



The African Development Bank Group
Open Competitive Bidding for the
Supply and installation of a Solar PV Energy Project for the Bank's
Regional Office in Pretoria -South Africa
REF: **ADB/ITB/TCGS/2023/0248**

African Development Bank

INVITATION TO BID

Tender REF: ADB/ITB/TCGS/2023/0248

**Supply and Installation of a Solar PV Energy
Project for the African Development Bank's
Regional Office in Pretoria – South Africa**

October, 2023

Corporate Procurement Division

Bidding Document

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PART 1 – Bidding Procedures

Section I. Instructions to Bidders

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Section I. Instructions to Bidders

A. General

- 1. Scope of Bid**
 - 1.1 The Bank indicated in Section II, **Bid Data Sheet (BDS)** issues this Bidding Document for the procurement of Works, as specified in Section VI, Requirements. The name, identification, and number of lots are provided in the **BDS**.
 - 1.2 Unless otherwise stated, throughout this Bidding Document definitions and interpretations shall be as prescribed in Section VII, **General Conditions**.
- 2. Source of Funds**
 - 2.1 The Bank has set aside funds toward the cost of the project named in the **BDS**. The Bank intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding Document is issued.
- 3. Fraud and Corruption**
 - 3.1 It is the Bank's policy to require bidders, suppliers, and contractors, and their subcontractors, to observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy¹, the Bank:
 - (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "Corrupt Practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - (ii) "Fraudulent Practice" any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
 - (iii) "Collusive Practice" is an arrangement between two or more parties, designed to achieve an improper purpose, including to influence improperly the actions of another party; and
 - (iv) "Coercive Practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (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 in question;
 - (d) will sanction a firm or individual, including declaring such firm or individual ineligible to bid for, or to be awarded Bank-financed contracts either indefinitely or for a stated period of time, if it at any time determines that the firm or individual has,

¹ See the Bank's "Rules and Procedures for Whistleblowing and Complaints Handling in the Bank"; and the "Guidelines for Preventing & Combating Corruption & Fraud in Bank Group Operations"

directly or through an agent, engaged in Corrupt, Fraudulent, Collusive, or Coercive Practices in competing for, or in executing, a Bank-financed contract;

- 3.2 Furthermore, Bidders shall be aware of the provisions stated in Section VII, **General Conditions**.

4. Eligible Bidders

- 4.1 A Bidder may be a natural person, private entity, government-owned entity—subject to **ITB 4.5**—or any combination of such entities supported by a letter of intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association (JVCA). In the case of a joint venture, consortium, or association:

- (a) unless otherwise specified in the **BDS**, all partners shall be jointly and severally liable, and
- (b) the JVCA shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the partners of the JVCA during the bidding process and, in the event the JVCA is awarded the Contract, during contract execution.

- 4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of an eligible country, in accordance with the Bank's **Rules and Procedures for Procurement of Goods and Works**, and as listed in Section V, Eligible Countries.² A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen 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 subcontractors or suppliers for any part of the Contract including Related Services.

- 4.3 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

- (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 Bank regarding this bidding process; or
- (e) a Bidder participates in more than one bid under the same lot in this bidding process. Participation by a Bidder in more than one Bid under the same lot will result in the disqualification of all Bids in which it is involved. However, this does not limit the inclusion of the same subcontractor, not otherwise participating as a Bidder, in more than one bid; or

² Including eligibility criteria for participation in the supply of goods, works and related services.

- (f) a Bidder participated as a consultant in the preparation of Section VI, Requirements that are the subject of the bid.
 - (g) a Bidder or any of its affiliates has been hired, or is proposed to be hired, by the Bank or the Borrower for the supervision of the contract.
 - (h) a Bidder has been evaluated as having provided unsatisfactory performance under a previous contract with the Bank within the last 3 years.
- 4.4 A Bidder that is under a declaration of ineligibility by the Bank in accordance with **ITB** Clause 3, at the date of the deadline for bid submission or thereafter, shall be disqualified.
- 4.5 Government-owned entities in the Borrower's country shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under the principles of commercial law, and (iii) are not dependent agencies of the Bank or the Borrower.
- 4.6 Bidders shall not be under execution of a Bid-Securing Declaration in the Bank's Country.
- 4.7 Bidders shall provide such evidence of their continued eligibility satisfactory to the Bank, as the Bank shall reasonably request.
- 4.8 Firms from an eligible country shall be excluded if:
- (a) as a matter of law or official regulation, the Bidder's country prohibits commercial relations with that country; or
 - (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Bidder's country prohibits any import of Goods from that country or any payments to persons or entities in that country.
- 4.9 In case a prequalification process has been conducted prior to the bidding process, this bidding is open only to prequalified Bidders.

5. Eligible Goods and Related Services

- 5.1 All Goods and Related Services to be supplied under the Contract and financed by the Bank, shall have as their country of origin an eligible country of the Bank in accordance with the Bank's **Rules and Procedures for Procurement of Goods and Works**, as listed in Section V, Eligible Countries.
- 5.2 For purposes of this Clause, the term "Goods" includes commodities, raw material, machinery, equipment, and industrial plants; and "Related Services" includes services such as insurance, transportation, installation, and commissioning, training, and initial maintenance.
- 5.3 The term "country of origin" means the country where the Goods have been mined, grown, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components.

- 5.4 The nationality of the firm that produces, assembles, distributes, or sells the Goods shall not determine their origin.

5.5

B. Contents of Bidding Document

6. Sections of Bidding Document

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

PART 1 Bidding Procedures

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

PART 2 Bank's Requirements

- Section VI. Requirements

PART 3 Conditions of Contract and Contract Forms

- Section VII. General Conditions (**GC**)
- Section VIII. Particular Conditions (**PC**)
- Section IX. Contract Forms

- 6.2 The Invitation for Bids issued by the Bank is not part of the Bidding Document.
- 6.3 The Bidder shall obtain the Bidding Document from the source stated by the Bank in the Invitation for Bids; otherwise the Bank is not responsible for the completeness of the Bidding Document.
- 6.4 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.

7. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting

- 7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Bank in writing at the Bank's address indicated in the **BDS** or raise his enquiries during the pre-bid meeting if provided for in accordance with **ITB 7.4**. The Bank will respond to any request for clarification, provided that such request is received prior to the deadline for submission of bids, within the number of days specified in the **BDS**. The Bank response shall be in writing with copies to all Bidders who have acquired the Bidding Document in accordance with **ITB 6.3**, including a description of the inquiry but without identifying its source. Should the Bank deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under **ITB 8** and **ITB 22.2**.
- 7.2 Where applicable, the Bidder is advised to visit and examine the project site 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 the Requirements. The costs of visiting the site shall be at the Bidder's own expense.

- 7.3 Pursuant to **ITB** 7.2, where the Bidder and any of its personnel or agents have been granted permission by the Bank to enter upon its premises and lands for the purpose of such visit, the Bidder, its personnel, and agents will release and indemnify the Bank 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 visit.
- 7.4 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. If so provided for in the **BDS**, the Bank will organize a site visit.
- 7.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Bank not later than one week before the meeting.
- 7.6 Minutes of the pre-bid meeting, including the text of the questions raised without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with **ITB** 6.3. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by the Bank exclusively through the issue of an Addendum pursuant to **ITB** 8 and not through the minutes of the pre-bid meeting.
- 7.7 Non-attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

8. Amendment of Bidding Document

- 8.1 At any time prior to the deadline for submission of bids, the Bank may amend the Bidding Document by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Bank in accordance with **ITB** 6.3.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Bank may, at its discretion, extend the deadline for the submission of bids, pursuant to **ITB** 22.2

C. Preparation of Bids

9. Cost of Bidding

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

10. Language of Bid

- 10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Bank, shall be written in the language specified in the **BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the

relevant passages in that language, in which case, for purposes of interpretation of the Bid, such translation shall govern.

11. Documents Comprising the Bid

11.1 The Bid shall comprise the following:

- (a) Letter of Bid
- (b) Completed Schedules as provided in Section IV, Bidding Forms;
- (c) Bid Security or Bid-Securing Declaration, in accordance with **ITB 19**;
- (d) at the Bidder's option, alternative proposals, if permissible, in accordance with **ITB 13**;
- (e) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with **ITB 20.2**;
- (f) documentary evidence establishing the eligibility of the Goods and Related Services offered by the Bidder, in accordance with **ITB 17.1**;
- (g) documentary evidence establishing the Bidder's qualifications in accordance with the requirements of Section III, Evaluation and Qualification Criteria, using the relevant forms furnished in Section IV, Bidding Forms;
- (h) documentary evidence as specified in the **BDS**, establishing the conformity of the Technical Proposal offered by the Bidder with the Bidding Document, using the relevant forms furnished in Section IV, Bidding Forms;
- (i) in the case of a bid submitted by a JVCA, JVCA agreement, or letter of intent to enter into a JVCA including a draft agreement, indicating at least the parts of the Requirements to be executed by the respective partners;
- (j) any other document required in the **BDS**.

12. Letter of Bid and Price Schedules

12.1 The Bidder shall submit the Letter of Bid using the form furnished in Section IV, Bidding Forms. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

13. Alternative Bids

13.1 Unless otherwise indicated in the **BDS**, alternative proposals shall not be considered. If alternative proposals are permitted, their method of evaluation shall be as stipulated in Section III, Evaluation and Qualification Criteria.

13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the **BDS**, as well as the method of evaluating different times for completion.

13.3 Except as provided under **ITB 13.4** below, Bidders wishing to offer technical alternatives to the requirements of the bidding document must first price the Bank's requirements as described in the bidding document and shall further provide all information necessary for a complete evaluation of the alternative by the Bank, including drawings, design calculations, technical specifications, breakdown of

prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Bank.

- 13.4 When specified in the **BDS**, Bidders are permitted to submit alternative technical solutions for specified parts of the requirements, and such parts shall be identified in the **BDS**, as will the method for their evaluation, and described in Section VI, Requirements.

**14. Bid Prices
and
Discounts**

- 14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Price Schedules shall conform to the requirements specified in **ITB 14.2**.
- 14.2 Unless otherwise provided in the **BDS** and the **General Conditions (GC)**, the prices quoted by the Bidder shall be fixed.
- 14.3 The Bidder shall submit a bid for the whole of the works described in **ITB 1.1** by filling in prices for all items of the Works, as identified in Section IV, Bidding Forms. In case of admeasurement contracts, the Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the Bank when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.
- 14.4 The price to be quoted in the Letter of Bid shall be the total price of the Bid, excluding any discounts offered.
- 14.5 Unconditional discounts, if any, and the methodology for their application shall be quoted in the Letter of Bid, in accordance with **ITB 12.1**.
- 14.6 If, pursuant to **ITB 14.2**, prices are adjustable, the Bidder shall furnish the indices and weightings for the price adjustment formula in the Schedule of Adjustment Data in Section IV (Bidding Forms) and the Bank may require the Bidder to justify its proposed indices and weightings.
- 14.7 If so indicated in **ITB 1.1**, bids are invited for individual contracts or for any combination of contracts (packages). Bidders wishing to offer any price reduction for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance with **ITB 14.5**, provided the bids for all contracts are submitted and opened at the same time.
- 14.8 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total bid price submitted by the Bidder.

**15. Currencies
of Bid and
Payment**

- 15.1 The currency(ies) of the bid and the currency(ies) for payment shall be as specified in the **BDS**.

- 16. Documents Establishing the Qualifications of the Bidder**
- 16.1 To establish its qualifications to perform the Contract in accordance with Section III, Evaluation and Qualification Criteria, the Bidder shall provide the information requested in Section IV, Bidding Forms.
- 16.2 Bidders, individually or in joint ventures, applying for eligibility for margin of preference, if such margin applies pursuant to **ITB** 31.2, shall supply all information required to satisfy the criteria for eligibility as described in **ITB** 31.2.
- 17. Documents Establishing the Eligibility of the Goods and Related Services**
- 17.1 To establish the eligibility of the Goods and Related Services in accordance with **ITB** Clause 5, Bidders shall complete the forms, included in Section IV, Bidding Forms.
- 18. Period of Validity of Bids**
- 18.1 Bids shall remain valid for the period specified in the **BDS** after the bid submission deadline date prescribed by the Bank. A bid valid for a shorter period shall be rejected by the Bank as non-responsive.
- 18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Bank 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** 19, the Bidder granting the request shall also extend the bid security for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in **ITB** 18.3.
- 18.3 In the case of fixed price contracts, if the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial bid validity, the Contract price shall be adjusted as specified in the request for extension. Bid evaluation shall be based on the Bid Price without taking into consideration the above correction.
- 19. Bid Security**
- 19.1 The Bidder shall furnish as part of its bid, at the option of the Bank, and as stipulated in the **BDS**, the original of either a Bid-Securing Declaration or a bid security using the relevant form included in Section IV, Bidding Forms. In the case of a bid security, the bid security amount and currency shall be as specified in the **BDS**.
- 19.2 A Bid-Securing Declaration shall use the form included in Section IV, Bidding Forms.
- 19.3 If a bid security is specified pursuant to **ITB** 19.1, the bid security shall be a demand guarantee in any of the following forms at the Bidder's option:
- (a) an unconditional guarantee issued by a bank or surety;
 - (b) an irrevocable letter of credit; or

(c) a cashier's or certified check;

from a reputable source from an eligible country. If the unconditional guarantee is issued by an insurance company or a bonding company located outside the Bank's Country, the issuer shall have a correspondent financial institution located in the Bank's Country to make it enforceable. In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms or in another substantially similar format approved by the Bank 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 18.2**.

19.4 Pursuant to the option stipulated at **ITB 19.1**, any bid not accompanied by a substantially responsive bid security or Bid-Securing Declaration shall be rejected by the Bank as non-responsive.

19.5 If a bid security is specified pursuant to **ITB 19.1**, the bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to **ITB 38**.

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

19.7 The bid security may be forfeited, or the Bid-Securing Declaration executed:

- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder in the Letter of Bid or
- (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with **ITB 37**; or
 - (ii) furnish a performance security in accordance with **ITB 38**.

19.8 The Bid Security or the Bid Securing Declaration of a JVCA shall be in the name of the JVCA that submits the bid. If the JVCA has not been legally constituted into a legally enforceable JVCA at the time of bidding, the Bid Security or the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent referred to in **ITB 4.1**.

19.9 If a Bid-Securing Declaration is executed in accordance with **ITB 19.7**, the Bank will declare the Bidder ineligible to be awarded a contract by the Bank for the period of time stated in the Form of Bid-Securing Declaration.

20. Format and Signing of Bid

20.1 The Bidder shall prepare one original of the documents comprising the bid as described in **ITB 11** 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.

- 20.2 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 bid where entries have been made shall be signed or initialled by the person signing the bid.
- 20.3 A bid submitted by a JVCA shall comply with the following requirements:
- (a) Unless not required in accordance with **ITB** 4.1 (a), be signed so as to be legally binding on all partners and
 - (b) Include the Representative's authorization referred to in **ITB** 4.1 (b), consisting of a power of attorney signed by those legally authorized to sign on behalf of the JVCA.
- 20.4 Any amendments, interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the bid.

D. Submission and Opening of Bids

21. Submission, Sealing and Marking of Bids

- 21.1 Bidders may always submit their bids by mail or by hand. If 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 copies of the Bid in separate sealed envelopes. If so permitted in accordance with **ITB** 13, alternative proposals, and copies thereof, shall also be placed in separate envelopes. The envelopes shall be duly marked as "ORIGINAL," "ALTERNATIVE," "ORIGINAL COPY," and "ALTERNATIVE COPY" These envelopes shall then be enclosed in one single package. The rest of the procedure shall be in accordance with **ITB** 21.2 and 21.3.
 - (b) Bidders submitting bids electronically shall follow the electronic bid submission procedures specified in the **BDS**.
- 21.2 The inner and outer envelopes shall:
- (a) bear the name and address of the Bidder;
 - (b) be addressed to the Bank in accordance with **ITB** 22.1;
 - (c) bear the specific identification of this bidding process pursuant to **ITB** 1.1; and
 - (d) bear a warning not to open before the time and date for bid opening
- 21.3 If envelopes and packages are not sealed and marked as required, the Bank will assume no responsibility for the misplacement or premature opening of the bid.

- 22. Deadline for Submission of Bids**
- 22.1 Bids must be received by the Bank at the address and no later than the date and time indicated in the **BDS**.
- 22.2 The Bank may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document in accordance with **ITB 8**, in which case all rights and obligations of the Bank and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 23. Late Bids**
- 23.1 The Bank shall not consider any bid that arrives after the deadline for submission of bids, in accordance with **ITB 22**. Any bid received by the Bank after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.
- 24. Withdrawal, Substitution, and Modification of Bids**
- 24.1 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 20.2.**, (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 20** and **ITB 21** (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 Bank prior to the deadline prescribed for submission of bids, in accordance with **ITB 22**.
- 24.2 Bids requested to be withdrawn in accordance with **ITB 24.1** shall be returned unopened to the Bidders.
- 24.3 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.
- 25. Bid Opening**
- 25.1 The Bank shall conduct the bid opening as soon as possible after the deadline for submission. The record of the bid opening shall be made available as soon as possible on the Bank’s website. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with **ITB 21.1**, shall be as specified in the **BDS**.
- 25.2 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 and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked “Modification” shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization

to request the modification and is read out at bid opening. Only bids that are opened and read out at bid opening shall be considered further.

25.3 The Bank shall open all other envelopes one at a time and read out: the name of the Bidder, the Bid Price(s), any discounts and their application methodology, alternative bids, the presence or absence of a bid security or Bid-Securing Declaration; and any other details as the Bank may consider appropriate. Only discounts and alternative bids read out at bid opening shall be considered for evaluation. No bid shall be rejected at bid opening except for late bids, in accordance with **ITB 23.1**.

25.4 The Bank shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot if applicable, including any discounts and alternative proposals; and the presence or absence of a bid security or a Bid-Securing Declaration. 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, and posted online when electronic bidding is permitted.

E. Examination of Bids

- | | |
|--|---|
| 26. Confidentiality | <p>26.1 Information relating to the evaluation of bids shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.</p> <p>26.2 Any attempt by a Bidder to influence improperly the Bank in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.</p> <p>26.3 Notwithstanding ITB 26.1, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Bank on any matter related to the bidding process, it should do so in writing.</p> |
| 27. Clarification of Bids | <p>27.1 To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Bank may, at its discretion, ask any Bidder for a clarification of its bid, allowing a reasonable time for response. Any clarification submitted by a Bidder that is not in response to a request by the Bank shall not be considered. The Bank's request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Bank in the evaluation of the bids, in accordance with ITB 29.</p> <p>27.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Bank's request for clarification, its bid may be rejected.</p> |
| 28. Determination of Responsiveness | <p>28.1 The Bank's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB 11.</p> |

- 28.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission.
- (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.
- 28.3 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 Schedule of Requirements as specified in Section VI; or
 - (ii) limit in any substantial way, inconsistent with the Bidding Document, the Bank’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.
- 28.4 The Bank shall examine the technical aspects of the bid in particular, to confirm that all requirements of Section VI have been met without any material deviation, reservation, or omission.
- 28.5 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Bank and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 28.6 Provided that a bid is substantially responsive, the Bank may waive any quantifiable nonconformity in the bid that does not constitute a material deviation, reservation or omission.
- 28.7 Provided that a bid is substantially responsive, the Bank 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.
- 28.8 Provided that a bid is substantially responsive, the Bank 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 the non-conforming item or component. The adjustment shall be made using the methodology indicated in Section III, Evaluation and Qualification Criteria.

F. Bid Evaluation and Comparison

- | | |
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| 29. Correction of Arithmetical Errors | <p>29.1 The Bank shall use the criteria and methodologies indicated in Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted</p> <p>29.2 Provided that the bid is substantially responsive, the Bank shall correct arithmetical errors as indicated in Section III, Evaluation and Qualification Criteria</p> <p>29.3 If a Bidder does not accept the correction of errors, its bid shall be declared non-responsive and its Bid Security shall be forfeited or the Bid-Securing Declaration executed.</p> |
| 30. Conversion to Single Currency | <p>30.1 For evaluation and comparison purposes, the currency(ies) of the bid shall be converted into a single currency as specified in Section III, Evaluation and Qualification Criteria.</p> |
| 31. Bid Adjustments | <p>31.1 For evaluation and comparison purposes the Bank shall adjust the bid prices using the criteria and methodology specified in Section III, Evaluation and Qualification Criteria.</p> <p>31.2 Unless otherwise specified in the BDS, no margin of domestic or regional preference shall apply. If a margin of preference applies, the application methodology shall be as specified in Section III, Evaluation and Qualification Criteria, and in accordance with the provisions stipulated in the Bank's Rules and Procedures for Procurement of Goods and Works.</p> <p>31.3 If in the opinion of the Bank the bid which results in the lowest Evaluated Bid, is seriously unbalanced or front loaded or substantially below the Bank's estimates, the Bank may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Bank may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Bank against financial loss in the event of default of the successful Bidder under the Contract.</p> |
| 32. Qualification of the Bidder | <p>32.1 The Bank shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.</p> <p>32.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 16.</p> <p>32.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Bank shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.</p> |

32.4 The capabilities of the manufacturers and subcontractors proposed in its Bid to be used by the lowest evaluated Bidder for identified major items of the Requirements will also be evaluated for acceptability in accordance with the criteria and methodologies defined in Section III, Evaluation and Qualification Criteria. Their participation should be confirmed with a letter of intent between the parties, as needed. Should a manufacturer or subcontractor be determined to be unacceptable, the Bid will not be rejected, but the Bidder will be required to substitute an acceptable manufacturer or subcontractor without any change to the bid price.

- 33. Comparison of Bid** 33.1 Subject to **ITB** 29, 30 and 31, the Bank shall compare all substantially responsive bids to determine the lowest evaluated bid.
- 34. Bank's Right to Accept Any Bid, and to Reject Any or All Bids** 34.1 The Bank reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.
- 34.2 The Bank reserves the right to increase or decrease the volume of goods or services, usually not to exceed 20%, without any change in unit price or other terms and conditions.
- 34.3 **Best and Final Offer** – Following technical and financial evaluation of complaint bids, the Bank may decide to obtain Best and Final Offers from bidders. The Bank may use e-auction for this process.

