause 6 Review Committees and Review Procedures Section VI: Schedule of Requirements

Inspection Only

Appendix 10. Functional Guarantees

1. General

This Appendix sets out

- (a) the functional guarantees referred to in GC Clause 30 (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 Functional Guarantees

Subject to compliance with the foregoing preconditions, the Contractor guarantees as follows:

Production Capacity

Bidder must have production capacity to manufacture e-passports as per the following delivery schedule.

| Batches of Delivery | Quantity | Delivery Date/ From Date of Commencement |
|---------------------|------------------|--|
| 1st | 500,000 | 8 months |
| 2nd | 1,000,000 | 10 months |
| 3rd | 500,000 | 15 Months |
| 4th | 500,000 | 20 Months |
| 5th | 500,000 | 30 Months |
| 6th | 500,000 | 36 months |
| 7th | 500,000 | 40 months |
| 8th | 500,000 | 50 Months |
| 9th | 500,000 | 60 Months |
| Total | 5,000,000 | Within 5 years |

and

3 Raw Materials and Utilities Consumption

Bidder must ensure that the availability of Raw Materials and Utilities for production 5 million e-passports.

Appendix 11. Insurance Requirements

Insurances to be taken out by the Contractor

In accordance with the provisions of GC Clause 38.1, 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 Contractor’s or manufacturer’s works or stores until arrival at the Site, to the Facilities (including spare parts there for) and to the construction equipment to be provided by the Contractor or its Sub-Contractors.

| <u>Amount</u> | <u>Deductible limits</u> | <u>Parties insured</u> | <u>From</u> | <u>To</u> |
|------------------------------|--------------------------|------------------------|----------------|----------------|
| <i>a. [in currency(ies)]</i> | | <i>[names]</i> | <i>[place]</i> | <i>[place]</i> |

(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> |
|------------------------------|--------------------------|------------------------|----------------|----------------|
| <i>a. [in currency(ies)]</i> | | <i>[names]</i> | <i>[place]</i> | <i>[place]</i> |

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Sub-Contractors (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.

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 38.1, except for the Third Party Liability, Workers’ Compensation and Employer’s Liability Insurances, and the Contractor’s Sub-Contractors shall be named as co-insured’s under all insurance policies taken out by the Contractor pursuant to GC Sub-Clause 38.1, except for the Cargo, 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.

Appendix 12. Price Adjustment

Not Applicable

Inspection Only

Appendix 13. Software License Agreement

Not Applicable

Inspection Only

Appendix 14. Schedule of Requirements

[SOR to be attached or inserted]

Inspection Only

Appendix 15. Minutes of Contract Finalization Discussions and Agreed Contract Amendments

The attached Contract amendments (if any) shall form part of this Contract Agreement and, where differences exist, shall supersede the relevant clauses in the GC, PC, Schedule of Requirements, or other parts of this Contract as defined in GCC Clause 1.1.

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2 Performance and Advance Payment Security Forms

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2.1 Letter of Acceptance

Employer: *[insert the name of the Employer]*

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

IFB No: *[insert IFB reference number]*

Date: *[insert Date]*

To: *[insert Name of Bidder]*

This is to notify you that your Bid dated *[insert Date]* for execution of the *[insert brief description of the Information System]* for the Contract Price in the aggregate of *[insert amount in figures]* (*[insert amount in words]*), as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 14 days in accordance with the Conditions of Contract, using the Performance Security Form, included in Section IX, - Contract Forms, of the Bidding Document.

Authorized Signature: _____

Name and Title of Signatory: *[insert Name and Title]*

Name of Agency: *[insert Employer Name]*

Attachment: Contract Agreement

2.2 Performance Security Form (Bank Guarantee)

[Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: *[Name and Address of Employer]*

Date: *[date]*

PERFORMANCE GUARANTEE No.: *[Performance Guarantee Number]*

We have been informed that on *[date of award]* you awarded Contract No. *[Contract number]* for *[title and/or brief description of the Contract]* (hereinafter called "the Contract") to *[complete name of Contractor]* (hereinafter called "the Contractor"). Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we hereby irrevocably undertake to pay you any sum(s) not exceeding *[amount(s)2 in figures and words]* upon receipt by us of your first demand in writing declaring the Contractor to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

On the date of your issuing, to the Contractor, the Operational Acceptance Certificate for the IT Software, Products and/or Services, the value of this guarantee will be reduced to any sum(s) not exceeding *[amount(s)2 in figures and words]*. This remaining guarantee shall expire no later than *[number and select: of months/of years (of the Warranty Period that needs to be covered by the remaining guarantee)]* from the date of the

Operational Acceptance Certificate for the IT Software, Products and/or Services,³ and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, except that subparagraph (ii) of Sub-article 20 (a) is hereby excluded.

[Signature(s)]

² *The Bank shall insert the amount(s) specified and denominated in the PC for GC Clauses 13.3(a) and 13.3(d) respectively, either in the currency (ies) of the Contract or a freely convertible currency acceptable to the Employer.*

³ *In this sample form, the formulation of this paragraph reflects the usual PC provisions for GC Clause 13.3. However, if the PC for GCC Clauses 13.3(a) and 13.3(d) varies from the usual provisions, this paragraph, and possibly the previous paragraph, need to be adjusted to precisely reflect the provisions specified in the PC.*

2.3 Advance Payment Security Form (Bank Guarantee)

[Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: *[Name and Address of Employer]*

Date: *[date]*

ADVANCE PAYMENT GUARANTEE No.: *[Advance Payment Guarantee Number]*

We have been informed that on *[date of award]* you awarded Contract No. *[Contract number]* for *[title and/or brief description of the Contract]* (hereinafter called "the Contract") to *[complete name of Contractor]* (hereinafter called "the Contractor").
Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of *[amount in numbers and words, for each currency of the advance payment]* is to be made to the Contractor against an advance payment guarantee.

At the request of the Contractor, we hereby irrevocably undertake to pay you any sum or sums not exceeding in total the amount of the advance payment referred to above, upon receipt by us of your first demand in writing declaring that the Contractor is in breach of its obligations under the Contract because the Contractor used the advance payment for purposes other than toward the proper execution of the Contract.

It is a condition for any claim and payment to be made under this guarantee that the advance payment referred to above must have been received by the Contractor on its account *[number and domicile of the account]*.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

[Signature(s)]

3.2 Operational Acceptance Certificate

Date: [date]

IFB No: PS/03/PB/PR/05/28/23

Contract: Procurement of Supply of Five (5) Million e-Passports to the Department of Immigration and Emigration (DIE)-Sri Lanka

To: [name and address of Contractor]

Dear Sir or Madam:

Pursuant to GCC Clause 27 (Commissioning and Operational Acceptance) of the Contract entered into between yourselves and the [name of Employer] (hereinafter the “Employer”) dated [date of Contract], relating to the [brief description of the Information Technology Software, Products and/or Services], we hereby notify you the IT Software, Products and/or Services (or the Subsystem or major component identified below) successfully completed the Operational Acceptance Tests specified in the Contract. In accordance with the terms of the Contract, the Employer hereby takes over the IT Software, Products and/or Services (or the Subsystem or major component identified below), together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

1. Description of the IT Software, Products and/or Services (or Subsystem or major component): [description]
2. Date of Operational Acceptance: [date]

This letter shall not relieve you of your remaining performance obligations under the Contract nor of your obligations during the Warranty Period.

For and on behalf of the Employer

Signed:

Date:

in the capacity of: [state: “Project Manager” or higher level authority in the Employer's organization]