G. Award of Contract

- 35. Award Criteria** 35.1 Subject to **ITB** 34.1, the Bank shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.
- 36. Notification of Award** 36.1 Prior to the expiration of the period of bid validity, the Bank 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") shall specify the sum that the Bank will pay the Contractor in consideration of the execution and completion of the Works (hereinafter and in the Contract Forms called "the Contract Price").
- 36.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 36.3 At the same time, the Bank shall also notify all other Bidders of the results of the bidding process, the results identifying the bid and lot numbers. The Bank shall promptly respond in writing to any unsuccessful Bidder who, after Publication of contract award, requests a debriefing.
- 36.4 **Debriefing:** Unsuccessful bidders have the right to be debriefed upon request to the Bank within seven (7) days from the date of the letter of notification.

- 37. Signing of Contract**
- 37.1 Promptly upon notification, the Bank shall send the successful Bidder the Contract Agreement.
- 37.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Bank.
- 37.3 Upon the successful Bidder's furnishing of the signed Contract Agreement and Performance Security pursuant to **ITB 38**, the Bank will discharge its Bid Security, pursuant to **ITB 19**.
- 37.4 Notwithstanding **ITB 37.2** above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Bank, to the country of the Bank, or to the use of the products/goods, systems or services to be supplied, where such export restrictions arise from trade regulations from a country supplying those products/goods, systems or services, the Bidder shall not be bound by its bid, always provided, however, that the Bidder can demonstrate to the satisfaction of the Bank and of the Bank that signing of the Contract Agreement has not been prevented by any lack of diligence on the part of the Bidder in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract Agreement.
- 38. Performance Security**
- 38.1 Within twenty-eight (28) days of the receipt of notification of award from the Bank, the successful Bidder shall furnish the performance security in accordance with the conditions of contract, subject to **ITB 31.3**, using for that purpose the Performance Security Form included in Section IX, Contract Forms, or another form acceptable to the Bank. If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Bank. A foreign institution providing a bond shall have a correspondent financial institution located in the Bank's Country.
- 38.2 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 Bank may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Bank to be qualified to perform the Contract satisfactorily
- 39. Advance Payment**
- 39.1 If provided in the **ITB**, the Bank shall provide advance payment to the successful bidder, subject to a maximum amount not to exceed 30% of the contract sum. The advance payment request shall be accompanied by an advance payment guarantee from an insurance company or bank located in a member country of the Bank and acceptable to the Bank. The advance payment guarantee shall be in the form specified in the **ITB**.
- 39.2 For the purpose of receiving the advance payment, the bidder shall make an estimate of, and include in its proposal, the expenses that will be incurred during the first month beginning with the date of the Bank's notice to proceed or contract signature, whichever is earliest.

39.3 The advance payment shall be repaid to the Bank by deducting proportionate amounts from payments due to the bidder as set out in the General and Specific Conditions.

39.4 The advance payment guarantee shall be returned to the bidder as set out in the General and Specific Conditions.

**40. Defects
Liability
Period and
Retention
Fee**

If provided in the **ITB**, the Bank shall retain 5 % of the contract sum until the end of the defects liability period. This is the pre-determined period after practical completion of the project when the successful bidder is responsible for making good any faults which appear and which are due to defective materials or work. The defects liability period is set out in the General and Specific Conditions. The Bank shall pay the successful bidder the retention fee as set out in the **ITB**.

Section II. Bid Data Sheet

A. General	
ITB 1.1	<p>The name of the bidding process is: Supply and installation of a Solar PV Energy Project for the African Development Bank's Regional Office in Pretoria – South Africa.</p> <p>The identification number of the bidding process is: ADB/ITB/TCGS/2023/0248</p> <p>The Purchaser is: The African Development Bank (The Bank)</p>
ITB 4.1(a)	The individuals or firms in a joint venture (JVCA), consortium or association shall be jointly and severally liable for the performance of any resulting contract. A JVCA shall comprise of no more than four (4) partners.
ITB 4.4	<p>The list of debarred companies is available at the following link: http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-related-Procurement/List%20of%20Debarred%20Entities.pdf </p>
B. Contents of Bidding Document	
ITB 7.1	<p>For <u>clarification purposes</u> only, requests should be sent in writing by electronic mail: tender@afdb.org</p> <p>Requests for clarifications should be received by the Bank <u>no later</u> than <u>October 17, 2023</u>. No request will be accepted or responded to after this deadline.</p>
ITB 7.4	<p>A Mandatory Site Visit and a Pre-Bid meeting will take place, it will be at the following date, time and place:</p> <p>Date: 12 ,October 2023 Time: 10.00AM (South African local time)</p> <p>The meeting will be held in the Rain Forrest Boardroom situated at: Block B - African Development Bank (AfDB) 339 Witch-Hazel Avenue Highveld, Eco Park One Centurion, Gauteng, 0157 Tel: +27 12 003 6900</p>
C. Preparation of Bids	
ITB 10.1	<p>The language of the bid is: English.</p> <p>This language will govern the contractual /legal relationship between the Bank and the Contractor. However, considering the bilingual nature of the Bank (French and English), offers written in French can be accepted</p>

ITB 11.1 (h)	<p>The Bidder must provide the following Documentary Evidence to establish the conformity of the Technical Proposal with the Bidding Document:</p> <ul style="list-style-type: none"> • Letter of Bid • A USB flash drive including the Bill of Quantities/Schedules of Prices • Manufactures' guarantee of the suggested equipment and/or installations • Site Organization • Schedule of the execution of the works • Method Statement • Notice and technical instructions of the proposed products, equipment and technical facilities; • Certifications, technical guidance, and results of analysis/testing of the products and equipment proposed
ITB 13.1	<u>Alternative bids are not permitted.</u>
ITB 13.2	Alternatives to the Times for Completion are not permitted
ITB 13.4	Alternative technical solutions are not permitted.
ITB 14.2	<p>Prices shall be fixed. The Contract will be in a form of “a Lump-Sum Fixed Prices Contract”.</p>
ITB 14.6	The prices quoted by the Bidder shall not be subject to adjustment during the performance of the Contract.
ITB 15.1	<p>The currency of the bid and the payment currency (ies) shall be in ZAR</p> <p>(a) The unit rates and the prices shall be quoted by the Bidder in the Bill of Quantities, entirely in ZAR further referred to as “the local currency”. A Bidder expecting to incur expenditures in other currencies for inputs to the Requirements supplied from outside the Bank’s country (referred to as “the foreign currency (ies) requirements”) shall indicate, in the Summary of Payment Currencies, furnished in Section IV. Bidding Forms, the percentage(s) of the Bid Price (excluding Provisional Sums), needed by him for the payment of such foreign currency requirements, limited to no more than three foreign currencies of any eligible country.</p> <p>(b) The rates of exchange to be used by the Bidder in arriving at the local currency equivalent and the percentage(s) mentioned in (a) above shall be specified by the Bidder in the Summary of Payment Currencies, furnished in Section IV. Bidding Forms, shall apply for all payments under the Contract so that no exchange risk will be borne by the successful Bidder.</p> <p>(c) Bidders may be required by the Bank to justify, to the Bank’s satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Adjustment Data, furnished in Section IV. Bidding Forms, are reasonable, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.</p>
ITB 18.1	The bid validity period shall be: Minimum of 120 days after the deadline for submission of tenders.

ITB 19.1	The Bidder shall furnish a Bid-Securing Declaration The form to be used by the Bidders is included in Section IV, Bidding Forms. Any bid not accompanied by a substantially responsive bid security or Bid-Securing Declaration shall be rejected by the Bank as non-responsive
ITB 20.1	In addition to <u>the original</u> of the Bid, the <u>number of copies is: Four (4)</u>
ITB 20.2	The written confirmation of authorization to sign on behalf of the Bidder shall indicate: (a) The name and description of the documentation required to demonstrate the authority of the signatory to sign the Bid such as a Power of Attorney; and (b) In the case of Bids submitted by an existing or intended JVCA an undertaking signed by all parties (i) stating that all parties shall be jointly and severally liable, if so required in accordance with ITB 4.1(a) , 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 the JVCA during the bidding process and, in the event the JV is awarded the Contract, during contract execution.”
D. Submission and Opening of Bids	
ITB 21.1	Bidders <u>shall not</u> have the option of <u>submitting their bids electronically</u> .
ITB 22.1	For <u>bid submission purposes</u> only, the Bank’s address is : Attention: Corporate Procurement Block B - African Development Bank (ADB) 339 Witch-Hazel Avenue Highveld, Eco Park One Centurion, Gauteng, 0157 Republic of South Africa Tel: +27 12 003 6900 REF.: Supply and installation of a Solar PV Energy Project for the African Development Bank’s Regional Offices in Pretoria – South Africa Date: 25 October 2023 Time: 3.00 pm Hours (South African time)
ITB 25.1	Public Bid Opening : Not applicable However, the record of the bid opening shall be made available as soon as possible on the Bank’s website
F. Bid Evaluation and Comparison	
ITB 31.2	A margin of domestic or regional preference <u>shall not</u> apply.
	Deadline of Completion of the Project: The whole Construction Works shall be completed within six (06) months following receipt of the Letter of contract award.
ITB 35	Award Criteria: The Bank will evaluate the Bid as a single lot.

	the Bank shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily
ITB 38	<p>Performance security is required: YES</p> <p>The bidder shall furnish the performance security within ten (10) days from the date of the notice to proceed or contract signature whichever is the earliest and, in the amount, representing 10% of the total amount of the contract.</p> <p>The performance security shall be in the form of bank guarantee, the format shall be in accordance with the form of performance security in Annex IV.</p>
ITB 39	<p>Advance payment will be provided to the successful bidder: YES, in case requested by the successful bidder.</p> <p>Payment will be made as set out in the General and Specific Conditions.</p> <p>The successful bidder will be required to provide advance payment guarantee in the format set out in Annex IV.</p>
ITB 40	<p>Defects Liability Period and Retention Fee : The Bank shall retain 5% of the contract sum until the end of the defects liability period: NO</p> <p>The amount will be returned to the bidder as set out in the General and Specific Conditions.</p>

Section III. Evaluation and Qualification Criteria

This Section contains all the criteria that the Bank shall use to evaluate bids and qualify Bidders. In accordance with **ITB 28** and **ITB 32**, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

1. Evaluation Criteria and Methodology

1.1 Alternative Proposal (NA)

Technical Alternative [NA]

Alternative Time for Completion [NA]

1.2 Correction of Arithmetical Errors (In accordance with ITB 29.1)

- (a) Where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the former shall prevail, and the latter will be corrected accordingly
- (b) If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the

opinion of the Bank there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;

- (c) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail, and the total shall be corrected; and
- (d) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

1.3 **Conversion to a Single Currency (In accordance with ITB 30)**

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: **Unit Account**

The source of exchange rate shall be: **African Development Currency Exchange rate.**

The date for the exchange rate shall be: The deadline of bid submission

1.4 **Discounts (In accordance with ITB 14.5)**

The Bank will adjust the Bid Price, using the methodology prescribed by the Bidder in its Letter of Bid, to take account of the Discounts offered by the Bidder in its Letter of Bid, as read out at the Bid Opening.

1.5 **Quantifiable Nonmaterial Nonconformities (NA)**

The adjustment shall be made using the following methodology: (NA)

1.6 **Margin of Domestic or Regional Preference (NA)**

1.7 **Any other Criteria or Methodology: (NA)**

2. Qualification Criteria

N.B.: This SBD for Procurement of Works assumes that no Prequalification has taken place before bidding.

2	Qualification (Without Prequalification)
2.1	Eligibility (TABLE)
2.2	Historical Contract Non-Performance (TABLE)
2.3	Financial Situation (TABLE)
2.4	Experience (TABLE)
2.5	Personnel (TABLE)
2.6	Equipment (TABLE)

2. Qualification Tables (Without Prequalification)

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

Factor	2.2 Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.2.1 History of non-performing contracts	Non-performance of a contract did not occur within the last three (3) years prior to the deadline for application submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the bidder have been exhausted.	Must meet requirement by itself or as partner to past or existing JVCA	N / A	Must meet requirement by itself or as partner to past or existing JVCA	N / A	Form CON - 2
2.2.2 Failure to Sign Contract	Not being under execution of Bid-Securing Declaration pursuant to ITB 4.6 for five (5) years	Must meet requirement	N / A	Must meet requirement by itself or as partner to a JVCA	N / A	Letter of Bid
2.2.3 Pending Litigation	All pending litigation shall in total not represent more than fifty percent (50%) of the Bidder's net worth and shall be treated as resolved against the Bidder.	Must meet requirement by itself or as partner to past or existing JVCA	N / A	Must meet requirement by itself or as partner to past or existing JVCA	N / A	Form CON – 2

Factor	2.3 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.3.1 Historical Financial Performance	Submission of audited balance sheets or if not required by the law of the bidder’s country, other financial statements acceptable to the Bank, for the last Three [3] years to demonstrate the current soundness of the bidders financial position and its prospective long term profitability.	Must meet requirement	N / A	Must meet requirement	N / A	Form FIN – 3.1 with attachments
2.3.2. Average Annual Turnover	Minimum average annual turnover of ZAR 35.000.000 (Thirty five million Rand) calculated as total certified payments received for contracts in progress or completed, within the last 3 years 2020, 2021, 2022 or latest	Must meet requirement	Must meet requirement	N/A	Must meet percent (50%) of the requirement	Form FIN –3.2
2.3.3. Financial Resources	The Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, lines of credit, and other financial means, other than any contractual advance payments to meet a cash-flow requirement of ZAR 5.000.000 (Five million rand)	Must meet requirement	Must meet requirement	N/A	Must meet _____ percent (100%) of the requirement	Form FIN –3.3 + Form CCC

Factor	2.4 Experience					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.4.1 General Experience	Experience under contracts in the role of EPC contractor, subcontractor, or management contractor for at least the last 5 years prior to the applications submission deadline, and with activity in at least nine (9) months in each year. General experience: A minimum of Five (5) years of general experience is mandatory	Must meet requirement	N / A	Must meet requireme nt	N / A	Form EXP-4.1
2.4.2 Specific Experience	(a)Participation as EPC contractor, management contractor, or subcontractor, in at least two (2) contracts within the last 7 years, each with a minimum value equivalent to ZAR 10.000.000 (Ten Million Rand) that have been successfully and substantially completed and that are similar to the proposed Works. The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in Section VI, Requirements.	Must meet requirement	Must meet requirements for all characteristics	N / A	Must meet requirement for one characteristic	Form EXP 2.4.2(a)
	b) For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum experience in the following key activities: <ul style="list-style-type: none">Experience in the requirements of this tender specification (3 years)	Must meet requirements	Must meet requirements	N / A	Must meet N/A	Form EXP-2.4.2(b)

2.5 Personnel

The Bidder must demonstrate that it will have the personnel for the key positions that meet the following requirements: Bidders are requested to indicate the organisation structure and the team structure for the project. While bidders may propose more positions, the Bank expects to see at the minimum the qualification of Project Manager, and Site Supervisor.

Civil and Electrical works

No.	Position	Qualifications	Total Work Experience (years)	Experience In Similar Work (years)
1	Project Manager	Diploma or Certificate in Electrical Engineering and proficient in English	5	3
2	Site supervisor	Certificate in Structural /Electrical Engineering or Project Management	5	3

Electrical Works

No.	Position	Qualifications	Total Work Experience (years)	Experience In Similar Work (years)
1	Electrical Engineer	Electrical Engineer Diploma/Certificate or Certificate in Solar Energy Design or Installation		3

The Bidder shall provide details of the proposed personnel and their experience records in the relevant Forms included in Section IV, Bidding Forms.

2.6 Equipment

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

Section IV. Bidding Forms

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Letter of Bid

The Bidder must prepare the Letter of Bid on stationery with its letterhead clearly showing the Bidder's complete name and address.

Date: _____

Invitation for Bid No.: ADB/ITB/RDGS/2023/0248

To:

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (**ITB**) Clause 8;
- (b) We offer to execute in conformity with the Bidding Documents the following Works:
_____;
- (c) The total price of our Bid, excluding any discounts offered in item (d) below is:
_____;
- (d) The discounts offered and the methodology for their application are: _____;
- (e) Our bid shall be valid for a period of _____ [insert validity period as specified in **ITB** 18.1.] 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 price adjustment provisions apply, the Table(s) of Adjustment Data shall be considered part of this Bid;³
- (g) If our bid is accepted, we commit to obtain a performance security in accordance in accordance with **ITB** 38 and **GC** 5.15, for the due performance of the Contract;
- (h) Our firm, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries;
- (i) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with **ITB** 4.3;
- (j) We are not participating, as a Bidder or as a subcontractor, in more than one bid in this bidding process in accordance with **ITB** 4.3, other than alternative offers submitted in accordance with **ITB** 13;
- (k) Our firm, its affiliates or subsidiaries (including any Subcontractors or Suppliers for any part of the contract), has not been declared ineligible by the Bank, or under execution of a Bid-Securing Declaration in the Bank's country, or under the Bank's country laws or official regulations, or by an act of compliance with a decision of the United Nations Security Council, in accordance with **ITB** 4.4, 4.6 and 4.8, respectively;

³ Include if price adjustment provisions apply in the Contract in accordance with **PC** Clause **5.10 Price Adjustment**.

- (l) We are not a government owned entity / We are a government owned entity but meet the requirements of **ITB 4.5**;⁴
- (m) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:⁵

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____

- (n) We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in the country of the Bank, as such laws have been listed by the Bank in the bidding documents for this contract.⁶
- (o) 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;
- (p) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive; and
- (q) If awarded the contract, the person named below shall act as Contractor's Representative:

- (r) We accept the appointment of **[Bank to insert full name and address of suggested appointee]** as the Adjudicator. / We do not accept the appointment of **[Bidder to insert name suggested by Bank]** as the Adjudicator and propose instead that **[Bidder to insert alternative name]** be appointed as the Adjudicator, whose daily fees and biographical data are attached.⁷

Name: _____

In the capacity of: _____

Signed: _____

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

Date: _____

⁴ Use one of the two options as appropriate.

⁵ If none has been paid or is to be paid, indicate "none".

⁶ The Bank will accept the introduction of such undertaking at the request of the Borrowing country, provided the arrangements governing such undertaking are satisfactory to the Bank.

⁷ Use one of the two options as appropriate.

Bill of Quantities/Schedules of Prices

Submit Electronic Excel File for Priced Bill of Quantities

Schedule of Adjustment Data

Table A - Local Currency

Index Code	Index Description	Source of Index	Base Value and Date	Bidder's Local Currency Amount	Bidder's Proposed Weighting
	Nonadjustable	—	—	—	A: _____ B: _____ C: _____ D: _____ E: _____
Total					1.00

Table B - Foreign CurrencyName of Currency: **US DOLLAR**

If the Bidder wishes to quote in more than one foreign currency, this table should be repeated for each foreign currency.

Index Code	Index Description	Source of Index	Base Value and Date	Bidder's Currency in Type/Amount	Equivalent in FC1	Bidder's Proposed Weighting
	Nonadjustable	—	—	—		A: _____ B: _____ C: _____ D: _____ E: _____
Total						1.00

Summary of Payment Currencies

Table: Alternative A

Forinsert name of Section of the Works

Separate tables may be required if the various sections of the Works (or of the Bill of Quantities) will have substantially different foreign and local currency requirements. The Bank should insert the names of each Section of the Works.

	A	B	C	D
Name of Payment Currency	Amount of Currency	Rate of Exchange to Local Currency	Local Currency Equivalent $C = A \times B$	Percentage of Net Bid Price (NBP) $\frac{100 \times C}{NBP}$
Local currency _____		1.00		
Foreign Currency #1 _____				
Foreign Currency #2 _____				
Foreign Currency #3 _____				
Net Bid Price				100.00
Provisional Sums Expressed in Local Currency		1.00		
BID PRICE				

Table: Alternative B

To be used only with Alternative B Prices directly quoted in the currencies of payment. (Clause ITB 15.1)

Summary of currencies of the bid for _____ [insert name of Section of the Works]

Name of currency	Amounts payable
Local currency: _____	
Foreign currency #1: _____	
Foreign currency #2: _____	
Foreign currency #3: _____	

Form of Bid-Securing Declaration

Date: [insert date (as day, month and year)]

Bid No.: ADB/ITB/RDGS/2023/0248

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

To: [insert complete name of Bank]

We, the undersigned, declare that:

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

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Bank for the period of time of **3 years** starting on October , 2023, if we are in breach of our obligation(s) under the bid conditions, because we:

- (a) have withdrawn our Bid during the period of bid validity specified in the Letter of Bid; or
- (b) having been notified of the acceptance of our Bid by the Bank during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with **ITB 38**.

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

Signed: [insert signature of person whose name and capacity are shown] In the capacity of [insert legal capacity of person signing the Bid-Securing Declaration]

Name: [insert complete name of person signing the Bid-Securing Declaration]

Duly authorized to sign the bid for and on behalf of: [insert complete name of Bidder]

Dated on _____ day of _____, _____ [insert date of signing]

Corporate Seal (where appropriate)

[Note: In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all partners to the Joint Venture that submits the bid.]

Technical Proposal

Technical Proposal Forms

Site Organization

Method Statement

Mobilization Schedule

Construction Schedule

Contractor's Equipment

Personnel

Others

Site Organization

Method Statement

Mobilization Schedule

Construction Schedule

Contractor's Equipment

Form EQU

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder. The Bidder shall provide all the information requested below, to the extent possible. Fields with asterisk (*) shall be used for evaluation.

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

The following information shall be provided only for equipment not owned by the Bidder.

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

Proposed Personnel**Form PER – 1**

Bidders should provide the names of suitably qualified personnel to meet the specified requirements for each of the positions listed in Section III, Evaluation and Qualification Criteria. The data on their experience should be supplied using the Form below for each candidate.

1.	Title of position
	Name
2.	Title of position
	Name
3.	Title of position
	Name
4.	Title of position
	Name
5.	Title of position
	Name
6.	Title of position
	Name
etc.	Title of position
	Name

Resume of Proposed Personnel	
------------------------------	--

Form PER - 2

The Bidder shall provide all the information requested below. Fields with asterix (*) shall be used for evaluation.

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

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

[illegible]

Others

Bidder's Qualification

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

Bidder Information Sheet

Form ELI - 1.1

Date: _____

Invitation for Bid No.: ADB/ITB/TCGS/2023/0248

Page _____ of _____ pages

1. Bidder's Legal Name
2. In case of Joint Venture, Consortium or Association (JVCA), legal name of each party:
3. Bidder's actual or intended Country of Registration:
4. Bidder's Year of Registration:
5. Bidder's Legal Address in Country of Registration:
6. Bidder's Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITB Clauses 4.1 and 4.2. <input type="checkbox"/> In case of JVCA, letter of intent to form JVCA including a draft agreement, or JVCA agreement, in accordance with ITB Clause 4.1 <input type="checkbox"/> In case of government owned entity from the Bank's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Clause 4.5.

Party to JVCA Information Sheet

Form ELI - 1.2

Date: _____

Invitation for Bid No.: ADB/ITB/TCGS/2023/0248

Page _____ of _____ pages

1. Bidder's Legal Name:
2. JVCA's Party legal name:
3. JVCA's Party Country of Registration:
4. JVCA's Party Year of Registration:
5. JVCA's Party Legal Address in Country of Registration:
6. JVCA's Party Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITB Clauses 4.1 and 4.2. <input type="checkbox"/> In case of government owned entity from the Purchaser's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Clause 4.5.

Historical Contract Non-Performance

Form CON – 2

Bidder's Legal Name: _____

Date: _____

JVCA Partner Legal Name: _____

Bidding No.: ADB/ITB/TCGS/2023/0248

Page _____ of _____ pages

Non-Performing Contracts in accordance with (Evaluation and Qualification Criteria)			
<input type="checkbox"/> Contract non-performance did not occur during the stipulated period, in accordance with Sub-Factor 2.2.1 of Section III, Evaluation and Qualification Criteria.			
<input type="checkbox"/> Contract non-performance during the stipulated period, in accordance with Sub-Factor 2.2.1 of Section III, Evaluation and Qualification Criteria.			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, RWF equivalent)
_____	_____	Contract Identification: Name of Bank: Address of Bank: Matter in dispute:	_____
Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> No pending litigation in accordance with Sub-Factor 2.2.3 of Section III, Evaluation and Qualification Criteria.			
<input type="checkbox"/> Pending litigation in accordance with Sub-Factor 2.2.3 of Section III, Evaluation and Qualification Criteria, as indicated below			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, RWF equivalent)
_____	_____	Contract Identification: Name of Bank: Address of Bank: Matter in dispute:	_____
_____	_____	Contract Identification: Name of Bank: Address of Bank: Matter in dispute:	_____

Current Contract Commitments / Works in Progress

Form CCC

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

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

Financial Situation

Form FIN – 3.1

Historical Financial Performance

Bidder's Legal Name: _____

Date: _____

JVCA Partner Legal Name: _____

Bidding No.: ADB/ITB/TCGS/2023/0248

Page _____ of _____ pages

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

Financial information in ZAR or US\$ equivalent	Historic information for previous _____ (____) years (RWF equivalent in 000s)						
	Year 1	Year 2	Year 3	Avg.	Avg. Ratio		
Information from Balance Sheet							
Total Assets (TA)							
Total Liabilities (TL)							
Net Worth (NW)							
Current Assets (CA)							
Current Liabilities (CL)							
Information from Income Statement							
Total Revenue (TR)							
Profits Before Taxes (PBT)							

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

Average Annual Turnover

Form FIN – 3.2

Bidder's Legal Name: _____ Date: _____
 JVCA Partner Legal Name: _____ Bidding No.: ADB/ITB/TCGS/2023/0248
 Page _____ of _____ pages

Annual turnover data (construction only)		
Year	Amount and Currency	RWF equivalent
2022	_____	_____
2021	_____	_____
2020	_____	_____
	_____	_____
	_____	_____
*Average Annual Construction Turnover	_____	_____

*Average annual turnover calculated as total certified payments received for work in progress or completed over the number of years specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.2, divided by that same number of years.

Financial Resources

Form FIN – 3.3

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

Source of financing	Amount (ZAR equivalent)
1.	
2.	
3.	
4.	

General Experience

Form EXP – 2.4.1

Bidder's Legal Name: _____
 JVCA Partner Legal Name: _____

Date: _____
 Bidding No.: ADB/ITB/TCGS/2023/0248
 Page _____ of _____ pages

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

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

Specific Experience

Form EXP – 2.4.2(a)

Bidder's Legal Name: _____ Date: _____
 JVCA Partner Legal Name: _____ Bidding No.: ADB/ITB/TCGS/2023/0248
 Page _____ of _____ pages

Similar Contract Number: ____ [insert specific number] of ____ [insert total number of contracts required].	Information		
Contract Identification	_____		
Award date	_____		
Completion date	_____		
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
Total contract amount	_____ _____		ZAR_____ _____
If partner in a JVCA or subcontractor, specify participation of total contract amount	_____%	_____	ZAR_____ _____
Bank's Name:	_____		
Address:	_____ _____ _____		
Telephone/fax number:	_____ _____		
E-mail:	_____ _____		

Specific Experience (cont.)

Form EXP – 2.4.2(a) (cont.)

Bidder's Legal Name: _____ Page _____ of _____ pages

JVCA Partner Legal Name: _____

Similar Contract No. __[insert specific number] of __[insert total number of contracts] required	Information
Description of the similarity in accordance with Sub-Factor 2.4.2(a) of Section III, Evaluation and Qualification Criteria:	
Amount	_____
Physical size	_____
Complexity	_____
Methods/Technology	_____
Physical Production Rate	_____

Specific Experience in Key Activities

Form EXP – 2.4.2(b)

Bidder's Legal Name: _____ Date: _____
 JVCA Partner Legal Name: _____ Bidding No.: ADB/ITB/TCGS/2023/0248
 Subcontractor's Legal Name: _____ Page _____ of _____ pages

	Information		
Contract Identification	_____		
Award date	_____		
Completion date	_____		
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
Total contract amount	_____		ZAR_____
If partner in a JVCA or subcontractor, specify participation of total contract amount	_____% _____	_____ _____	ZAR_____
Bank's Name:	_____		
Address:	_____ _____ _____		
Telephone/fax number:	_____		
E-mail:	_____		

Specific Experience in Key Activities (cont.)

Form EXP – 2.4.2(b) (cont.)

Bidder's Legal Name: _____ Page _____ of _____ pages

JVCA Partner Legal Name: _____

Subcontractor's Legal Name: _____

	Information
Description of the key activities in accordance with Sub-Factor 2.4.2(b) of Section III, Evaluation and Qualification Criteria:	
Amount	
Physical size	
Complexity	
Methods/Technology	
Physical Production Rate	

Section V. Eligible Countries

Eligibility for the Provision of Goods, Works and Related Services in Bank-financed Procurement

A. Provision at Paragraph 1.3 of the Bank's Rules and Procedures for Corporate Procurement of Goods and Works

1.6 The African Development Fund permits firms and individuals from all countries to offer goods, works and services for ADF funded projects. However, the proceeds of any Financing undertaken in the operations of the African Development Bank and the South Africa Government shall be used for procurement of goods and works, including the related services, provided by bidders from Eligible⁸ Countries.⁹ Any conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfill the contract in question. In the case of ADB and NTF, bidders from non-Member Countries offering goods, works and related services (including transportation and insurance) are not eligible even if they offer these from Eligible Member Countries. Any waiver to this rule will be in accordance with the Articles 17(1) (d) of the Agreement Establishing the African Development Bank and 4.1 of the Agreement established by the South Africa Government.

B. Provision at Appendix 4 of the Bank's Rules and Procedures for Procurement of Goods and Works

Overview

1. The eligibility criteria for participation in the supply of goods, works and related services, to be procured by the bank derive from the requirements of the Agreement Establishing the African Development Bank, Article 17.1.d. The foregoing requirements basically prescribe two types of eligibility criteria:

- (a) The eligibility of the bidder;
- (b) The eligibility of the goods, works and related services.

Eligibility of the Bidder

2. The eligibility of the bidder shall be based on nationality, in accordance with the following rules:
- (a) Natural Persons: A natural person is eligible if he or she is a national of a Member Country of the Bank. Where a person has more than one nationality, such a person shall be eligible if the nationality indicated in his or her bid is that of a Member Country of the Bank.
 - (b) Corporations: A corporation is eligible if it satisfies the following criteria:
 - 1. it is incorporated in a country that is a Member of the Bank;

⁸ Refer to Appendix 4 for additional information on Eligibility.

⁹ "Eligible Countries" shall mean: (a) in the case of the African Development Bank and the Nigeria trust Fund, the Member Countries of the African Development Bank.

2. it is a national of a country that is a Member of the Bank, or State, as determined by the law of its place of incorporation;
 3. it has its principal place of business in a country that is a Member of the Bank;
 4. the majority of its capital is held by nationals from a member Country of the Bank or, if the business has no capital, more than half of the value of the members contributions to the business has been contributed by nationals from a member of the Bank.
- (c) Joint Ventures and Associations: An unincorporated joint venture, partnership, or association, shall be eligible if at least 60% of its individual, or corporate members, satisfy the eligibility requirement for individuals or corporations.

Eligibility of the Goods, Works and Related Services

3. In order to be eligible, the goods to be procured must have been mined, grown, or produced, in the form in which they are purchased, in an Eligible Member Country.
4. For works contracts, which may include civil works, plant construction, or turnkey contracts, the contractor must satisfy the nationality criteria of eligibility, either as a natural person, or corporation, or joint venture and association. Labour, equipment, and materials needed for carrying out the works contract, shall be supplied from Eligible Member Countries.
5. For contracts, which have been awarded on the basis of Cost, Insurance and Freight (CIF), or Carriage and Insurance Paid (CIP), bidders shall be free to arrange for ocean and other transportation, and the related insurance, from any Eligible Member Country. On the other hand, where goods are shipped on FOB basis, and the Bank has agreed to finance transportation and insurance separately, which are arranged by the purchaser, under a separate contract, the Bank shall be satisfied that the services are supplied from Eligible Member Countries.

C. Eligible Countries

LIST OF MEMBER COUNTRIES OF THE BANK

REGIONAL COUNTRIES			
1. Algeria	2. Angola	3. Benin	4. Botswana
5. Burkina Faso	6. Burundi	7. Cameroon	8. Cape Verde
9. Central African Rep.	10. Chad	11. Comoros	12. Congo
13. Côte d'Ivoire	14. Democratic Rep of Congo	15. Djibouti	16. Egypt
17. Equatorial Guinea	18. Eritrea	19. Ethiopia	20. Gabon
21. Gambia	22. Ghana	23. Guinea	24. Guinea Bissau
25. Kenya	26. Lesotho	27. Liberia	28. Libya
29. Madagascar	30. Malawi	31. Mali	32. Mauritania
33. Mauritius	34. Morocco	35. Mozambique	36. Namibia
37. Niger	38. Nigeria	39. Republic of South Africa	40. Rwanda
41. Sao Tome & Principe	42. Senegal	43. Seychelles	44. Sierra Leone
45. Somalia	46. North Sudan	47. South Sudan	48. Swaziland
49. Tanzania	50. Togo	51. Tunisia	52. Uganda
53. Zambia	54. Zimbabwe		
NON REGIONAL COUNTRIES			
1. Argentina	2. Austria	3. Belgium	4. Brazil
5. Canada	6. China	7. Denmark	8. Finland
9. France	10. Germany	11. India	12. Italy
13. Japan	14. Korea	15. Kuwait	16. Netherlands
17. Norway	18. Portugal	19. Saudi Arabia	20. Spain
21. Sweden	22. Switzerland	23. United Kingdom	24. United States of America
25. Turkey	26. Luxemburg	27. Ireland	

PART 2 – Bank’s Requirements

Section VI. Requirements

Table of Contents

Specifications 2

Drawings 4

Bill of
Quantities.....

Technical Specifications

SEE VOLUME 2 (ATTACHED TO THE BID DOCUMENT°

Drawings

SEE ATTACHED DRAWINGS

Bills of Quantities

SEE ATTACHED EXCEL SHEET

PART 3 – Conditions of Contract and Contract Forms

Section VII. General Conditions (GC)

Supply and installation of Solar PV Energy Project for the African Development Bank's Regional Offices in Pretoria Republic of South Africa

CONTRACT

BETWEEN

THE AFRICAN DEVELOPMENT BANK

AND

.....

October 2023

SECTION 1

FORM OF CONTRACT

THIS CONTRACT is made on theday of (month /year) .

THE AFRICAN DEVELOPMENT BANK an International Financial Institution having its headquarters on Avenue Joseph Anoma, 01 BP 1387, ABIDJAN 01, COTE D'IVOIRE, (hereinafter referred to as the “**Bank**”)

AND

..... a company duly incorporated and existing under the laws of Rwanda, Company Registration Act Number and having its registered office address located at, Pretoria, South Africa. Tel No..... and email;, (hereinafter referred to as the “**Supplier**”).

Parties mean the Bank and the Supplier collectively, and **Party** means any one of them, as the context may indicate.

WHEREAS:

- (i) The Bank requires the provision of Works and related Goods and Services as detailed in the Works Schedule. Following an open Competitive Bidding launched on June 16, 2023 for one (01) lot related to works and equipment, the Bank has appointed the Supplier for the execution and completion of the Works and the remedying of any defects therein. The Supplier hereby agrees to provide the Works in accordance with the terms and conditions set out below.
- (ii) The Supplier has represented and affirmed to the Bank that it has the required qualifications, professional skills, experience, personnel, technical resources and capability to provide the Works and related Goods and Services.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and intending to be legally bound, the Parties hereby agree as follows:

1. TERMS OF THE CONTRACT

- 1.1 The Supplier shall provide the Bank with the Works and related Goods and Services in accordance with the terms and conditions of this Contract that shall comprise of all documents set out below in paragraph 1.2 (as the same may be supplemented or varied from time to time).
- 1.2 The following documents (the “Contract Documents”) shall be deemed to form, and be read and construed as integral part of this Contract:

Section 1:	Form of Contract
Section 2:	Special Conditions of Contract

Section 3:	General Conditions of Contract
Schedule A:	Request for Proposals
Schedule B:	Supplier's Proposal
Schedule C:	Statement of Works/Drawings
Schedule E:	Code of Conduct for Suppliers
Schedule F:	Performance Evaluation Form
Schedule G:	Performance Guaranty

- 1.3 The Contract shall take effect from the date specified in the Notice to Proceed or the date of the last signature of the Contract, whichever is earlier (the "Commencement Date") and shall expire automatically 12 months after the date of practical handover of the works, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise extended.
- 1.4 The Bank shall pay the Supplier for the Works and related Goods and Services during the Contract period, a lump sum fixed amount not exceeding (ZAR) at the times and in the manner prescribed in the Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed on the respective dates specified below.

**SIGNED for and on behalf of
BANK**

**SIGNED for and on behalf of
SUPPLIER**

SIGNATURE: SIGNATURE: DATE

NAME: NAME: DATE

POSITION: POSITION:

SECTION 3

GENERAL CONDITIONS OF CONTRACT

CONTENTS

A. GENERAL PROVISIONS

A1	Definitions and Interpretation
A2	Communication
A3	Supplier's Status
A4	Contract Period
A5	Care and Supply of Documents
A6	Delayed Drawings and Instructions
A7	Compliance with Laws
A8	Inspection and Audit by the Bank

B. THE BANK

B1	Right of Access to the Site
B2	Bank's Personnel
B3	Bank's Claims

C THE PROJECT MANAGER

C1	Project Manager's Duty and Authority
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A GENERAL PROVISIONS

A1 Definitions and Interpretation

A1.1 In this Contract, the following terms shall be interpreted as indicated below.

“Bank” means the African Development Bank, purchasing the Works and related goods and services.

“Bank’s Equipment” means the Bank’s equipment, consumables, plant, materials and such other items supplied to the Supplier by the Bank in the performance of the Supplier’s obligations under the Contract.

“Bidding Documents” means the collection of documents issued by the Bank to instruct and inform potential suppliers of the process to submit a Proposal, selection of the winning Proposal and contractual conditions governing the relationship between the Bank and the Supplier.

“Bill of Quantities” means the documents so named (if any) which comprised in the Schedules.

“Coercive Practice” means impairing, harming, threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

“Collusive Practice” means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

“Commencement Date” means the date set out in paragraph 1.3 of the Form of Contract.

“Contract” means this written agreement entered into between the Bank and the Supplier consisting of the Contract Documents. In the event of any ambiguity or conflict between the Contract Documents, the order of precedence shall be the order in which the Contract Documents are specified in the Form of Contract.

“Contract Documents” means the documents as specified in the Form of Contract forming part of the Contract.

“Contract Price” means the price payable to the Supplier by the Bank under the Contract for the full and proper performance by the Supplier of its obligations under the Contract as specified in Schedule B (the Supplier’s Proposal).

“Corrupt Practice” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

“Cost” means all expenditure reasonably incurred (or to be incurred) by the Supplier, whether on or off the Site, including overhead and similar charges, but does not include profit.

“Defects Notification Period” means the period for notifying defects in the Works or a section (as the case may be) under [GCC clause J1](#) (Completion of Outstanding Work and Remedying Defects), which extends over twelve months except if otherwise stated in the SCC (with any extension under [GCC clause J3](#) (Extension of Defects Notification Period), calculated from the date on which the

Works or section is completed as certified under [GCC clause I1](#) (Taking Over of the Works and Sections).

“Drawings” means the drawing of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Bank in accordance with the Contract.

“Final Payment Certificate” means the payment certificate issued under GCC M13 (Issue of Final Payment Certificate).

“Form of Contract” means the documents comprising section 1 of the Contract signed by or on behalf of the parties confirming their willingness to enter into and be bound by the terms of the Contract.

“Fraudulent Practice” means any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

“General Conditions of Contract” or “GCC” means the conditions as set out in section 2 of the Contract.

“Intellectual Property Rights” means any and all copyright, 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.

“Interim Payment Certificate” means a payment certificate issued under GCC [clause M](#) (Contract Price and Payment), other than the Final Payment Certificate.

“International Entity” means the World Bank, Asian Development Bank, Inter-American Development Bank, European Bank for Reconstruction and Development or any other participating institution in the cross-debarment agreement signed with the Bank.

“Landlord” means Mr. Ibrahim Parther Bah, owner of the premises located at 27 Regent Road Hill Station, Freetown Sierra Leone and for which the Bank requires the Supplier to execute the Works

“Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.

“Letter of Acceptance”

“Materials” means things of all kind (other than Plant) intended to form or forming part of the Works, including the supply-only materials (if any) to be supplied by the Supplier under the Contract.

“Notice to Proceed”

“Obstructive Practice” means

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

“Payment Certificate” means a payment certificate issued under [GCC clause M](#) (Contract Price and Payment).

“Performance Certificate” means the certificate issued under [GCC clause J9](#) (Performance Certificate).

“Performance Security” means the security (or securities, if any) under [GCC clause D2](#) (Performance Security).

“Plant” means the apparatus, machinery and other equipment intended to form or forming part of the Works, including vehicles purchased for the Bank and relating to the construction and operation of the Works.

“Project Manager” means the person appointed by the Bank to act as the project manager for the purposes of the Contract and named in the SCC, or other person appointed from time to time by the Bank and notified to the Supplier under [GCC clause C4](#) (Replacement of the Project Manager).

“Property” means the property, other than real property, issued or made available to the Supplier by the Bank in connection with the Contract.

“Proposal” means the Supplier’s technical and financial proposal submitted to the Bank in response to the Bidding Documents.

“Retention Money” means the accumulated retention moneys which the Bank retains under [GCC clause M4](#) (Application for Interim Payment Certificates) and pays under [GCC clause M9](#) (Payment of Retention Money).

“Services” means the services to be supplied by the Supplier under the Contract as specified in Schedule A (Works Schedule) (including any modified or alternative services as may be provided in accordance with [GCC clause P1](#)... (Intellectual Property Rights)).

“Site” means the places where the Works are to be executed including storage and working areas and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.

“Special Conditions of Contract” or “SCC” means the conditions as set out in section 3 of the Contract.

“Statement” means a statement submitted by the Supplier as part of an application, under GCC clause M (Contract Price and Payment) for a payment certificate.

“Subcontractor” means any person to whom any of the obligations of the Supplier under the Contract is subcontracted directly or indirectly by the Supplier and includes its legal successors or permitted assignees.

“Supplier” means the person(s) who has been appointed by the Bank and accepted to perform the Contract and is named as such in the Form of Contract and includes the legal successors or permitted assignees.

“Supplier’s Documents” means all approvals, consents, designs, method statement, drawings, manuals, reports or any other document required for the execution of the Works and remedying of defects.

“Supplier’s Equipment” means the Supplier’s equipment, consumables, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract.

“Supplier’s Representative” means the person named by the Supplier in the Contract or appointed from time to time by the Supplier under [GCC clause D3](#) (Supplier’s Representative), who acts on behalf of the Supplier.

“Taking-Over Certificate” means a certificate issued under [GCC clause I](#) (Bank Taking Over).

“Tests on Completion” means the tests which are specified in the Contract or agreed by the Parties or instructed as a Variation, and which are carried out under [GCC clause H](#) (Tests on Completion) before the Works or a section of the Works (as the case may be) are taken over by the Bank.

“Time for Completion” means the time for completing the Works or a section (as the case may be) under [GCC clause G2](#) (Time for Completion), as stated in the Contract (with any extension under [GCC clause G4](#) (Extension of Time for Completion), calculated from the Commencement Date.

“Unforeseeable” means not reasonably foreseeable by an experienced Supplier or supplier by the Commencement Date.

“Variation” means any change to the Works, which is instructed or approved as a variation under [GCC clause L](#) (Variation and Adjustments).

“Works” means all works and related goods and services required to be executed and completed by the Supplier and the remedying of any defects as specified in Schedule A (Works Schedule).

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) reference to any person shall include natural persons, businesses, partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (e) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- (f) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

A2 Communication

A2.1 Wherever this Contract provides for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the SCC ([Clause SCC, A.1](#)) at such Party’s address as specified in the SCC ([Clause SCC, A.1](#)).

A2.2 Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Project Manager, a copy shall be sent to the Project Manager or the other Party, as the case may be.

A2.3 The language for all correspondence and communications shall be that stated in the SCC. If no language is stated, the language for communications shall be the ruling language of the Contract.

A3 Supplier’s Status

A3.1 At all times during the Contract period the Supplier shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorized to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

A3.2 All employees, representatives, or Subcontractors engaged by the Supplier in connection with the performance of the Contract shall be under the complete control of the Supplier and shall not be deemed to be employees of the Bank. Nothing contained in the Contract or in any subcontract awarded by the Supplier shall be construed to create any contractual relationship between any such employees, representatives, or Subcontractors and the Bank.

A3.3 If the Supplier is a joint venture of two or more persons, all such firms shall be jointly and severally bound to the Bank for the fulfillment of the provisions of the Contract and shall designate one of such

persons to act as the authorized representative with Bank to bind the joint venture. The composition or constitution of the joint venture shall not be altered without the prior written consent of the Bank.

A4 Contract Period

A4.1 The Contract shall take effect on the Commencement Date and shall expire automatically at midnight on the date set out in the Form of Contract, unless otherwise terminated or extended.

A4.2 The Bank may extend the Contract, for further periods as set out in the Form of Contract. Unless otherwise provided, the provisions of the Contract will apply throughout any such extended period.

A5 Care and Supply of Documents

A5.1 Each of the Supplier's Documents shall be in the custody and care of the Supplier, unless and until taken over by the Bank. Unless otherwise stated in the Contract, the Supplier shall supply to the Project Manager copies of each of the Supplier's Documents.

A5.2 The Supplier shall keep, on the Site, a copy of the Contract, publications named in the schedules, the Supplier's Documents (if any), the Drawings and Variations and other communications given under the Contract. The Bank's personnel shall have the right of access to all these documents at all reasonable times.

A5.3 If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

A6 Delayed Drawings and Instructions

A6.1 The Supplier shall give notice to the Project Manager whenever the Works are likely to be delayed or disrupted if any necessary drawing or instruction is not issued to the Supplier within a particular time, which shall be reasonable. The notice shall include details of the necessary drawing or instructions, details of why and by when it should be issued, and the nature and amount of the delay or disruption likely to be suffered if it is late.

A6.2 If the Supplier suffers delay and/or incurs Cost as a result of a failure of the Project Manager to issue the notified drawing or instruction within a time which is reasonable and is specified in the notice with supporting details, the Supplier shall give a further notice to the Project Manager and shall be entitled subject to GCC clause G5.1 (Supplier's Claims) to:

- (a) claim for an extension of time for any such delay, if completion is or will be delayed, under [GCC clause G4](#) (Extension of Time for Completion), and
- (b) claim for payment of any such Cost, which shall be included in the Contract Price.

A6.3 After receiving this further notice, the Project Manager shall proceed in accordance with [GCC clause C5](#) (Determinations) to agree or determine these matters.

A6.4 However, if and to the extent that the Project Manager's failure was caused by any error or delay by the Supplier, including an error in, or delay in the submission of, any of the Supplier's Documents, the Supplier shall not be entitled to such extension of time or Cost.

A7 Compliance with Laws

A7.1 The Supplier shall, in performing the Contract, comply with applicable Laws.

A7.2 Unless otherwise stated in the Contract:

- (a) the Bank shall obtain the planning, zoning, building permit or similar permission for the Works, and any other permissions described in the Works to be obtained by the Bank; and the Bank shall indemnify and hold the Supplier harmless against and from the consequences of any failure to do so; and
- (b) the Supplier shall give all notices, pay all taxes, duties and fees, and obtain all permits, licences and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Supplier shall indemnify and hold the Bank harmless against and from the consequences of any failure to do so, unless the Supplier is impeded to accomplish these actions and shows evidence of its diligence.

A7.3 The Bank shall provide, at the request of the Supplier, such reasonable assistance as to allow the Supplier to obtain properly any permits, licences or approvals required by the applicable Laws which the Supplier is required to obtain in relation to the execution and completion of the Works and remedying of any defects.

A8 Inspection and Audit by the Bank

A8.1 The Supplier shall permit the Bank and/or persons appointed by the Bank to inspect the Site and/or the Supplier's accounts and records relating to the performance of the Contract and to have such accounts and records audited by auditors appointed by the Bank if required by the Bank.

B The Bank

B1 Right of Access to the Site

B1.1 The Bank shall give the Supplier right of access to, and possession of, all parts of the Site within the time (or times) stated in the Works. The right and possession shall not be exclusive to the Supplier. If, under the Contract, the Bank is required to give (to the Supplier) possession of any foundation, structure, plant or means of access, the Bank shall do so in the time and manner stated in the Works. However, the Bank may withhold any such right or possession until the Security has been received.

B1.2 If no such time is stated in the Works, the Bank shall give the Supplier right of access to, and possession of, the Site within such times as required to enable the Supplier to proceed without disruption in accordance with the programme submitted under [GCC clause G3](#) (Programme).

B1.3 If the Supplier suffers delay and/or incurs Cost as a result of a failure by the Bank to give any such right or possession within such time, the Bank shall give notice to the Project Manager and shall be entitled subject to [GCC clause G5](#) (Supplier's Claims) to:

- (a) claim for an extension of time for any such delay, if completion is or will be delayed, under [GCC clause G4](#) (Extension of Time for Completion), and
- (b) claim for payment of any such Cost, which shall be included in the Contract Price.

B1.4 After receiving this notice, the Project Manager shall proceed in accordance with [GCC clause C5](#) (Determinations) to agree or determine these matters.

B1.5 However, if and to the extent that the Bank's failure was caused by any error or delay by the Supplier, including an error in, or delay in the submission of, any of the Supplier's Documents, the Supplier shall not be entitled to such extension of time or Cost.

B2 Bank's Personnel

B2.1 The Bank shall be responsible for ensuring that the Bank's personnel and the Bank's Suppliers and suppliers on the Site co-operate with the Supplier's effort under [GCC clause D4](#) (Co-operation).

B3 Bank's Claims

B3.1 If the Bank considers it is entitled to any payment under any clause or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Bank or the Project Manager shall give notice and particulars to the Supplier. However, notice is not required for payments due for services requested by the Supplier.

B3.2 The notice shall be given as soon as practicable and no longer than twenty-eight (28) days after the Bank becomes aware, or should have become aware, of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

B3.3 The particulars shall specify the GCC clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Bank considers it is entitled in connection with the Contract. The Bank shall then proceed in accordance with [GCC clause C5](#) (Determinations) to agree or determine (i) the amount (if any) which the Bank is entitled to be paid by the Supplier, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with [GCC clause J3](#) (Extension of Defects Notification Period).

B3.4 This amount may be included as a deduction in the Contract Price and Payment Certificates. The Bank shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Supplier, in accordance with this GCC clause.

C The Project Manager

C1 Project Manager's Duty and Authority

C1.1 The Bank shall appoint the Project Manager who shall carry out the duties assigned to him in the Contract. The Project Manager's staff shall include suitably qualified project managers and other professionals who are competent to carry out these duties.

C1.2 The Project Manager shall have no authority to amend the Contract.

C1.3 The Project Manager may exercise the authority attributable to the Project Manager as specified in or necessarily to be implied from the Contract. If the Project Manager is required to obtain the approval of the Bank before exercising a specified authority, the requirements shall be as stated in the SCC. The Bank shall promptly inform the Supplier of any change to the authority attributed to the Project Manager.

C1.4 Whenever the Project Manager exercises a specified authority for which the Bank's approval is required, then (for the purposes of the Contract) the Bank shall be deemed to have given approval.

C1.5 Except as otherwise stated in these conditions:

- (a) whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Project Manager shall be deemed to act for the Bank;
- (b) the Project Manager has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract;
- (c) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Project Manager (including absence of disapproval) shall not

- relieve the Supplier from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances; and
- (d) any act by the Project Manager in response to a Supplier's request except otherwise expressly specified shall be notified in writing to the Supplier within twenty-eight (28) days of receipt.

C1.6 The following provisions shall apply:

The Project Manager shall obtain the specific approval of the Bank before taking action under the following clauses of these conditions:

- (a) [GCC clause D10](#) (Unforeseeable Physical Conditions): Agreeing or determining an extension of time and/or additional cost.
- (b) [GCC clause L1](#) (Right to Vary): Instructing a Variation, except;
- a. in an emergency situation as determined by the Project Manager, or
 - b. if such a Variation would increase the Contract Price by more than five (5)%.
- (c) [GCC clause L3](#) (Variation Procedure): Approving a proposal for Variation submitted by the Supplier.

C1.7 Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Project Manager, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Supplier of any of his duties and responsibility under the Contract, instruct the Supplier to execute all such work or to do all such things as may, in the opinion of the Project Manager, be necessary to abate or reduce the risk. The Supplier shall forthwith comply, despite the absence of approval of the Bank, with any such instruction of the Project Manager. The Project Manager shall determine an addition to the Contract Price, in respect of such instruction, in accordance with [GCC clause L](#) (Variations and Adjustments) and shall notify the Supplier accordingly, with a copy to the Bank.

C2 Delegation by the Project Manager

C2.1 The Project Manager may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident Project Manager, and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties. However, unless otherwise agreed by both Parties, the Project Manager shall not delegate the authority to determine any matter in accordance with [GCC clause C5](#) (Determinations).

C2.2 Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in [GCC clause A3](#) (Language).

C2.3 Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Supplier to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Project Manager.

However:

- (a) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Project Manager to reject the work, Plant or Materials;

- (b) if the Supplier questions any determination or instruction of an assistant, the Supplier may refer the matter to the Project Manager, who shall promptly confirm, reverse or vary the determination or instruction.

C3 Instruction of the Project Manager

C3.1 The Project Manager may issue to the Supplier (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Supplier shall only take instructions from the Project Manager, or from an assistant to whom the appropriate authority has been delegated under [GCC clause C2](#) (Delegation by the Project Manager). If an instruction constitutes a Variation, [GCC clause L](#) (Variations and Adjustments) shall apply.

C3.2 The Supplier shall comply with the instructions given by the Project Manager or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Project Manager or a delegated assistant:

- (a) gives an oral instruction,
- (b) receives a written confirmation of the instruction, from (or on behalf of) the Supplier, within two (2) working days after giving the instruction, and
- (c) does not reply by issuing a written rejection and/or instruction within two (2) working days after receiving the confirmation,

then the confirmation shall constitute the written instruction of the Project Manager or delegated assistant (as the case may be).

C4 Replacement of the Project Manager

C4.1 If the Bank intends to replace the Project Manager, the Bank shall, not less than twenty-one (21) days before the intended date of replacement, give notice to the Supplier of the name, address and relevant experience of the intended replacement Project Manager. If the Supplier considers the intended replacement Project Manager to be unsuitable, he has the right to raise objection against him by notice to the Bank, with supporting particulars, and although the Bank shall give full and fair consideration to this objection, the Bank shall never be constrained by it.

C5 Determinations

C5.1 Whenever these conditions provide that the Project Manager shall proceed in accordance with this GCC clause to agree or determine any matter, the Project Manager shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Project Manager shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

C5.2 The Project Manager shall give notice to both Parties of each agreement or determination, with supporting particulars within twenty-eight (28) days from the receipt of the corresponding claim or request except when otherwise specified. Each Party shall give effect to each agreement or determination unless and until revised under [GCC clause Q1](#) (Dispute Settlement).

D The Supplier

D1 Supplier's General Obligations

D1.1 The Supplier shall (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract and with the Project Manager's instructions, and shall remedy any defects in the Works.

D1.2 The Supplier shall provide the Plant, Materials and Supplier's Documents specified in the Contract, and all Supplier's personnel, goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for the execution, completion and remedying of defects.

D1.3 All equipment, material, goods and services to be incorporated in or required for the Works shall be produced in a member country of the Bank as defined in the Bank's rules on its corporate procurement activities. The Bank reserves the right to ask the Supplier to provide proof at any time.

D1.4 The Supplier shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction.

D1.5 The Supplier shall, whenever required by the Project Manager, submit details of the arrangements and methods which the Supplier proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Project Manager.

D1.6 If the Contract specifies that the Supplier shall design any part of the Works, then unless otherwise stated in the Contract:

- (a) the Supplier shall submit to the Project Manager the Supplier's Documents for this part in accordance with the procedures specified in the Contract;
- (b) these Supplier's Documents shall be in accordance with the Works and Drawings, shall be written in the language for communications defined in [GCC clause A3](#) (Language), and shall include additional information required by the Project Manager to add to the Drawings for co-ordination of each Party's designs;
- (c) the Supplier shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and
- (d) prior to the commencement of the Tests on Completion, the Supplier shall submit to the Project Manager "as-built" documents and, if applicable, operation and maintenance manuals in accordance with the Works and in sufficient detail for the Bank to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking-over under [GCC clause I1](#) (Taking Over of the Works and Sections) until these documents and manuals have been submitted to the Project Manager.

D2 Performance Security

D2.1 The Supplier shall obtain (at his cost) a Performance Security for proper performance, in the amount stated in the SCC and denominated in the currency(ies) of the Contract or in a freely convertible currency acceptable to the Bank. If an amount is not stated in the SCC, this GCC clause shall not apply.

D2.2 The Supplier shall deliver the Performance Security to the Bank within twenty-eight (28) days after receiving the Letter of Acceptance, and shall send a copy to the Project Manager. The Performance Security shall be issued by a reputable bank or financial institution selected by the Supplier, and shall be in the form stipulated in the Contract forms or in another form approved by the Bank.

D2.3 The Supplier shall ensure that the Performance Security is valid and enforceable until the Supplier has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Supplier has not become entitled to receive the Performance Certificate by the date twenty-eight (28) days prior to the expiry date, the Supplier shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.

D2.4 The Bank shall not make a claim under the Performance Security, except for amounts to which the Bank is entitled under the Contract.

D2.5 The Bank shall return the Performance Security to the Supplier within twenty-one (21) days after receiving a copy of the Performance Certificate.

D2.6 Without limitation to the provisions of the rest of this GCC clause, whenever the Project Manager determines an addition or a reduction to the Contract Price as a result of a change in Cost and/or legislation or as a result of a Variation, amounting to more than twenty-five (25) percent of the portion of the Contract Price payable, the Supplier shall at the Project Manager's request promptly increase, or decrease, as the case may be, the value of the Performance Security in that currency by an equal percentage.

D3 Supplier's Representative

D3.1 The Supplier shall appoint the Supplier's Representative and shall give him all authority necessary to act on the Supplier's behalf under the Contract.

D3.2 Unless the Supplier's Representative is named in the SCC, the Supplier shall, prior to the Commencement Date, submit to the Project Manager for consent the name and particulars of the person the Supplier proposes to appoint as Supplier's Representative. If consent is withheld or subsequently revoked in terms of [GCC clause E5](#) (Supplier's Personnel), or if the appointed person fails to act as Supplier's Representative, the Supplier shall similarly submit the name and particulars of another suitable person for such appointment.

D3.3 The Supplier shall not, without the prior consent of the Project Manager, revoke the appointment of the Supplier's Representative or appoint a replacement.

D3.4 The Supplier's Representative shall direct the Supplier's performance of the Contract. If the Supplier's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Project Manager's prior consent, and the Project Manager shall be notified accordingly.

D3.5 The Supplier's Representative shall, on behalf of the Supplier, receive instructions under [GCC clause C3](#) (Instructions of the Project Manager).

D3.6 The Supplier's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Project Manager has received prior notice signed by the Supplier's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

D3.7 The Supplier's Representative shall be fluent in the language for communications defined in [GCC clause A3](#) (Language). If the Supplier's Representative's delegates are not fluent in the said language, the Supplier shall make competent interpreters available during all working hours in a number deemed sufficient by the Project Manager.

D4 Co-operation

D4.1 The Supplier shall, as specified in the Contract or as instructed by the Project Manager, allow appropriate opportunities for carrying out work to:

- (a) the Bank's personnel,
- (b) any Suppliers or suppliers employed by the Bank, and
- (c) the personnel of any legally constituted public authority,

who may be employed in the execution on or near the Site of any work not included in the Contract.

D4.2 Any such instruction shall constitute a Variation if and to the extent that it causes the Supplier to suffer delay and/or to incur Cost. Services for these personnel and other suppliers may include the use of Supplier's Equipment or access arrangements.

D5 Setting Out

D5.1 The Supplier shall set out the Works in relation to original points, lines and levels of reference specified in the Contract or notified by the Project Manager. The Supplier shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

D5.2 The Bank shall be responsible for any errors in these specified or notified items of reference, but the Supplier shall use reasonable efforts to verify their accuracy before they are used.

D5.3 If the Supplier suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced Supplier could not reasonably have discovered such error and avoided this delay and/or Cost, the Supplier shall give notice to the Project Manager and shall be entitled subject to [GCC clause G5](#) (Supplier's Claims) to:

- (a) get an extension of time for any such delay, if completion is or will be delayed, under [GCC clause G4](#) (Extension of Time for Completion), and
- (b) get payment of any such Cost, which shall be included in the Contract Price.

D5.4 After receiving this notice, the Project Manager shall proceed in accordance with [GCC clause C5](#) (Determinations) to agree or determine (i) whether and (if so) to what extent the error could not reasonably have been discovered, and (ii) the matters described in GCC clause D5.3(a) and (b) above related to this extent.

D6 Safety Procedures

D6.1 The Supplier shall:

- (a) comply with all applicable safety regulations,
- (b) take care for the safety of all persons entitled to be on the Site,
- (c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons,
- (d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under [GCC clause I](#) (Bank Taking Over), and
- (e) provide any works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

D7 Quality Assurance

D7.1 The Supplier shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Project Manager shall be entitled to audit any aspect of the system.

D7.2 Details of all procedures and compliance documents shall be submitted to the Project Manager for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Project Manager, evidence of the prior approval by the Supplier himself shall be apparent on the document itself.

D7.3 Compliance with the quality assurance system shall not relieve the Supplier of any of his duties, obligations or responsibilities under the Contract.

D8 Site Data

D8.1 The Bank shall have made available to the Supplier for his information, prior to the Commencement Date, all relevant data in the Bank's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Bank shall similarly make available to the Supplier all such data which come into the Bank's possession after the Commencement Date. The Supplier shall be responsible for interpreting all such data.

D8.2 To the extent which was practicable (taking account of cost and time), the Supplier shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Proposal or Works. To the same extent, the Supplier shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Proposal as to all relevant matters, including (without limitation):

- (a) the form and nature of the Site, including sub-surface conditions,
- (b) the hydrological and climatic conditions,
- (c) the extent and nature of the work and goods necessary for the execution and completion of the Works and the remedying of any defects,
- (d) the Laws, procedures and labour practices of the country where the Contract is performed, and
- (e) the Supplier's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

D9 Sufficiency of the Contract Price

D9.1 The Supplier shall be deemed to:

- (a) have satisfied himself as to the correctness and sufficiency of the Contract Price, and
- (b) have based the Contract Price on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in GCC clause [D8](#) (Site Data).

D9.2 Unless otherwise stated in the Contract, the Contract Price covers all the Supplier's obligations under the Contract and all things necessary for the proper execution and completion of the Works and the remedying of any defects.

D10 Unforeseeable Physical Conditions

D10.1 In this GCC Clause, “physical conditions” means natural physical conditions and man-made and other physical obstructions and pollutants, which the Supplier encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions.

D10.2 If the Supplier encounters adverse physical conditions which he considers to have been Unforeseeable, the Supplier shall give notice to the Project Manager as soon as practicable.

D10.3 This notice shall describe the physical conditions, so that they can be inspected by the Project Manager and shall set out the reasons why the Supplier considers them to be Unforeseeable. The Supplier shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Project Manager may give. If an instruction constitutes a Variation, [GCC clause L](#) (Variations and Adjustments) shall apply.

D10.4 If and to the extent that the Supplier encounters physical conditions which are Unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Supplier shall be entitled subject to notice under [GCC clause G3](#) (Supplier’s Claims) to:

- (a) claim for an extension of time for any such delay, if completion is or will be delayed, under [GCC clause G4](#) (Extension of Time for Completion), and
- (b) claim for payment of any such Cost, which shall be included in the Contract Price.

D10.5 Upon receiving such notice and inspecting and/or investigating these physical conditions, the Project Manager shall proceed in accordance with [GCC clause C5](#) (Determinations) to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in GCC [D10.4](#)(a) and (b) above related to this extent.

D10.6 However, before additional Cost is finally agreed or determined for item (ii) under GCC clause [D10.5](#), the Project Manager may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen when the Supplier submitted the Proposal. If and to the extent that these more favourable conditions were encountered, the Project Manager may proceed in accordance with GCC clause [C5](#) (Determinations) to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under GCC [D10.4](#)(b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

D10.7 The Project Manager shall take account of any evidence of the physical conditions foreseen by the Supplier when submitting the Proposal, which shall be made available by the Supplier, but shall not be bound by the Supplier’s interpretation of any such evidence.

D11 Avoidance of Interference

D11.1 The Supplier shall not interfere unnecessarily or improperly with:

- (a) the convenience of the public, or
- (b) the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Bank or of others.

D11.2 The Supplier shall indemnify and hold the Bank harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

D12 Transport of Goods

D12.1 Unless otherwise stated in the Contract:

- (a) the Supplier shall give the Project Manager not less than twenty-one (21) days' notice of the date on which any Plant or a major item of other goods will be delivered to the Site;
- (b) the Supplier shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all goods and other things required for the Works; and
- (c) the Supplier shall indemnify and hold the Bank harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of goods, and shall negotiate and pay all claims arising from their transport.

D13 Supplier's Equipment

D13.1 The Supplier shall be responsible for all Supplier's Equipment. When brought on to the Site, Supplier's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Supplier shall not remove from the Site any major items of Supplier's Equipment without the consent of the Project Manager. However, consent shall not be required for vehicles transporting goods or Supplier's personnel off Site.

D14 Protection of the Environment

D14.1 The Supplier shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

D14.2 The Supplier shall ensure that emissions, surface discharges and effluent from the Supplier's activities shall not exceed the values stated in the Works or prescribed by applicable Laws.

D15 Bank's Equipment

D15.1 The Bank shall make the Bank's Equipment (if any) available for the use of the Supplier in the execution of the Works

D15.2 The Bank shall, at his risk and cost, provide the Bank's Equipment at the time and place specified in the Contract. The Supplier shall then visually inspect them, and shall promptly give notice to the Project Manager of any shortage, defect or default in the Bank's Equipment. Unless otherwise agreed by both Parties, the Bank shall immediately rectify the notified shortage, defect or default.

D15.3 After this visual inspection, the Bank's Equipment shall come under the care, custody and control of the Supplier. The Supplier's obligations of inspection, care, custody and control shall not relieve the Bank of liability for any shortage, defect or default not apparent from a visual inspection.

D16 Progress Reports

D16.1 Unless otherwise stated in the SCC, progress reports shall be prepared by the Supplier and submitted to the Project Manager in the frequency and number of copies as specified in the SCC. Each report shall include the information set out in the SCC. Reports shall be submitted within seven (7) days after the last day of the period to which it relates.

D16.2 Reporting shall continue until the Supplier has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

D17 Security of the Site

D17.1 Unless otherwise stated in the Contract:

- (a) the Supplier shall be responsible for keeping unauthorised persons off the Site, and
- (b) authorised persons shall be limited to the Supplier's personnel and the Bank's personnel; and to any other personnel notified to the Supplier, by the Bank or the Project Manager, as authorised personnel of the Bank's contractors or suppliers on the Site.

D18 Supplier's Operations on Site

D18.1 The Supplier shall confine his operations to the Site, and to any additional areas which may be obtained by the Supplier and agreed by the Project Manager as additional working areas. The Supplier shall take all necessary precautions to keep Supplier's Equipment and Supplier's personnel within the Site and these additional areas, and to keep them off adjacent land.

D18.2 During the execution of the Works, the Supplier shall keep the Site free from all unnecessary obstruction and shall store or dispose of any Supplier's Equipment or surplus materials. The Supplier shall clear away and remove from the Site any wreckage, rubbish and temporary Works which are no longer required.

D18.3 Upon the issue of a Taking-Over Certificate, the Supplier shall clear away and remove, from that part of the Site and Works to which the Taking-Over Certificate refers, all Supplier's Equipment, surplus material, wreckage, rubbish and temporary works. The Supplier shall leave that part of the Site and the Works in a clean and safe condition. However, the Supplier may retain on Site, during the Defects Notification Period, such goods as are required for the Supplier to fulfil obligations under the Contract.

D19 Code of Conduct

D19.1 The Supplier declares that it is fully cognizant of and undertakes to comply with the Code of Conduct for Suppliers of the Bank.

E Staff and Labour**E1 Engagement of Staff and Labour**

E1.1 Except as otherwise stated in the Works, the Supplier shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, feeding, transport, and when appropriate, housing.

E1.2 The Supplier is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from sources within the country where the Contract is performed.

E2 Rates of Wages and Conditions of Labour

E2.1 The Supplier shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Supplier shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by suppliers whose trade or industry is similar to that of the Supplier.

E2.2 The Supplier shall inform the Supplier's personnel about their liability to pay personal income taxes in the relevant country in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the Laws of the relevant country for the time being in force, and the Supplier shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

E3 Labour Laws

E3.1 The Supplier shall comply with all the relevant labour Laws applicable to the Supplier's personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

E3.2 The Supplier shall require his employees to obey all applicable Laws, including those concerning safety at work.

E4 Supplier's Personnel

E4.1 The Supplier's personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Project Manager may require the Supplier to remove (or cause to be removed) any person employed on the Site or Works, including the Supplier's Representative if applicable, who:

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

E4.2 If appropriate, the Supplier shall then appoint a suitable replacement person.

E5 Records of Supplier's Personnel and Equipment

E5.1 The Supplier shall submit, to the Project Manager, details showing the number of each class of Supplier's personnel and each type of Supplier's Equipment on the Site. The records of Supplier's personnel shall include the names, ages, gender, hours worked and wages paid to all works. Details shall be submitted each calendar month, in a form approved by the Project Manager, until the Supplier has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

E6 Foreign Personnel

E6.1 The Supplier may bring in to the relevant country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Supplier shall ensure that these personnel are provided with the required residence visas and work permits. The Bank will, if requested by the Supplier, use its best endeavours in a timely and expeditious manner to assist the Supplier in obtaining any local, state, national or government permission required for bringing in the Supplier's personnel.

E6.2 The Supplier shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the relevant country of any of these personnel or members of their families, the Supplier shall similarly be responsible for making the appropriate arrangements for their return or burial.

F Plant, Materials and Workmanship

F1 Manner of Execution

F1.1 The Supplier shall execute the Works:

- (a) in the manner (if any) specified in the Contract,
- (b) in a proper workmanlike and careful manner, in accordance with recognised good practice, and
- (c) with properly equipped facilities and non-hazardous Materials.

F2 Samples

F2.1 The Supplier shall submit the following samples of Materials, and relevant information, to the Project Manager for consent prior to using the Materials in or for the Works:

- (a) manufacturer's standard samples of Materials and samples specified in the Contract, all at the Supplier's cost, and
- (b) additional samples instructed by the Project Manager as a Variation.

F2.2 Each sample shall be labelled as to origin and intended use in the Works.

F3 Inspection

F3.1 The Bank's personnel shall at all reasonable times:

- (a) have full access to all parts of the Site,
- (b) during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of the Works.

F3.2 The Supplier shall give the Bank's personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Supplier from any obligation or responsibility.

F3.3 The Supplier shall give notice to the Project Manager whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Project Manager shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Supplier that the Project Manager does not require to do so. If the Supplier fails to give the notice, he shall, if and when required by the Project Manager, uncover the work and thereafter reinstate and make good, all at the Supplier's cost.

F4 Testing

F4.1 This GCC clause shall apply to all tests specified in the Contract, other than the tests after completion (if any).

F4.2 Except as otherwise specified in the Contract, the Supplier shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Supplier shall agree, with the Project Manager, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

F4.3 The Project Manager may, under [GCC Clause L](#) (Variations and Adjustments), vary the location or details of specified tests, or instruct the Supplier to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Supplier, notwithstanding other provisions of the Contract.

F4.4 The Project Manager shall give the Supplier not less than twenty-four (24) hours' notice of the Project Manager's intention to attend the tests. If the Project Manager does not attend at the time and place agreed, the Supplier may proceed with the tests, unless otherwise instructed by the Project Manager, and the tests shall then be deemed to have been made in the Project Manager's presence.

F4.5 If the Supplier suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the Bank is responsible, the Supplier shall give notice to the Project Manager and shall be entitled subject to [GCC clause G5](#) (Supplier's Claims) to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under [GCC clause G4](#) (Extension of Time for Completion), and
- (b) payment of any such Cost, which shall be included in the Contract Price.

F4.6 After receiving this notice, the Project Manager shall proceed in accordance with [GCC clause C5](#) (Determinations) to agree or determine these matters.

F4.7 The Supplier shall promptly forward to the Project Manager duly certified reports of the tests. When the specified tests have been passed, the Project Manager shall endorse the Supplier's test certificate, or issue a certificate to him, to that effect. If the Project Manager has not attended the tests, he shall be deemed to have accepted the readings as accurate.

F5 Rejection

F5.1 If, as a result of an examination, inspection, measurement or testing, any Plant, Materials or workmanship is found to be defective or otherwise not in accordance with the Contract, the Project Manager may reject the Plant, Materials or workmanship by giving notice to the Supplier, with reasons. The Supplier shall then promptly make good the defect and ensure that the rejected item complies with the Contract.

F5.2 If the Project Manager requires this Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Bank to incur additional costs, the Supplier shall subject to [GCC clause B3](#) (Bank's Claims) pay these costs to the Bank.

F6 Remedial Work

F6.1 Notwithstanding any previous test or certification, the Project Manager may instruct the Supplier to:

- (a) remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,
- (b) remove and re-execute any other work which is not in accordance with the Contract, and
- (c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

F6.2 The Supplier shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under [GCC clause F6.1\(c\)](#).

F6.3 If the Supplier fails to comply with the instruction, the Bank shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Supplier would have been entitled to payment for the work, the Supplier shall subject to [GCC clause B3](#) (Bank's Claims) pay to the Bank all costs arising from this failure.

F7 Ownership of Plant and Materials

F7.1 Except otherwise specified in the Contract, each item of Plant and Materials shall, to the extent consistent with the Laws of the relevant country, become the property of the Bank at whichever is the earlier of the following times, free from liens and other encumbrances:

- (a) when it is incorporated in the Works;
- (b) when the Supplier is paid the corresponding value of the Plant and Materials under [GCC clause G10](#) (Payment for Plant and Materials in Event of Suspension).

G Commencement, Delays, Claims and Suspension

G1 Commencement of Works

G1.1 Except as otherwise specified in the SCC, the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Project Manager's instruction recording the agreement of both Parties on such fulfilment and instructing to commence the Works is received by the Supplier:

- (a) signature of the Contract by both Parties;
- (b) except if otherwise specified in the SCC, effective access to and possession of the Site given to the Supplier together with such permission(s) under [GCC clause A7](#) (Compliance with Laws) as required for the commencement of the Works; and
- (c) receipt by the Supplier of the Advance Payment under GCC clause [M2](#) (Advance Payment) provided that the corresponding bank guarantee has been delivered by the Supplier.

G1.2 The Supplier shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date and shall then proceed with the Works with due expedition and without delay.

G2 Time for Completion

G2.1 The Supplier shall complete the Works, and each section (if any), within the Time for Completion for the Works or section (as the case may be), including:

- (a) achieving the passing of the Tests on Completion, and
- (b) completing all work which is stated in the Contract as being required for the Works or section for the purposes of taking-over under [GCC clause II](#) (Taking Over of the Works and Sections).

G3 Programme

G3.1 The Supplier shall submit a detailed time programme to the Project Manager within twenty-eight (28) days after receiving the notice under [GCC clause G1](#) (Commencement of Works). The Supplier shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Supplier's obligations. Each programme shall include:

- (a) the order in which the Supplier intends to carry out the Works, including the anticipated timing of each stage of design (if any), Supplier's Documents, procurement, delivery to Site, construction, erection and testing,
- (b) the sequence and timing of inspections and tests specified in the Contract, and
- (c) a supporting report which includes:
 - a. a general description of the methods which the Supplier intends to adopt, and of the major stages, in the execution of the Works, and

- b. details showing the Supplier's reasonable estimate of the number of each class of Supplier's personnel and of each type of Supplier's Equipment, required on the Site for each major stage.

G3.2 Unless the Project Manager, within twenty-one (21) days after receiving a programme, gives notice to the Supplier stating the extent to which it does not comply with the Contract, the Supplier shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Bank's personnel shall be entitled to rely upon the programme when planning their activities.

G3.3 The Supplier shall promptly give notice to the Project Manager of specific probable future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works. The Project Manager may require the Supplier to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal under [GCC clause L3](#) (Variation Procedure).

G3.4 If, at any time, the Project Manager gives notice to the Supplier that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Supplier's stated intentions, the Supplier shall submit a revised programme to the Project Manager in accordance with this GCC Clause.

G4 Extension of Time for Completion

G4.1 The Supplier shall be entitled subject to [GCC clause G5](#) (Supplier's Claims) to an extension of Time for Completion if and to the extent that completion for the purposes of [GCC clause I1.1](#) (Taking Over of the Works and Sections) is or will be delayed by any of the following causes:

- (a) a Variation (unless an adjustment to the Time for Completion has been agreed under [GCC clause L1.3](#) (Variation Procedure) or other substantial change in the quantity of an item of work included in the Contract,
- (b) a cause of delay giving an entitlement to extension of time under a clause of these conditions,
- (c) exceptionally adverse climatic conditions,
- (d) Unforeseeable shortages in the availability of personnel or goods caused by epidemic or governmental actions, or
- (e) any delay, impediment or prevention caused by or attributable to the Bank, the Bank's personnel or the Bank's other Suppliers.

G4.2 If the Supplier considers himself to be entitled to an extension of the Time for Completion, the Supplier shall give notice to the Project Manager in accordance with [GCC clause G5](#) (Supplier's Claims). When determining each extension of time under [GCC Clause G5](#), the Project Manager shall review previous determinations and may increase, but shall not decrease, the total extension of time.

G5 Supplier's Claim

G5.1 If the Supplier considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any clause of these conditions or otherwise in connection with the Contract, the Supplier shall give 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 Supplier became aware, or should have become aware, of the event or circumstance.

G5.2 If the Supplier fails to give notice of a claim within such period of twenty-eight (28) days, the Time for Completion shall not be extended, the Supplier shall not be entitled to additional payment, and the Bank shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this GCC Clause shall apply.

G5.3 The Supplier 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.

G5.4 The Supplier 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 Bank's liability, the Project Manager may, after receiving any notice under this GCC Clause, monitor the record-keeping and/or instruct the Supplier to keep further contemporary records. The Supplier shall permit the Project Manager to inspect all these records and shall (if instructed) submit copies to the Project Manager.

G5.5 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 Supplier, 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 response on the principles of the claim within the above defined time period.

G5.6 Within the above defined period of forty-two (42) days, the Project Manager shall proceed in accordance with [GCC clause C5.5](#) (Determinations) to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with [GCC clause G4](#) (Extension of Time for Completion), and/or (ii) the additional payment (if any) to which the Supplier is entitled under the Contract.

G5.7 Each Payment Certificate shall include such additional payment 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 Supplier shall only be entitled to payment for such part of the claim as he has been able to substantiate.

G5.8 If the Project Manager does not respond within the timeframe defined in this GCC Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer it to the dispute settlement procedure in accordance with GCC clause Q1 (Dispute Settlement)

G5.9 The requirements of this GCC Clause are in addition to those of any other GCC clause which may apply to a claim. If the Supplier fails to comply with this or another GCC 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 GCC clause.

G6 Rate of Progress

G6.1 If, at any time:

- (a) actual progress is too slow to complete within the Time for Completion, and/or
- (b) progress has fallen (or will fall) behind the current programme under GCC clause G3 (Programme),

other than as a result of a cause listed in GCC clause G4 (Extension of Time for Completion), then the Project Manager may instruct the Supplier to submit, under GCC clause G3 (Programme), a revised programme and supporting report describing the revised methods which the Supplier proposes to adopt in order to expedite progress and complete within the Time for Completion.

G6.2 Unless the Project Manager notifies otherwise, the Supplier shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Supplier's personnel and/or goods, at the risk and cost of the Supplier. If these revised methods cause the Bank to incur additional costs, the Supplier shall subject to notice under [GCC clause B3](#) (Bank's Claims) pay these costs to the Bank, in addition to delay damages (if any) under [GCC clause G7](#) (Delay Damages).

G6.3 Additional costs of revised methods, including acceleration measures, instructed by the Project Manager to reduce delays resulting from causes listed under [GCC clause G4](#) (Extension of Time for Completion) shall be paid by the Bank, without generating, however, any other additional payment benefit to the Supplier.

G7 Delay Damages

G7.1 If the Supplier fails to comply with [GCC clause G2](#) (Time for Completion), the Supplier shall subject to notice under [GCC clause B3](#) (Bank's Claims) pay delay damages to the Bank for this default. These delay damages shall be the sum stated in the SCC ([Section D, Clause 6](#)), which shall be paid for every day that shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate. However, the total amount due under this GCC clause shall not exceed the maximum amount of delay damages (if any) stated in the SCC.

G8 Suspension of Work

G8.1 The Project Manager may at any time instruct the Supplier to suspend progress of part or all of the Works. During such suspension, the Supplier shall protect, store and secure such part or the Works against any deterioration, loss or damage.

G8.2 The Project Manager may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Supplier, the following [GCC clauses G8](#) (Consequences of Suspension), [G9](#) (Payment for Plant and Materials in event of Suspension) and G10 (Prolonged Suspension) shall not apply.

G9 Consequences of Suspension

G9.1 If the Supplier suffers delay and/or incurs Cost from complying with the Project Manager's instructions under [GCC clause G8](#) (Suspension of Work) and/or from resuming the work, the Supplier shall give notice to the Project Manager and shall be entitled subject to [GCC clause G5](#) (Supplier's Claims) to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under [GCC clause G4](#) (Extension of Time for Completion), and

(b) payment of any such Cost, which shall be included in the Contract Price.

G9.2 After receiving this notice, the Project Manager shall proceed in accordance with [GCC clause C5](#) (Determinations) to agree or determine these matters.

G9.3 The Supplier shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Supplier's faulty design, workmanship or materials, or of the Supplier's failure to protect, store or secure in accordance with [GCC clause G8](#) (Suspension of Work).

G10 Payment for Plant and Materials in event of Suspension

G10.1 The Supplier shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:

- (a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than twenty-eight (28) days, and
- (b) the Supplier has marked the Plant and/or Materials as the Bank's property in accordance with the Project Manager's instructions.

G11 Prolonged Suspension

G11.1 If the suspension under [GCC clause G8](#) (Suspension of Work) has continued for more than eighty-four (84) days, the Supplier may request the Project Manager's permission to proceed. If the Project Manager does not give permission within twenty-eight (28) days after being requested to do so, the Supplier may, by giving notice to the Project Manager, treat the suspension as an omission under [GCC clause L](#) (Variations and Adjustments) of the affected part of the Works. If the suspension affects the whole of the Works, the Supplier may give notice of termination under [GCC clause N2](#) (Termination).

G12 Resumption of Work

G12.1 After the permission or instruction to proceed is given, the Supplier and the Project Manager shall jointly examine the Works and the Plant and Materials affected by the suspension. The Supplier shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension after receiving from the Project Manager an instruction to this effect under [GCC clause L](#) (Variations and Adjustments).

H Tests on Completion

H1 Supplier's Obligations

H1.1 The Supplier shall carry out the Tests on Completion in accordance with this GCC clause and [GCC clause F4](#) (Testing), after providing the documents in accordance with GCC clause [D1.6\(d\)](#) (Supplier's General Obligations).

H1.2 The Supplier shall give to the Project Manager not less than twenty-one (21) days' notice of the date after which the Supplier will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within fourteen (14) days after this date, on such day or days as the Project Manager shall instruct.

H1.3 In considering the results of the Tests on Completion, the Project Manager shall make allowances for the effect of any use of the Works by the Bank on the performance or other characteristics of the Works.

As soon as the Works, or a section, have passed any Tests on Completion, the Supplier shall submit a certified report of the results of these tests to the Project Manager.

H2 Delayed Tests

H2.1 If the Tests on Completion are being unduly delayed by the Bank, GCC clause F4.5 (Testing) and/or [GCC clause I3](#) (Interference with Tests on Completion) shall be applicable.

H2.2 If the Tests on Completion are being unduly delayed by the Supplier, the Project Manager may by notice require the Supplier to carry out the Tests within twenty-one (21) days after receiving the notice. The Supplier shall carry out the Tests on such day or days within that period and give notice to the Project Manager.

H2.3 If the Supplier fails to carry out the Tests on Completion within the period of twenty-one (21) days, the Bank's personnel may proceed with the Tests at the risk and cost of the Supplier. The Tests on Completion shall then be deemed to have been carried out in the presence of the Supplier and the results of the Tests shall be accepted as accurate.

H3 Retesting

H3.1 If the Works, or a Section, fail to pass the Tests on Completion, GCC Clause F5 (Rejection) shall apply, and the Project Manager or the Supplier may require the failed Tests, and tests on Completion on any related work, to be repeated under the same terms and conditions.

H4 Failure to Pass Tests on Completion

H4.1 If the Works, or a section, fail to pass the Tests on Completion repeated under [GCC clause H3](#) (Retesting), the Project Manager shall be entitled to:

- (a) order further repetition of Tests on Completion under [GCC clause H3](#);
- (b) if the failure deprives the Bank of substantially the whole benefit of the Works or section, reject the Works or section (as the case may be), in which event the Bank shall have the same remedies as are provided in [GCC clause J4](#) (Failure to Remedy Defects); or
- (c) issue a Taking-Over Certificate, if the Bank so requests.

H4.2 In the event of [GCC clause H4.1\(c\)](#), the Supplier shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Bank as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Bank may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under [GCC clause B3](#) (Bank's Claims) and [GCC clause C5](#) (Determinations).

I Bank Taking Over

II Taking Over of the Works and Sections

II.1 Except as stated in [GCC clause H4](#) (Failure to Pass Tests on Completion), the Works shall be taken over by the Bank when (i) the Works have been completed in accordance with the Contract, including the matters described in GCC clause G2 (Time for Completion) and except as allowed in GCC clause II.3(a) below, and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this GCC clause.

II.2 The Supplier may apply by notice to the Project Manager for a Taking-Over Certificate not earlier than fourteen (14) days before the Works will, in the Supplier's opinion, be complete and ready for taking over. If the Works are divided into sections, the Supplier may similarly apply for a Taking-Over Certificate for each section.

II.3 The Project Manager shall, within twenty-eight (28) days after receiving the Supplier's application:

- (a) issue the Taking-Over Certificate to the Supplier, stating the date on which the Works or section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or
- (b) reject the application, giving reasons and specifying the work required to be done by the Supplier to enable the Taking-Over Certificate to be issued. The Supplier shall then complete this work before issuing a further notice under this GCC clause.

II.4 If the Project Manager fails either to issue the Taking-Over Certificate or to reject the Supplier's application within the period of twenty-eight (28) days, and if the Works or section (as the case may be) are substantially complete in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

II Taking Over of Parts of the Works

II.1 The Project Manager may, at the sole discretion of the Bank, issue a Taking-Over Certificate for any part of the Works.

II.2 The Bank shall not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Project Manager has issued a Taking-Over Certificate for this part. However, if the Bank does use any part of the Works before the Taking-Over Certificate is issued:

- (a) the part which is used shall be deemed to have been taken over as from the date on which it is used,
- (b) the Supplier shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Bank, and
- (c) if requested by the Supplier, the Project Manager shall issue a Taking-Over Certificate for this part.

II.3 After the Project Manager has issued a Taking-Over Certificate for a part of the Works, the Supplier shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Supplier shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.

I2.4 If the Supplier incurs Cost as a result of the Bank taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Supplier, the Supplier shall (i) give notice to the Project Manager and (ii) be entitled subject to [GCC clause G5](#) (Supplier's Claims) to payment of any such Cost, which shall be included in the Contract Price. After receiving this notice, the Project Manager shall proceed in accordance with [GCC clause C5](#) (Determinations) to agree or determine this Cost.

I2.5 If a Taking-Over Certificate has been issued for a part of the Works (other than a section), the delay damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in these delay damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or section (as the case may be) as a whole. The Project Manager shall proceed in accordance with [GCC clause C5](#) (Determinations) to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of delay damages under [GCC clause G7](#) (Delay Damages), and shall not affect the maximum amount of these damages.

I3 Interference with Tests on Completion

I3.1 If the Supplier is prevented, for more than fourteen (14) days, from carrying out the Tests on Completion by a cause for which the Bank is responsible, the Bank shall be deemed to have taken over the Works or section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.

I3.2 The Project Manager shall then issue a Taking-Over Certificate accordingly, and the Supplier shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Project Manager shall require the Tests on Completion to be carried out by giving fourteen (14) days' notice and in accordance with the relevant provisions of the Contract.

I3.3 If the Supplier suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Supplier shall give notice to the Project Manager and shall be entitled subject to [GCC clause G5](#) (Supplier's Claims) to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under [GCC clause G4](#) (Extension of Time for Completion), and
- (b) payment of any such Cost, which shall be included in the Contract Price.

I3.4 After receiving this notice, the Project Manager shall proceed in accordance with [GCC clause C5](#) (Determinations) to agree or determine these matters.

J Defects Liability**J1 Completion of Outstanding Work and Remedying Defects**

J1.1 In order that the Works and Supplier's Documents, and each section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Supplier shall:

- (a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Project Manager, and
- (b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Bank on or before the expiry date of the Defects Notification Period for the Works or section (as the case may be).

J1.2 If a defect appears or damage occurs, the Supplier shall be notified accordingly, by (or on behalf of) the Bank.

J2 Cost of Remedying Defects

J2.1 All work referred to in [GCC clause J1.1\(b\)](#) (Completion of Outstanding Work and Remedying Defects) shall be executed at the risk and cost of the Supplier, if and to the extent that the work is attributable to:

- (a) any design for which the Supplier is responsible,
- (b) Plant, Materials or workmanship not being in accordance with the Contract, or
- (c) failure by the Supplier to comply with any other obligation.

J2.2 If and to the extent that such work is attributable to any other cause, the Supplier shall be notified promptly by (or on behalf of) the Bank, and [GCC clause L3](#) (Variation Procedure) shall apply.

J3 Extension of Defects Notification Period

J3.1 The Bank shall be entitled subject to [GCC clause B3](#) (Bank's Claims) to an extension of the Defects Notification Period for the Works or a section if and to the extent that the Works, section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or by reason of a damage attributable to the Supplier. However, a Defects Notification Period shall not be extended by more than two (2) years.

J3.2 If delivery and/or erection of Plant and/or Materials was suspended under [GCC clause G8](#) (Suspension of Work), the Supplier's obligations under this GCC clause shall not apply to any defects or damage occurring more than two (2) years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.

J4 Failure to Remedy Defects

J4.1 If the Supplier fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Bank, on or by which the defect or damage is to be remedied. The Supplier shall be given reasonable notice of this date.

J4.2 If the Supplier fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Supplier under [GCC clause J2](#) (Cost of Remedying Defects), the Bank may (at its option):

- (a) carry out the work itself or by others, in a reasonable manner and at the Supplier's cost, but the Supplier shall have no responsibility for this work; and the Supplier shall subject to [GCC clause B3](#) (Bank's Claims) pay to the Bank the costs reasonably incurred by the Bank in remedying the defect or damage;
- (b) require the Project Manager to agree or determine a reasonable reduction in the Contract Price in accordance with [GCC clause C5](#) (Determinations); or
- (c) if the defect or damage deprives the Bank of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Bank shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Supplier.

J5 Removal of Defective Work

K5.1 If the defect or damage cannot be remedied expeditiously on the Site and the Bank gives consent, the Supplier may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Supplier to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

J6 Further Tests

K6.1 If the work of remedying of any defect or damage may affect the performance of the Works, the Project Manager may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within twenty-eight (28) days after the defect or damage is remedied.

J6.2 These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under [GCC clause J2](#) (Cost of Remedying Defects), for the cost of the remedial work.

J7 Right of Access

J7.1 Until the Performance Certificate has been issued, the Supplier shall have such right of access to the Works as is reasonably required in order to comply with this GCC clause, except as may be inconsistent with the Bank's reasonable security restrictions.

J8 Supplier to Search

J8.1 The Supplier shall, if required by the Project Manager, search for the cause of any defect, under the direction of the Project Manager. Unless the defect is to be remedied at the cost of the Supplier under [GCC clause J2](#) (Cost of Remedying Defects), the Cost of the search shall be agreed or determined by the Project Manager in accordance with [GCC clause C5](#) (Determinations) and shall be included in the Contract Price.

J9 Performance Certificate

J9.1 Performance of the Supplier's obligations shall not be considered to have been completed until the Project Manager has issued the Performance Certificate to the Supplier, stating the date on which the Supplier completed his obligations under the Contract.

J9.2 The Project Manager shall issue the Performance Certificate within twenty-eight (28) days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Supplier has supplied all the Supplier's Documents and completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Bank.

J9.3 Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

J10 Unfulfilled Obligations

K10.1 After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

J11 Clearance of Site

J11.1 Upon receiving the Performance Certificate, the Supplier shall remove any remaining Supplier's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

J11.2 If all these items have not been removed within twenty-eight (28) days after receipt by the Supplier of the Performance Certificate, the Bank may sell or otherwise dispose of any remaining items. The Bank shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

J11.3 Any balance of the moneys from the sale shall be paid to the Supplier. If these moneys are less than the Bank's costs, the Supplier shall pay the outstanding balance to the Bank.

K Measurement and Evaluation**K1 Works to be Measured**

K1.1 The Works shall be measured, and valued for payment, in accordance with this GCC clause. The Supplier shall show in each application under GCC clauses M4 (Application for Interim Payment Certificates), M11 (Statement at Completion), and M12 (Application for Final Payment Certificate) the quantities and other particulars detailing the amounts which he considers to be entitled under the Contract.

K1.2 Whenever the Project Manager requires any part of the Works to be measured, reasonable notice shall be given to the Supplier's Representative, who shall:

- (a) promptly either attend or send another qualified representative to assist the Project Manager in making the measurement, and
- (b) supply any particulars requested by the Project Manager.

K1.3 If the Supplier fails to attend or send a representative, the measurement made by (or on behalf of) the Project Manager shall be accepted as accurate.

K1.4 Except as otherwise stated in the Contract, wherever any Works are to be measured from records, these shall be prepared by the Project Manager. The Supplier shall, as and when requested, attend to examine and agree the records with the Project Manager, and shall sign the same when agreed. If the Supplier does not attend, the records shall be accepted as accurate.

K1.5 If the Supplier examines and disagrees with the records, and/or does not sign them as agreed, then the Supplier shall give notice to the Project Manager of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Project Manager shall review the records and either confirm or vary them and certify the payment of the undisputed part. If the Supplier does not so give notice to the Project Manager within fourteen (14) days after being requested to examine the records, they shall be accepted as accurate.

K2 Method of Measurement

K2.1 Except as otherwise stated in the Contract and notwithstanding local practice:

- (a) measurement shall be made of the net actual quantity of each item of the Works, and
- (b) the method of measurement shall be in accordance with the Bill of Quantities or other applicable schedules.

K3 Evaluation

K3.1 Except as otherwise stated in the Contract, the Project Manager shall proceed in accordance with [GCC clause C5](#) (Determinations) to agree or determine the Contract Price by evaluating each item of work, applying the measurement agreed or determined in accordance with the above [GCC clauses K1.1](#) and [K1.2](#) and the appropriate rate or price for the item.

K3.2 For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contract or, if there is no such item, specified for similar work.

K3.3 Any item of work included in the Bill of Quantities for which no rate or price was specified shall be considered as included in other rates and prices in the Bill of Quantities and will not be paid for separately.

K3.4 However, a new rate or price shall be appropriate for an item of work if:

- (a) the measured quantity of the item is changed by more than 25% from the quantity of this item in the Bill of Quantities or other schedule,
 - (b) this change in quantity multiplied by such specified rate for this item exceeds 0.25% of the Contract Price,
 - (c) this change in quantity directly changes the Cost per unit quantity of this item by more than 1%, and
 - (d) this item is not specified in the Contract as a “fixed rate item”;
- or
- (e) the work is instructed under [GCC clause L3](#) (Variations and Adjustments),
 - (f) no rate or price is specified in the Contract for this item, and
 - (g) no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.

K3.5 Each new rate or price shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of the matters described in GCC clause [K3.4\(a\)](#) and/or [\(b\)](#), as

applicable. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable Cost of executing the work, taking account of any other relevant matters.

K3.6 Until such time as an appropriate rate or price is agreed or determined, the Project Manager shall determine a provisional rate or price for the purposes of Interim Payment Certificates as soon as the concerned Works commences.

K4 Omissions

K4.1 Whenever the omission of any work forms part (or all) of a Variation, the value of which has not been agreed, if:

- (a) the Supplier will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Contract Price;
- (b) the omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; and
- (c) this cost is not deemed to be included in the evaluation of any substituted work;

then the Supplier shall give notice to the Project Manager accordingly, with supporting particulars. Upon receiving this notice, the Project Manager shall proceed in accordance with [GCC clause C5](#) (Determinations) to agree or determine this cost, which shall be included in the Contract Price.

L Variations and Adjustments

L1 Right to Vary

L1.1 Variations may be initiated by the Project Manager at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Supplier to submit a proposal.

L1.2 The Supplier shall execute and be bound by each Variation, unless the Supplier promptly gives notice to the Project Manager stating (with supporting particulars) that (i) the Supplier cannot readily obtain the goods required for the Variation, or (ii) such Variation triggers a substantial change in the sequence or progress of the Works. Upon receiving this notice, the Project Manager shall cancel, confirm or vary the instruction.

L1.3 Each Variation may include:

- (a) changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation),
- (b) changes to the quality and other characteristics of any item of work,
- (c) changes to the levels, positions and/or dimensions of any part of the Works,
- (d) omission of any work unless it is to be carried out by others,
- (e) any additional work, Plant, Materials or services necessary for the Works, including any associated Tests on Completion, boreholes and other testing and exploratory work, or
- (f) changes to the sequence or timing of the execution of the Works.

L1.4 The Supplier shall not make any alteration and/or modification of the Works, unless and until the Project Manager instructs or approves a Variation.

L2 Value Project Management

L2.1 The Supplier may, at any time, submit to the Project Manager a written proposal which (in the Supplier's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Bank of executing,

maintaining or operating the Works, (iii) improve the efficiency or value to the Bank of the completed Works, or (iv) otherwise be of benefit to the Bank.

L2.2 The proposal shall be prepared at the cost of the Supplier and shall include the items listed in [GCC clause L3](#) (Variation Procedure).

L2.3 If a proposal, which is approved by the Project Manager, includes a change in the design of part of the Works, then unless otherwise agreed by both Parties:

- (a) the Supplier shall design this part,
- (b) GCC clauses [D1.6\(a\), D1.6\(b\), D1.6\(c\), and D1.6\(d\)](#) (Supplier's General Obligations) shall apply, and
- (c) if this change results in a reduction in the contract value of this part, the Project Manager shall proceed in accordance with [GCC clause C5](#) (Determinations) to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:
 - a. such reduction in contract value, resulting from the change, excluding adjustments under [GCC clause L4](#) (Adjustments for Changes in Legislation) and
 - b. the reduction (if any) in the value to the Bank of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

L2.4 However, if amount (a) is less than amount (b) there shall not be a fee.

L3 Variation Procedure

L3.1 If the Project Manager requests a proposal, prior to instructing a Variation, the Supplier shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- (a) a description of the proposed work to be performed and a programme for its execution,
- (b) the Supplier's proposal for any necessary modifications to the programme according to [GCC clause G3](#) (Programme) and to the Time for Completion, and
- (c) the Supplier's proposal for evaluation of the Variation.

L3.2 The Project Manager shall, as soon as practicable after receiving such proposal (under [GCC clause L2](#) (Value Project Management) or otherwise), respond with approval, disapproval or comments. The Supplier shall not delay any work whilst awaiting a response.

L3.3 Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Project Manager to the Supplier, who shall acknowledge receipt.

L3.4 Each Variation shall be evaluated in accordance with [GCC clause K](#) (Measurement and Evaluation), unless the Project Manager instructs or approves otherwise in accordance with this GCC clause.

L4 Adjustments for Changes in Legislation

L4.1 The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of the relevant country (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws,

made after the Commencement Date, which affect the Supplier in the performance of obligations under the Contract.

L4.2 If the Supplier suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Commencement Date, the Supplier shall give notice to the Project Manager and shall be entitled subject to [GCC clause G5](#) (Supplier's Claims) to:

- (a) claim for an extension of time for any such delay, if completion is or will be delayed, under [GCC clause G4](#) (Extension of Time for Completion), and
- (b) claim for payment of any such Cost, which shall be included in the Contract Price.

L4.3 After receiving this notice, the Project Manager shall proceed in accordance with [GCC clause C5](#) (Determinations) to agree or determine these matters.

L4.4 Notwithstanding the foregoing, the Supplier shall not be entitled to an extension of time and such Cost if the relevant delay has already been taken into account in the determination of a previous extension of time.

M Contract Price and Payment

M1 Contract Price

M1.1 Unless otherwise stated in the SCC:

- (a) the Contract Price shall be agreed or determined under GCC clause K 3 (Evaluation) and be subject to adjustments in accordance with the Contract;
- (b) the Supplier shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs;
- (c) any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:
 - a. of the Works which the Supplier is required to execute, or
 - b. for the purposes of [GCC clause K](#) (Measurement and Evaluation); and
- (d) the Supplier shall submit to the Project Manager, within twenty-eight (28) days after the Commencement Date, a proposed breakdown of each lump sum price in the schedules. The Project Manager may take account of the breakdown when preparing Payment Certificates, but shall not be bound by it; and
- (e) notwithstanding the provisions of [GCC clause M1\(b\)](#), Supplier's Equipment, including essential spare parts therefore, imported by the Supplier for the sole purpose of executing the Contract shall be exempt from the payment of import duties and taxes upon importation.

M2 Taxes and Duties

M2.1 The Bank is exempt from all taxation, customs duties and other such imposts in its member countries in accordance with Article 57 of the Agreement establishing the Bank. The Supplier shall not claim from the Bank any taxes, levies, license fees or any other such charges which are paid or may be payable to the municipal/local council or any other responsible authority in relation to this Contract. The Bank shall provide the Supplier with documentation reasonably necessary to support any such tax exemptions. If the Supplier improperly charges the Bank for any such taxes, the Supplier hereby authorizes the Bank to deduct the amount of any tax or

other impost included on any Statement presented by the Supplier in connection with this Contract, without any cost to the Bank.

M2.2 If a Supplier is unable to quote or invoice exclusive of all applicable taxes, such taxes shall be separately set forth on the quote or Statement and the Supplier shall provide to the Bank any additional information or document as may be required by the Bank for obtaining the requisite exemption.

M3 Advance Payment

M3.1 The Bank shall make an advance payment, as an interest-free loan for mobilisation and cash flow support, when the Supplier submits a guarantee in accordance with this GCC clause. The total advance payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions, shall be as stated in the SCC.

M3.2 Unless and until the Bank receives this guarantee, or if the total advance payment is not stated in the SCC, this GCC clause shall not apply.

M3.3 The Project Manager shall deliver to the Bank and to the Supplier an Interim Payment Certificate for the advance payment or its first instalment after receiving a Statement (under [GCC clause M4](#) (Application for Interim Payment Certificates)) and after the Bank receives (i) the Performance Security in accordance with [GCC clause D2](#) (Performance Security) and (ii) a guaranty in amounts and currencies equal to the advance payment. This guaranty shall be issued by a reputable bank or financial institution selected by the Supplier, and shall be in the form furnished in the Contract forms or in another form approved by the Bank.

M3.4 The Supplier shall ensure that the guaranty is valid and enforceable until the advance payment has been repaid, but its amount shall be progressively reduced by the amount repaid by the Supplier as indicated in the Payment Certificates. If the terms of the guaranty specify its expiry date, and the advance payment has not been repaid by the date twenty-eight (28) days prior to the expiry date, the Supplier shall extend the validity of the guaranty until the advance payment has been repaid.

M3.5 Unless stated otherwise in the SCC, the advance payment shall be repaid through percentage deductions from the interim payments determined by the Project Manager in accordance with [GCC clause M7](#) (Issue of Interim Payment Certificates), as follows:

- (a) deductions shall commence in the next interim Payment Certificate following that in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds 30 per cent (30%) of the Contract Price less any advance payment; and
- (b) deductions shall be made at the amortisation rate stated in the SCC of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when ninety (90) per cent (90%) of the Contract Price less any advance payment has been certified for payment.

M3.6 If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works, or prior to termination under [GCC N2](#) (Termination) [GCC O5](#) (Force Majeure) (as the case may be), the whole of the balance then outstanding shall immediately become due.

M4 Application for Interim Payment Certificates

M4.1 The Supplier shall submit a Statement in six copies to the Project Manager after the end of each month, in a form approved by the Project Manager, showing in detail the amounts to which the Supplier considers itself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with [GCC clause D16](#) (Progress Reports).

M4.2 The Statement shall include the following items, as applicable, which shall be expressed in the currencies in which the Contract Price is payable, in the sequence listed:

- (a) the estimated contract value of the Works executed and the Supplier's Documents produced up to the end of the month (including Variations but excluding items described in this GCC clause M4.2(b) to (g) below);
- (b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with [GCC clause L4](#) (Adjustments for Changes in Legislation);
- (c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the SCC to the total of the above amounts, until the amount so retained by the Bank reaches the limit of Retention Money (if any) stated in the SCC;
- (d) any amounts to be added for the advance payment (if more than one instalment) and to be deducted for its repayments in accordance with [GCC clause M3](#) (Advance Payment);
- (e) any amounts to be added and deducted for Plant and Materials in accordance with [GCC Clause M6](#) (Plant and Materials intended for the Works);
- (f) any other additions or deductions which may have become due under the Contract or otherwise, including those under [GCC clause Q](#) (Disputes and Law); and
- (g) the deduction of amounts certified in all previous Payment Certificates.

M5 Schedule of Payments

M5.1 If the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:

- (a) the instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of GCC clause [M4.2\(a\)](#) (Application for Interim Payment Certificates);
- (b) [GCC Clause M6](#) (Plant and Materials intended for the Works) shall not apply; and
- (c) if these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less or more than that on which this schedule of payments was based, then the Project Manager may proceed in accordance with [GCC clause C5](#) (Determinations) to agree or determine revised instalments, which shall take account of the extent to which progress is less or more than that on which the instalments were previously based.

M5.2 If the Contract does not include a schedule of payments, the Supplier shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within forty-two (42) days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

M6 Plant and Materials intended for the Works

M6.1 If this GCC clause applies, Interim Payment Certificates shall include, under GCC clause [M4.2\(e\)](#) (Application for Interim Payment Certificates), (i) an amount for Plant and Materials which have been sent to the Site for incorporation in the Works, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Works under GCC clause [M4.2\(a\)](#) (Application for Interim Payment Certificates).

M6.2 If the lists referred to in GCC clause [M.6.3\(b\)a.](#), or GCC clause [M6.3\(c\)b.](#) below are not included in the schedules, this GCC clause shall not apply.

M6.3 The Project Manager shall determine and certify each addition if the following conditions are satisfied:

(a) the Supplier has:

- a. kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection, and
- b. submitted a statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence;

and either:

(b) the relevant Plant and Materials:

- a. are those listed in the schedules for payment when shipped,
- b. have been shipped to the relevant country, en route to the Site, in accordance with the Contract; and
- c. are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Project Manager together with evidence of payment of freight and insurance, any other
- d. documents reasonably required, and a bank guarantee in a form and issued by an entity approved by the Bank in amounts and currencies equal to the amount due under this GCC clause: this guarantee may be in a similar form to the form referred to in [GCC clause M3](#) (Advance Payment) and shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration;

or

(c) the relevant Plant and Materials:

- a. are those listed in the schedules for payment when delivered to the Site, and
- b. have been delivered to and are properly stored on the Site, are protected against loss, damage or deterioration, and appear to be in accordance with the Contract.

M6.4 The additional amount to be certified shall be the equivalent of eighty (80) percent (80%) of the Project Manager's determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this GCC clause and of the contract value of the Plant and Materials.

N6.5 The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under GCC clause [M4.2\(a\)](#) (Application for Interim Payment Certificates). At that time, the Payment Certificate shall include the applicable reduction which shall be

equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

M7 Issue of Interim Payment Certificates

M7.1 No amount will be certified or paid until the Bank has received and approved the Performance Security. Thereafter, the Project Manager shall, within twenty-eight (28) days after receiving a Statement and supporting documents, deliver to the Bank and to the Supplier an Interim Payment Certificate which shall state the amount which the Project Manager fairly determines to be due, with all supporting particulars for any reduction or withholding made by the Project Manager on the Statement.

M7.2 However, prior to issuing the Taking-Over Certificate for the Works, the Project Manager shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of Interim Payment Certificates (if any) stated in the SCC. In this event, the Project Manager shall give notice to the Supplier accordingly.

M7.3 An Interim Payment Certificate shall not be withheld for any other reason, although:

- (a) if anything supplied or work done by the Supplier is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or
- (b) if the Supplier was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Project Manager, the value of this work or obligation may be withheld until the work or obligation has been performed.

M7.4 The Project Manager may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Project Manager's acceptance, approval, consent or satisfaction.

M8 Payment

M8.1 The Bank shall pay to the Supplier:

- (a) the first instalment of the advance payment within forty-two (42) days after issuing the Letter of Acceptance or within twenty-one (21) days after receiving the documents in accordance with [GCC clause D2](#) (Performance Security) and [GCC clause M3](#) (Advance Payment), whichever is later;
- (b) the amount certified in each Interim Payment Certificate within fifty-six (56) days after the Project Manager receives the Statement and supporting documents; or, at a time when the bank's loan or credit (from which part of the payments to the Supplier is being made) is suspended, the amount shown on any statement submitted by the Supplier within fourteen (14) days after such statement is submitted, any discrepancy being rectified in the next payment to the Supplier; and
- (c) the amount certified in the Final Payment Certificate within fifty-six (56) days after the Bank receives this Payment Certificate.

M8.2 Payment of the amount due in each currency shall be made into the bank account, nominated by the Supplier, in the payment country specified in the Contract.

M9 Payment of Retention Money

M9.1 When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the Project Manager for payment to the Supplier. If a Taking-Over Certificate is issued for a section or part of the Works, a proportion of the Retention Money shall be certified and paid. This proportion shall be half fifty (50) percent (50%) of the proportion calculated by dividing the estimated contract value of the section or part, by the estimated final Contract Price.

M9.2 Promptly after the latest of the expiry dates of the Defects Notification Periods, the outstanding balance of the Retention Money shall be certified by the Project Manager for payment to the Supplier. If a Taking-Over Certificate was issued for a section, a proportion of the second half of the Retention Money shall be certified and

paid promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall be half fifty (50) percent (50%) of the proportion calculated by dividing the estimated contract value of the section by the estimated final Contract Price.

M9.3 However, if any work remains to be executed under [GCC clause J](#) (Defects Liability), the Project Manager shall be entitled to withhold certification of the estimated cost of this work until it has been executed.

M9.4 When calculating these proportions, no account shall be taken of any adjustments under [GCC clause L4](#) (Adjustments for Changes in Legislation)

M9.5 Unless otherwise stated in the SCC, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Project Manager, the Supplier shall be entitled to substitute a guarantee, in the form stipulated in Contract forms or in another form approved by the Bank and issued by a reputable bank or financial institution selected by the Supplier,

for the second half of the Retention Money. The Supplier shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Supplier has executed and completed the Works and remedied any defects, as specified for the Performance Security in [GCC clause D2](#). On receipt by the Bank of the required guarantee, the Project Manager shall certify and the Bank shall pay the second half of the Retention Money. The release of the second half of the Retention Money against a guarantee shall then be in lieu of the release under [GCC clause M8.2](#). The Bank shall return the guarantee to the Supplier within 21 days after receiving a copy of the Performance Certificate.

M9.6 If the Performance Security required under [GCC clause D2](#) is in the form of a demand guarantee, and the amount guaranteed under it when the Taking-Over Certificate is issued is more than half of the Retention Money, then the Retention Money guarantee will not be required. If the amount guaranteed under the Performance Security when the Taking-Over Certificate is issued is less than half of the Retention Money, the Retention Money guarantee will only be required for the difference between half of the Retention Money and the amount guaranteed under the Performance Security.

M10 Statement at Completion

M10.1 Within eighty-four (84) days after receiving the Taking-Over Certificate for the Works, the Supplier shall submit to the Project Manager six copies of a Statement at completion with supporting documents, in accordance with [GCC clause M4](#) (Application for Interim Payment Certificates), showing:

- (a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
- (b) any further sums which the Supplier considers to be due, and
- (c) an estimate of any other amounts which the Supplier considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

M10.2 The Project Manager shall then certify in accordance with [GCC clause M7](#) (Issue of Interim Payment Certificates).

M11 Application for Final Payment Certificate

M11.1 Within fifty-six (56) days after receiving the Performance Certificate, the Supplier shall submit, to the Project Manager, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Project Manager:

- (a) the value of all work done in accordance with the Contract, and
- (b) any further sums which the Supplier considers to be due to him under the Contract or otherwise.

M11.2 If the Project Manager disagrees with or cannot verify any part of the draft final statement, the Supplier shall submit such further information as the Project Manager may reasonably require within twenty-eight (28) days from receipt of the said draft and shall make such changes in the draft as may be agreed between them. The Supplier shall then prepare and submit to the Project Manager the final statement as agreed. This agreed statement is referred to in these conditions as the “Final Statement”.

M11.3 However if, following discussions between the Project Manager and the Supplier and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Project Manager shall deliver to the Bank (with a copy to the Supplier) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under [GCC clause Q](#) (Disputes and

Law), the Supplier shall then prepare and submit to the Bank (with a copy to the Project Manager) a Final Statement.

M12 Discharge

M12.1 When submitting the Final Statement, the Supplier shall submit a discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Supplier under or in connection with the Contract. This discharge may state that it becomes effective when the Supplier has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

M13 Issue of Final Payment Certificate

M13.1 Within twenty-eight (28) days after receiving the Final Statement and discharge in accordance with [GCC clause M11](#) (Application for Final Payment Certificate) and [GCC clause M12](#) (Discharge), the Project Manager shall deliver to the Bank and to the Supplier, the Final Payment Certificate which shall state:

- (a) the amount which he fairly determines is finally due, and
- (b) after giving credit to the Bank for all amounts previously paid by the Bank and for all sums to which the Bank is entitled, the balance (if any) due from the Bank to the Supplier or from the Supplier to the Bank, as the case may be.

M13.2 If the Supplier has not applied for a Final Payment Certificate in accordance with [GCC clause M11](#) (Application for Final Payment Certificate) and [GCC clause M12](#) (Discharge), the Project Manager shall request the Supplier to do so. If the Supplier fails to submit an application within a period of twenty-eight (28) days, the Project Manager shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

M14 Cessation of Bank's Liability

M14.1 The Bank shall not be liable to the Supplier for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Supplier shall have included an amount expressly for it:

- (a) in the Final Statement, and also
- (b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in [GCC clause M10](#) (Statement at Completion).

M14.2 However, this GCC clause shall not limit the Bank's liability under his indemnification obligations, or the Bank's liability in any case of fraud, deliberate default or reckless misconduct by the Bank.

N Termination**N1 Notice to Correct**

N1.1 If the Supplier fails to carry out any obligation under the Contract, the Project Manager may by notice require the Supplier to make good the failure and to remedy it within a specified reasonable time.

N2 Termination by Bank

N2.1 The Bank shall be entitled to terminate the Contract if the Supplier:

- (a) fails to comply with [GCC clause D2](#) (Performance Security) or with a notice under [GCC clause N1](#) (Notice to Correct),
- (b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
- (c) without reasonable excuse fails:
 - a. to proceed with the Works in accordance with [GCC clause G](#) (Commencement, Delays, Claims and Suspension), or
 - b. to comply with a notice issued under [GCC clause F5](#) (Rejection) or [GCC clause F6](#) (Remedial Work), within twenty-eight (28) days after receiving it,
- (d) subcontracts the whole of the Works or assigns the Contract without the required agreement,
- (e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or
- (f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - a. for doing or forbearing to do any action in relation to the Contract, or
 - b. for showing or forbearing to show favour or disfavour to any person in relation to the Contract,

or if any of the Supplier's personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this [GCC clause N2.1\(f\)](#). However, lawful inducements and rewards to Supplier's personnel shall not entitle termination.

N2.2 In any of these events or circumstances, the Bank may, upon giving fourteen (14) days' notice to the Supplier, terminate the Contract and expel the Supplier from the Site. However, in the case of [GCC clause N2.1\(e\)](#) or [\(f\)](#), the Bank may by notice terminate the Contract immediately.

N2.3 The Bank's election to terminate the Contract shall not prejudice any other rights of the Bank, under the Contract or otherwise.

N2.4 The Supplier shall then leave the Site and deliver any required goods, all Supplier's Documents, and other design documents made by or for him, to the Project Manager. However, the Supplier shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

N2.5 After termination, the Bank may complete the Works and/or arrange for any other entities to do so. The Bank and these entities may then use any goods, Supplier's Documents and other design documents made by or on behalf of the Supplier.

N2.6 The Bank shall then give notice that the Supplier's Equipment and temporary Works will be released to the Supplier at or near the Site. The Supplier shall promptly arrange their removal, at the risk and cost of the Supplier. However, if by this time the Supplier has failed to make a payment due to the Bank, these items may be sold by the Bank in order to recover this payment. Any balance of the proceeds shall then be paid to the Supplier.

N3 Valuation at Date of Termination

N3.1 As soon as practicable after a notice of termination under [GCC clause N2](#) (Termination by Bank) has taken effect, the Project Manager shall proceed in accordance with [GCC clause C5](#) (Determinations) to agree or determine the value of the Works, goods and Supplier's Documents, and any other sums due to the Supplier for work executed in accordance with the Contract.

N4 Payment after Termination

N4.1 After a notice of termination [under GCC clause N2](#) (Termination by Bank) has taken effect, the Bank may:

- (a) proceed in accordance with [GCC clause B3](#) (Bank's Claims),
- (b) withhold further payments to the Supplier until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Bank, have been established, and/or
- (c) recover from the Supplier any losses and damages incurred by the Bank and any extra costs of completing the Works, after allowing for any sum due to the Supplier under GCC clause N3 (Valuation at Date of Termination). After recovering any such losses, damages and extra costs, the Bank shall pay any balance to the Supplier.

N5 Bank's Entitlement to Termination for Convenience

N5.1 The Bank shall be entitled to terminate the Contract, at any time for the Bank's convenience, by giving at least twenty-eight (28) days notice of such termination to the Supplier.

N5.2 After this termination, the Supplier shall proceed in accordance with [GCC clause N8](#) (Cessation of Work and Removal of Supplier's Equipment) and shall be paid in accordance with [GCC clause N9](#) (Payment on Termination).

N6 Termination by Supplier

N6.1 The Supplier shall be entitled to terminate the Contract if:

- (a) the Project Manager fails, within fifty-six (56) days after receiving the Statement and supporting documents, to issue the relevant Payment Certificate,
- (b) the Supplier does not receive the amount due under an Interim Payment Certificate within forty-two (42) days after the expiry of the time stated in [GCC clause M8](#) (Payment) within which payment is to be made (except for deductions in accordance with [GCC clause B3](#) (Bank's Claims), or
- (c) the Supplier is unable to carry out any of its obligations under the Contract for any reason attributable to the Bank, including but not limited to the Bank's failure to provide possession of or access to the site or other areas or failure to obtain any governmental permit necessary

for the execution and/or completion of the Works.

N6.2 In any of these events or circumstances, the Supplier may, upon giving thirty (30) days notice to the Bank, terminate the Contract. After the termination, the Supplier shall proceed in accordance with [GCC clause N8](#) (Cessation of Work and Removal of Supplier's Equipment) and shall be paid in accordance with [GCC clause N9](#) (Payment on Termination).

N7 Fraud and Corruption

N7.1 If the Bank determines, based on reasonable evidence, that the Supplier has engaged in Corrupt, Fraudulent, Collusive, Coercive or Obstructive practices, in competing for or in executing the Contract, then the Bank may, after giving fourteen (14) days notice to the Supplier, terminate the Supplier's employment under the Contract and expel him from the Site, and the provisions of [GCC clause N](#) shall apply as if such expulsion had been made under [GCC clause N2](#) (Termination by Bank).

N7.2 Should any employee of the Supplier be determined, based on reasonable evidence, to have engaged in Corrupt, Fraudulent, Collusive, Coercive or Obstructive practice during the execution of the work then that employee shall be removed in accordance with [GCC clause E5](#) (Supplier's Personnel).

N7.3 It is the Bank's policy to require that suppliers, contractors, service providers, bidders and their agents and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts. In pursuance of this policy, the Bank:

- (a) will reject a proposal for award if it or an International Entity determines that the bidder recommended for award or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in Corrupt, Fraudulent, Collusive, Coercive or Obstructive practices in competing for the contract in question;
- (b) will cancel the portion of the contract if it or an International Entity determines at any time that representatives of the bidder engaged in Corrupt, Fraudulent, Collusive, Coercive or Obstructive practices during the procurement or the implementation of that contract, without the bidder having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices; and
- (c) will sanction a firm or individual, at any time, in accordance with the prevailing Bank's sanctions procedures, including by publicly declaring such firm or individual ineligible either indefinitely or for a stated period of time, (i) to be awarded Bank contracts and (ii) to be a sub-contractor, consultant, supplier, or service provider of an otherwise eligible firm being awarded a Bank contract.

N8 Cessation of Work and Removal of Supplier's Equipment

N8.1 After a notice of termination under [GCC clause N5](#) (Bank's Entitlement to Termination for Convenience) or [GCC clause N6](#) (Termination by Supplier) has taken effect, the Supplier shall promptly:

- (a) cease all further work, except for such work as may have been instructed by the Project Manager for the protection of life or property or for the safety of the Works,
- (b) hand over Supplier's Documents, Plant, Materials and other work, for which the Supplier has received payment, and
- (c) remove all other goods from the Site, except as necessary for safety, and leave the Site.

N9 Payment on Termination

N9.1 After a notice of termination under [GCC clause N6](#) (Termination by Supplier) has taken effect, the Bank shall promptly:

- (a) return the Performance Security to the Supplier,
- (b) pay to the Supplier the amount of any loss or damage sustained by the Supplier as a result of this termination.

O Risk and Responsibility**O1 Indemnities**

P1.1 The Supplier shall indemnify and hold harmless the Bank, the Bank's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Supplier's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the Contract by the Bank, the Bank's personnel, or any of their respective agents, and
- (b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by reason of the Supplier's design (if any), the execution and completion of the Works and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, wilful act or breach of the Contract by the Bank, the Bank's personnel, their respective agents, or anyone directly or indirectly employed by any of them.

O1.2 The Bank shall indemnify and hold harmless the Supplier, the Supplier's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Bank, the Bank's personnel, or any of their respective agents.

O2 Supplier's Care of the Works

O2.1 The Supplier shall take full responsibility for the care of the Works and goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under [GCC clause I1](#) (Taking Over of the Works and Sections) for the Works, when responsibility for the care of the Works shall pass to the Bank. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any section or part of the Works, responsibility for the care of the section or part shall then pass to the Bank.

O2.2 After responsibility has accordingly passed to the Bank, the Supplier shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

O2.3 If any loss or damage happens to the Works, goods or Supplier's Documents during the period when the Supplier is responsible for their care, the Supplier shall rectify the loss or damage at the Supplier's risk and cost, so that the Works, goods and Supplier's Documents conform with the Contract.

O2.4 The Supplier shall be liable for any loss or damage caused by any actions performed by the Supplier after a Taking-Over Certificate has been issued. The Supplier shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Supplier was liable.

O3 Limitation of Liability

O3.1 Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in [GCC clause G7](#) (Delay Damages); [GCC clause J2](#) (Cost of Remedying Defects); [GCC clause N4](#) (Payment after Termination); [GCC clause N9](#) Payment on Termination; [GCC clause O1](#) (Indemnities); and [GCC clause N6](#) (Intellectual Property Rights).

O3.2 The total liability of the Supplier to the Bank, under or in connection with the Contract other than under [GCC clause N1](#) (Indemnities) and [GCC Clause N6](#) (Intellectual Property Rights), shall not exceed five (5) times (5x) the Contract Price.

O3.3 This GCC clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

O4 Insurance

O4.1 The Supplier shall at its own expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurance set forth below. The identity of the insurers and the form of the policies shall be subject to the approval of the Bank, who should not unreasonably withhold such approval.

(a) Insurance for Works and Supplier's Equipment

Insure the Works, Plant, Materials and Supplier's Documents for not less than the full reinstatement costs including the costs of demolition, removal of debris and professional fees and profit.

(b) Insurance against Injury to Persons and Damage to Property

Insure against any loss, damage, death or bodily injury which may occur to any physical property (including loss and damage to the Bank's property) (except things insured under GCC clause [O4.1\(a\)](#) (Insurance for Works and Supplier's Equipment) or to any person (except persons insured under GCC clause [O4.1\(c\)](#) (Insurance for Supplier's Personnel)).

This insurance shall be for a limit per occurrence of not less than the amount stated in the SCC, with no limit on the number of occurrences.

(c) Insurance for Supplier's Personnel

Insure against liability for claims, damages, losses and expenses (including legal fees and expense) arising from injury, sickness, disease or death of any person employed by the Supplier or any other of the Supplier's personnel.

This shall cover the Bank and Project Manager against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Supplier or any other person of the Supplier's personnel, except that this

insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Bank or of the Bank's personnel.

O4.2 The Supplier shall maintain the insurance policies to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Supplier is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate and for loss or damage caused by the Supplier in the course of any other operations (including those under [GCC clause J](#) (Defects Liability)).

O4.3 The Bank shall be named as loss-payee under all insurance policies taken out by the Supplier pursuant to [clause O4.1](#), except for the third-party liability, and the Subcontractors shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to [clause O4.1](#) except for cargo insurance during transport of goods to be supplied under the Contract. All insurers' rights of subrogation against such loss-payee and co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.

O4.4 The Supplier shall deliver to the Bank certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect during the performance of this Contract.

O5 Force Majeure

O5.1 Neither Party shall be responsible for any delay or failure to perform its obligations under this Contract if the delay or failure is attributable to Force Majeure. "Force Majeure" means any event or condition which (a) wholly or partially delays or prevents the affected Party from performing any of its obligations under this Contract, (b) is unforeseeable and unavoidable, (c) is beyond the reasonable control of the Party invoking Force Majeure, and (d) occurs without the fault or negligence of such Party.

O5.2 The Party affected by such Force Majeure shall give prompt written notice to the other Party specifying the nature and probable duration of the Force Majeure, and the extent of its effects on such Party's performance of its obligations under this Contract. During the continuance of such Force Majeure, the obligations of the affected Party shall be suspended to the extent necessitated by such Force Majeure.

O5.3 In the event of a Force Majeure which delays or prevents performance of the whole or any part of this Contract for more than forty-five (45) days, either Party shall have the right, by notice in writing to the other Party, to terminate this Contract without liability to the other Party.

O5.4 Upon such termination, the Project Manager shall determine the value of work done and issue a Payment Certificate which shall include:

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Supplier, or for which the Supplier is liable to accept deliver; this Plant and Materials shall become the property of (and be at the risk of) the Bank when paid for by the Bank and the Supplier shall place the same at the Bank's disposal;
- (c) other Costs or liabilities which in the circumstances were reasonably and necessarily incurred by the Supplier in the expectation of completing the Works; and

- (d) the Cost of removal of temporary Works and Supplier's Equipment from the Site and the return of these items to the Supplier's works in his country (or to any other destination at no greater costs).

O5.5 Each Party shall at all time use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure.

P. Intellectual Property and Protection of Information

P1 Intellectual Property Rights

P1.1 All Intellectual Property Rights in all documents, reports, materials, design, drawings specifically created for the Bank by the Supplier pursuant to this Contract (the "Deliverables") shall be the property of the Bank. The Supplier may retain copies of the Deliverables provided that any material which contains Bank specific information shall not be used by the Supplier for purposes unrelated to this Contract, without the prior written authorization of the Bank.

P1.2 If a third party asserts a claim against the Bank that any documents, reports, materials, plant, design drawings, equipment, deliverable or other product ("Product") that the Supplier provides to the Bank under this Contract infringes third party's Intellectual Property Rights, the Supplier will defend the Bank against that claim at the Supplier's expense and pay all costs, damages, and attorney's fees awarded against the Bank or that are included in a settlement approved by the Supplier, provided that the Bank:

- (a) promptly notifies the Supplier in writing of the claim, and
- (b) subject to the rights, immunities, privileges or exemption accorded to the Bank under the Agreement establishing the African Development Bank, allows the Supplier to control, and reasonably cooperates with the Supplier in, the defense and any related settlement negotiations.

P1.3 If a claim is made under [GCC clause P1.2](#), the Bank shall inform the Supplier for the Supplier to either (i) obtain a license to enable the Bank to continue to use the Product concerned, in accordance with the terms of this Contract, or (ii) modify the infringing Product to avoid infringement, or (iii) replace the Product, without additional charges to the Bank, with one that is compatible, functionally equivalent and non-infringing. If the Supplier determines that none of the foregoing alternatives is reasonably available, then on the Supplier's written request, the Bank shall return the Product to the Supplier and discontinue its use. The Supplier shall then give the Bank a prorated refund of the cost of the Product based on the Contract period beginning on the date of the Taking-Over Certificate.

P1.4 The Supplier represents and warrants that it has full power and authority to grant the rights granted by this Contract to the Bank, without exception, with respect to the Product supplied under this Contract without further consent of any other person. As of the Commencement Date, the Supplier represents and warrants that it is not aware of any threatened or pending legal action with respect to the Product provided by the Supplier under this Contract regarding infringement or other violation of any copyright, trademark, patent, or other intellectual or proprietary or other rights of any third party.

P2 Bank's Use of Supplier's Documents

P2.1 As between the Parties, the Supplier shall retain the Intellectual Property Rights in the Supplier's Documents and other design documents made by (or on behalf of) the Supplier.

P2.2 The Supplier shall be deemed (by signing the Contract) to give to the Bank a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Supplier's Documents, including making and using modifications of them. This licence shall:

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
- (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Supplier's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- (c) in the case of Supplier's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Supplier.

P2.3 The Supplier's Documents and other design documents made by (or on behalf of) the Supplier shall not, without the Supplier's consent, be used, copied or communicated to a third party by (or on behalf of) the Bank for purposes other than those permitted under this GCC clause.

P3 Supplier's Use of Bank's Documents

P3.1 As between the Parties, the Bank shall retain the copyright and other intellectual property rights in the specification, the Drawings and other documents made by (or on behalf of) the Bank. The Supplier may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Bank's consent, be copied, used or communicated to a third party by the Supplier, except as necessary for the purposes of the Contract.

P4 Confidential Information

P4.1 No Party shall at any time without written authorization from the other Party, communicate to any third party any Confidential Information disclosed to it, or obtained in the course of, performing its obligations under this Contract. For purposes of this paragraph, “Confidential Information” means (a) any information of the Supplier or the Bank that, if disclosed in writing, is marked “confidential” or “proprietary” at the time of disclosure, or, if disclosed orally, is identified as “confidential” or “proprietary” at the time of disclosure, and is summarized in writing sent by the disclosing party to the other party within thirty (30) days of such disclosure; or (b) any information that, under the circumstances of disclosure, a person exercising reasonable business judgment would understand to be confidential or proprietary.

P4.2 The obligations under [clause P2.1](#) will not be deemed to have been breached to the extent that Confidential Information: (a) is disclosed solely in order to comply with obligations, or exercise rights, under this Contract; or (b) is in the public domain other than due to a breach of [GCC clause P4.1](#); or (c) is independently and legally developed or acquired without the obligation of confidentiality; or (d) is legally required to be disclosed by operation of law or judicial process, provided that the Party required to make such disclosure has given the other Party prompt prior notice of any such request for disclosure.

P4.3 Where a party discloses Confidential Information to another person or entity pursuant to [GCC clause P4.1](#), the disclosing party will notify the receiving person that (a) the information is Confidential Information and (b) require the receiving person not to disclose the confidential information. In every instance, the disclosing Party shall notify the other party (a) prior to making any such disclosure and (b) promptly of any breach of its confidentiality obligations when it has learned of such a breach.

P4.4 The Supplier shall not publish or cause or permit to be published, without the prior written approval of the Bank, the existence of this Contract nor any conclusions or recommendations nor part thereof formulated in the course of or as a result of the performance of the Contract.

P4.5 The Supplier further agrees to include the contents of this clause P4 in all subcontracts and consulting agreements entered into by the Supplier for the performance of the Contract.

P4.7 The provisions of this clause P4 shall survive the expiration or the termination of this Contract.

P5 Data Protection

P5.1 The Supplier shall not damage, disclose, alter, lose or destroy any information or data of the Bank for any reason unless specifically instructed to do so in writing by the Bank. Nor shall the Supplier use any such information or data for any purpose other than that for which it has been specifically authorized. The Supplier shall maintain appropriate security measures to prevent unauthorized use, disclosure, destruction or loss of any exchange information or data.

P5.2 In the event of loss of any Bank data or information where such loss is due to the intentional act or omission or negligence of the Supplier or any of its Subcontractors, the Supplier shall be responsible for recreating such lost data in the manner and on the schedule set by the Bank. The Supplier shall ensure that all data is backed up and recoverable by the Supplier. The Supplier shall use its best efforts to assure that at no time shall any actions undertaken by the Supplier under this Contract (or any failures to act

when the Supplier has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms and/or applications with which the Supplier is working hereunder.

Q Control of the Contract

Q1 Assignment and Subcontracting

Q1.1 The Supplier shall not assign, transfer or make any other disposition of any of its rights or obligations under this Contract, in whole or in part, except with the prior written consent of the Bank.

Q1.2 The Supplier shall not subcontract for any part of the Services to any person or entity except with the prior written consent of the Bank given in respect of the particular person or entity.

Q1.3 Notwithstanding any such consent given by the Bank pursuant to [GCC clauses Q1.1](#) and [Q1.2](#), the Supplier hereby guarantees full compliance by the Subcontractors and assignees with the terms of the Contract and the prompt performance by each of them of the subcontracted parts of the Works. The Supplier further represents and warrants that it shall be fully responsible as primary obligor to the Bank regarding the manner and standard of performance of the Works.

Q1.4 Notwithstanding the approval by the Bank of (i) the assignment by the Supplier, in whole or in part, of this Contract; or (ii) the subcontracting of this Contract to a third party by the Supplier, such approval in each such case shall be without prejudice to the Supplier's obligations and liabilities hereunder and the Supplier shall not be permitted to subcontract the Works specified in the SCC ([clause F, 10](#)).

Q1.5 However, it should be understood, that no third party shall be a subcontractor or perform work on the basis of this Contract unless incorporated as a business in one of the Bank's member countries.

Q1.6 The Supplier shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Supplier. Unless otherwise stated in the SCC:

- (a) the Supplier shall not be required to obtain consent to suppliers solely of Materials, or to a subcontract for which the Subcontractor is named in the Contract;
- (b) the prior consent of the Project Manager shall be obtained to other proposed Subcontractors;
- (c) the Supplier shall give the Project Manager not less than twenty-eight (28) days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site; and
- (d) each subcontract shall include provisions which would entitle the Bank to require the subcontract to be assigned to the Bank.

Q1.7 The Supplier shall ensure that the requirements imposed on the Supplier by GCC clause P2 (Confidential Information) apply equally to each Subcontractor.

Q2 Counterparts

Q2.1 The Contract may be executed in any number of counterparts and by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.

Q3 Severability

Q3.1 If any provision of the Contract is held to be invalid or unenforceable, the remainder of the Contract will remain in full force and effect, and such provision will be deemed to be amended to the minimum extent necessary to render it enforceable.

Q4 Waiver

Q4.1 No waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

Q5 Entire Agreement

Q5.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraud or fraudulent misrepresentation.

R Disputes and Law

R1 Dispute settlement

R1.1 The Parties shall make every effort to resolve any disagreement or dispute arising between them under or in connection with this Contract amicably by direct informal negotiation. The Party asserting the existence of a disagreement or dispute shall, promptly upon becoming aware of such disagreement or dispute, notify the other Party in writing specifying the nature of the disagreement or dispute, and shall also provide such other information about the disagreement or dispute as the other Party may reasonably require.

R1.2 If, after forty-five (45) days from the commencement of such informal negotiations, the parties have been unable to amicably resolve the dispute or disagreement, either Party shall have the right to initiate arbitration proceedings in accordance with the London Court of International Arbitration (LCIA) Arbitration Rules as at present in force. The arbitral tribunal shall consist of one (1) arbitrator selected by agreement of the parties. If the parties are unable to agree on the arbitrator within sixty (60) days of notification to commence arbitration, the London Court of International Arbitration (LCIA) shall act as the appointing authority. The arbitration shall take place in the venue specified in the SCC and the arbitral proceedings shall be in the language specified in the SCC. The resulting award shall be final and binding on the parties and shall be in lieu of any other remedy.

R1.3 The arbitrator shall abide by the rules of ethics for international arbitrators established by the International Bar Association. The authority of the Arbitration Tribunal to grant relief is subject to the terms of this arbitration clause, the terms of this Contract, and the law governing the Contract. The Arbitration Tribunal shall have no authority to award exemplary, punitive, or special damages or any other damages excluded by this Contract.

R1.4 The resulting award shall be final and binding on the Parties and shall be in lieu of any other remedy.

R2 Immunity

R2.1 Nothing in this Contract shall operate or be construed as a waiver, renunciation or other modification of any right, privilege, immunity and exemption accorded to the Bank under the Agreement establishing the African Development Bank, international conventions or any other applicable law.

R3 Governing Law and Jurisdiction

R3.1 This Contract shall be governed by, enforced and construed in accordance with the laws of England.

SECTION 2

SPECIAL CONDITIONS OF CONTRACT

A. GENERAL PROVISIONS

1. Communication ([GCC Clause A2](#))

GCC A2.1 All communication shall be in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the following systems of electronic transmission:

- By letter or email

All communication shall, be sent to the following address:

For the Bank: TCGS.2 Division manager 01BP 1387 ABJ.01 20 26 26 98 African Development Bank Abidjan RCI

For the Supplier: Tél.....Email:

GCC A2.3 The ruling language of the Contract shall be: English.

B. PROJECT MANAGER

2. Project Manager's Duty and Authority ([GCC Clause C1](#))

GCC C1.1 The Project Manager is:
 Attention: Mr.
 Managing Director. Tel.....
 E-mail:

GCC C1.3 The Project Manager is required to obtain approval from the Bank before taking any of the following actions:

- Additional works
- Using the contingencies amount
- Any decision witch impact the amount of the budget

C. THE SUPPLIER

3. Performance Security ([GCC Clause D2](#))

GCC D2.1 Performance Security shall be denominated in the currency of the Contract for an amount equal to 10% of the Contract Price.

4. Progress Reports ([GCC Clause D16](#))

GCC D16.1 The Supplier shall submit to the Bank progress reports. These reports shall be submitted monthly and shall summarize the works done in the previous months, including minutes of any site meetings and other pertinent information for the Bank.

The report shall include:

- (a) charts and detailed descriptions of progress, including each stage of design (if any), Supplier's Documents, procurement, manufacture, delivery to Site, construction, erection and testing;
- (b) photographs showing the status of manufacture and of progress on the Site;
- (c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - a. commencement of manufacture,
 - b. Supplier's inspections,
 - c. tests, and
 - d. shipment and arrival at the Site;
- (d) the details described in [GCC clause E6](#) (Records of Supplier's Personnel and Equipment);
- (e) copies of quality assurance documents, test results and certificates of Materials;
- (f) list of notices given under GCC clause B3 (Bank's Claims) and notices given under [GCC clause G5](#) (Supplier's Claims);
- (g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- (h) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

D. COMMENCEMENT, DELAYS, CLAIMS AND SUSPENSION

5. Commencement of Works ([GCC Clause G1](#))

- GCC G1.1 The Supplier shall commence works no more than seven (07) days after the date of the letter to proceed;

6. Delay Damages ([GCC Clause G7](#))

- GCC G7.1 The Bank may, without prejudice to any other remedy under the Contract, deduct from the Contract Price, as delay damages, a sum equal to 0.05% of the Contract Price for each day of delay between the Time of Completion and the Taking-Over Certificate up to a maximum of 5% of the Contract Price.

E. CONTRACT PRICE AND PAYMENT

7. Contract Price ([GCC Clause M1](#))

- GCC M1 The Contract Price is a fixed lump sum : ZAR.....
The Contract price includes the repair and maintenance of technical equipment supplied by the Supplier during the one-year Defects Liability Period as indicated in the BoQ. The Contract price also includes a 10% contingency amount which will be utilized by the Supplier only upon receiving written authorization by the Bank through the Project Manager (.....).

8. Advance Payment ([GCC Clause M3](#))

- GCC M3.1 The Supplier shall provide, prior to an advance payment under the Contract, an ²advance payment guarantee equivalent to the Advance payment request: The advance payment shall be not more than 30% of the total contract price with guarantee from the Supplier' bank.

9. Retention Money ([GCC Clause M9](#))

- GCC M9.1 The percentage of retention money is 5 % of the Contract Price. The retention money will be deducted from each application for interim payment certificate.

10. Insurance (GCC clause Q4.1 (b))

Insurance against Injury to Persons and Damage to Property

This insurance shall be for a limit per occurrence of not less than **110%** or Minimum insurance amount:
For loss or damage to the works, plant and materials: USD to be discuss
For loss and damage to equipment: USD to be discuss

For loss and damage property in connection with contract: USD to be discussed for person injury or death: contractor's employees (USD to be discuss) and of the other people (USD to be discussed) with no limit on the number of occurrences.

F. CONTROL OF THE CONTRACT

11. Assignment and Subcontracting ([GCC Clause Q1](#))

GCC Q1.4 The Supplier shall not subcontract 100% of its obligations under the Contract.

The Supplier agrees that the maintenance of technical equipment is a full part of its offer during the contractual warranty period.

The Supplier shall make available to the Bank, a list of potential subcontractors within seven (7) days from receipt of the Notice to Proceed and will provide copies of the contract agreements with the subcontractors within 90 days from receipt of the Notice to Proceed,

G. DISPUTES AND LAW

12. Dispute Settlement ([GCC Clause R1](#))

GCC R1.4 The arbitration shall take place in **London**

The arbitral proceedings shall be in the English language.

H. WARRANTY

The Supplier warrants that the construction services shall be performed with all due care, diligence and efficiency, in accordance with the highest standards of professional competence and skill. This warranty shall inure to the benefit of the Bank and the Landlord of the premises who shall be entitled to rely upon this representation and warranty in the event of any breach.

The Bank shall be entitled to assign any and all of the express and implied warranties given by the Supplier as to the quality of the construction services to the Landlord, as the owner of the premises. The Supplier herein expressly agrees that the Landlord shall have standing to enforce these warranties and the principles pertaining to privity of contract shall not apply to these provisions or a claim for breach of warranty brought by the Landlord.

SCHEDULE A
REQUEST FOR PROPOSAL

SCHEDULE B
SUPPLIER'S PROPOSAL

SCHEDULE C
STATEMENT OF WORKS/DRAWINGS

SCHEDULE D
CODE OF CONDUCT FOR SUPPLIERS

SCHEDULE F
PERFORMANCE EVALUATION FORM

SCHEDULE G
PERFORMANCE GUARANTY

Section VIII. Particular Conditions

Except where otherwise indicated, all **PC** should be filled in by the Bank prior to issuance of the Bidding Documents. Schedules and reports to be provided by the Bank should be annexed.

1. General Provisions	
GC 1.1.2.2	The Bank is: The African Development Bank
GC 1.1.2.4	The Project Manager is: The Bank's Project Manager Architect recruited by the Bank to oversee the construction works.
GC 1.1.2.6	N A
GC 1.1.2.7	N A
GC 1.1.3.2	The Commencement Date shall be at the date of the issuance of the "Letter of Acceptance and Notice to Proceed" or signature of the contract by both parties
GC 1.1.3.3	The Completion Date for the whole Works is six (06) months from Commencement Date.
GC 1.1.5.6	N A
GC 1.1.5.8	The Works consist of the design, authority approval, supply, delivery, installation, integration, testing, commissioning and certification of all equipment for a 900kWp Photovoltaic (PV) system for the African Development Bank at their premises in Centurion.
GC 1.1.6.6	The Site is located at: African Development Bank- RDGS 339 Witch-Hazel Avenue Highveld, Eco Park One Centurion, Gauteng, 0157, Republic of South Africa
GC 1.2.3	N A
GC 1.2.4(i)	The following documents also form part of the Contract: Maps, calculation notes, book surveys, geotechnical documents; outfitting schedule
GC 1.3.1(a)	The Electronic Transmission System is: N A
GC 1.3.1(b)	The Bank's address for the purpose of communications is: [Attention: Corporate Procurement Division, African Development Bank Immeuble du CCIA– 18^{ème} étage Bureau N° 18N07 – Abidjan Plateau City: Abidjan ZIP Code: 01 BP 1387 Country: Cote d'Ivoire Electronic mail address: tender@afdb.org The Contractor's address for the purpose of communications is: [state full address, telephone, fax and e-mail]
GC 1.4.1	The governing law is that of: the London Court of International Arbitration (LCIA)

	The ruling language is: English The language for communications is: English
GC 1.6.1	The Parties shall enter into contract within 28 days after the Contractor receives the Letter of Acceptance.
GC 1.10.2(a)	N A
GC 1.10.2(b)	N A
GC 1.11.1	The individuals or firms in a joint venture, consortium or association shall be jointly and severally liable .
GC 1.17.1	N A
GC 1.21.1	The minimum insurance amounts and deductibles shall be: (a) for loss or damage to the Works, Plant and Materials – USD to be discussed (b) for loss or damage to Equipment – USD to be discuss (c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract – USD to be discussed (d) for personal injury or death: - (i) of the Contractor's employees – USD to be discussed (ii) of other people – USD to be discussed
GC 1.22.1	N A
GC 1.28.1	N A
GC 1.31.1 & 1.31.2	Appointing Authority for the Adjudicator: The name of Appointing Authority, together with full address and contact details will be provided in due course in case it is deemed necessary".
GC 1.32.3	Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: will be provided in due course in case it is deemed necessary".
GC 1.32.4	"United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules: Any dispute, controversy, or claim arising out of or relating to this Contract, or breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force."
2. Time Control	
GC 2.1.1	The Contractor shall submit for approval a Programme for the Works within seven (7) days from the date of the Letter of Acceptance.
GC 2.1.3	The period between Programme updates is 7 days. The amount to be withheld for late submission of an updated Programme is: 3/1000
3. Quality Control	
GC 3.3.1	The Defects Liability Period is: 12 months
4. Cost Control	
GC 4.9.1	The currency of the Bank's country is: ZAR
GC 4.10.1	N A
GC 4.11.1	The proportion of payments retained is: N/A
GC 4.12.1	The Liquidated Damages for the whole of the Works are 0.05 percent of the final Contract Price, per day. The maximum amount of Liquidated Damages for the whole of the Works is 10 percent of the final Contract Price.

GC 4.13.1	N A
GC 4.14.1	The Advance Payment shall be not more than 30% of the total contract price with Bank guaranty provided by the supplier
GC 4.15.1	The Performance Security amount is: 10% of the total amount of the contract
GC 7.4.1	<u>Finishing the Contract:</u> The date by which operating and maintenance manuals are required shall be: 30 calendar days after completion. The date by which “as built” drawings are required shall be: 30 calendar days after completion of the works.
GC 7.4.2	<u>Finishing the Contract:</u> The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GC Clause 7.4.1 shall be 5% of the total amount of the contract
GC 7.5.2 (g)	<u>Finishing the Contract:</u> The maximum number of days is: 30 calendar days after completion of the works
GC 7.7.1	<u>Finishing the Contract:</u> The percentage to apply to the value of the work not completed, representing the Bank’s additional cost for completing the Works, shall be determined in due course and certified by the project manager on the basis of actual work executed following the work schedule and variations

Section IX. Contract Forms

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

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Letter of Acceptance

[on letterhead paper of the Bank]

..... **[date]**

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

Subject: **[Notification of Award Contract No.]**

This is to notify you that your Bid dated **[Insert date]** for execution of the
[insert name of the contract and identification number] for the amount of
[insert amount (s) in figures and words and name(s) of currency(ies)], as corrected and modified
 in accordance with the Instructions to Bidders is hereby accepted by us.

You are requested to furnish the Performance Security in the amount of **[insert amount (s) in figures and words and name(s) of currency(ies)]** within 28 days¹⁰ in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section IX (Contract Forms) of the Bidding Document.

We accept the appointment of **[Bank to insert full name and address of alternative appointee proposed by Bidder in Letter of Bid]** as the Adjudicator. / We do not accept the appointment of **[Bank to insert full name and address of alternative appointee proposed by Bidder in Letter of Bid]** as the Adjudicator. And, consequently, the provisions of GC Clause 1.31 shall apply.¹¹

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

¹⁰ Or, the alternative deadline stipulated in the **Particular Conditions**.

¹¹ Use one of the two options as appropriate.

Contract Agreement

THIS CONTRACT AGREEMENT is made on the [insert: number] day of [insert: month], [insert: year].

BETWEEN

- (1) [insert complete name of the Bank], a [insert description of type of legal entity, for example, an agency of the Ministry of] of the Government of {insert name of Country of the Bank}, or corporation incorporated under the laws of { insert name of Country of the Bank } and having its principal place of business at [insert address of the Bank] (hereinafter called “the Bank”),

and

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

WHEREAS the Bank invited bids for the Works, described as **Supply and installation of Solar PV energy project for the African Development Bank’s Regional Offices in Pretoria** and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein, and the Bank agrees to pay the Contractor the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

The Bank and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
 - (a) the Letter of Acceptance
 - (b) the Bid
 - (c) the Addenda Nos [insert addenda numbers if any].
 - (d) the Particular Conditions
 - (e) the General Conditions
 - (f) the Specification
 - (g) the Drawings; and
 - (h) the completed Schedules,
3. In consideration of the payments to be made by the Bank to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Bank to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Bank hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

Agreement to be executed in accordance with the laws of **The Republic of South Africa**
on the day, month and year indicated above.

Signed by:

Signed by:

For and on behalf of the Bank

for and on behalf the Contractor

In the presence of:

in the presence of:

Witness, Name, Signature, Address, Date

Witness, Name, Signature, Address, Date

Performance Security

[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated]

Date: **[insert date (e.g., day, month, and year)]**

Bidding Process Reference: **[ADB/ITB/TCGS/2023/0248]**

Bank's Branch or Office: **[insert complete name of Guarantor]**

Beneficiary: **[insert complete name of Bank]**

PERFORMANCE GUARANTEE No.: **[insert Performance Guarantee number]**

We have been informed that **[insert complete name of the Contractor]** (hereinafter called "the Contractor") has entered into Contract No. **[insert number]** dated **[insert day and month]**, **[insert year]** with you, for the execution and completion of **[insert description of the Works]** and the remedying of any defects therein (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Bank, we hereby irrevocably undertake to pay you any sum(s) not exceeding **[insert amount(s)¹² in figures and words]** such sum being payable in the types and proportions of currencies in which the Contract Price is payable, 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.

This Guarantee shall expire no later than the **[insert number]** day of **[insert month]**, **[insert year]**,¹³ 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.

[signatures of authorized representatives of the bank]

¹² The Bank shall insert the amount(s) specified in the **PC** and denominated, as specified in the **PC**, either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Bank.

¹³ Insert the date twenty-eight days after the expected completion date. The Bank should note that in the event of an extension of the time for completion of the Contract, the Bank would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Bank might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Bank's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

Advance Payment Security

[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated.]

Date: **[insert date (e.g., day, month, and year) of Bid Submission]**

Bidding Process Reference: **[ADB/ITB/TCGS/2023/0248]**

[bank's letterhead]

Beneficiary: **[insert legal name and address of Bank]**

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

We have been informed that **[insert name of the Contractor]**. . . . (hereinafter called "the Contractor") has entered into Contract No. **[insert reference number of the Contract]**. . . . dated **[insert day and month]**, **[insert year]**.with you, for the execution of **[insert name of contract and brief description of Works]** (hereinafter called "the Contract").

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum . . . **[insert currency and amount in figures]**¹⁴. . . . (**[insert currency and amount in words]**. . . .) is to be made against an advance payment guarantee.

At the request of the Bank, we **[insert name of the Bank]**. . . . hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of **[insert currency and amount in figures]***. (**[insert currency and amount in words]**. . . .) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than performing his obligations under the Contract or the costs of mobilization in respect of the Works.

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the Contract Price has been certified for payment, or on the . . . day of,¹⁵, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

¹⁴ The Guarantor shall insert an amount representing the amount of the advance payment denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Bank

¹⁵ Insert the expected expiration date of the Time for Completion. The Bank should note that in the event of an extension of the time for completion of the Contract, the Bank would need to request an extension of this guarantee from the

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..

. [Seal of Bank and Signature(s)].

Note –

All italicized text (including footnotes) is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Bank might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [insert number of months], in response to the Bank’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”]

Retention Money Security

Demand Guarantee (N/A)

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

Beneficiary: _____ [insert Name and Address of Bank]

Date: _____ [insert date (e.g., day, month, and year)]

RETENTION MONEY GUARANTEE No.: [insert Retention Money Guarantee no.]

We have been informed that _____ [insert name of Contractor] (hereinafter called "the Contractor") has entered into Contract No. _____ [insert reference number of contract] dated _____ [insert date] with you, for the execution of _____ [insert name of contract and brief description of Works] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment, payment of [insert either "the second half of the Retention Money", or, if the amount guaranteed under the Performance Guarantee, when the Taking-Over Certificate is issued, is less than half of the Retention Money, "the difference between half of the Retention Money and the amount guaranteed under the Performance Security"] is to be made against a Retention Money guarantee.

At the request of the Bank, we _____ [insert name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ [insert amount in figures] () [insert amount in words]¹ upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

It is a condition for any claim and payment under this guarantee to be made that the payment of the second half of the Retention Money referred to above must have been received by the Contractor on

¹ The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or, if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated either in the currency(ies) of the second half of the Retention Money as specified in the Contract, or in a freely convertible currency acceptable to the Bank.

its account number _____ **[insert Contractor's account number]** at _____
[insert name and address of the Bank].

This guarantee shall expire, at the latest, 21 days after the date when the Bank has received a copy of the Performance Certificate issued by the Project Manager. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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

[signature(s)]

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