



INVITATION TO BID DOCUMENT

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for the

Provision and Commissioning of Core ICT Infrastructure & Security Enhancement Project

ITB No: ZRA/ICT/07/2016

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SECTION I. INSTRUCTIONS TO BIDDERS
(Single-Stage Bidding)

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Instructions to Bidders

A. GENERAL

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| 1. Scope of Bid and Bidding Process | <p>1.1 The Authority hereinafter referred to as the “Zambezi River Authority” named in the BDS and the SCC for GCC Clause 1.1 (b) (i), invites bids for the supply and installation of the Information System (IS), as briefly described in the BDS and specified in greater detail in these Bidding Documents.</p> <p>1.2 The title and identification number of the Invitation for Bids (ITB) and resulting Contract(s) are provided in the BDS.</p> <p>1.3 Throughout the Bidding Documents, the term "in writing" means communicated in written form (e.g. by mail, e-mail) with proof of receipt, and the term "days" means calendar days unless a different meaning is evident from the context.</p> <p>1.4 If the BDS so provides, alternative procedures forming part or all of what is commonly known as e-Tendering are available to the extent specified in, or referred to by, the BDS.</p> |
| 2. Source of Funds | <p>2.1 The Authority named in the BDS has set aside funds to finance various operation during the 2016 financial year. The Authority intends to apply a portion of the proceeds to eligible payments under the Contract for which these Bidding Documents are issued.</p> |
| 3. Fraud and Corruption | <p>3.1 It is the Authority’s policy to require that Authority’s (including beneficiaries of the funds), as well as bidders, suppliers, and contractors and their subcontractors under Authority-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Authority:</p> <p style="margin-left: 20px;">(a) defines, for the purposes of this provision, the terms set forth below as follows:</p> <p style="margin-left: 40px;">(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;</p> <p style="margin-left: 40px;">(ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;</p> |

- (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;
 - (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;
 - (v) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Authority investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - (bb) acts intended to materially impede the exercise of the Authority’s inspection and audit rights provided for under sub-clause 3.1 (e) below.
- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
- (c) will cancel the portion of the funds allocated to a contract if it determines at any time that representatives of the Authority or of a beneficiary engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Authority having taken timely and appropriate action satisfactory to the Authority to address such practices when they occur;
- (d) will sanction a firm or individual, including suspending or barring a bidder or supplier and
- (e) will have the right to require that a provision be included in bidding documents and in contracts financed by Authority, requiring bidders, suppliers, and contractors and their sub-contractors to permit the Authority to inspect their accounts and records and other documents relating to

the bid submission and contract performance and to have them audited by auditors appointed by the Authority.

- 3.2 Furthermore, Bidders shall be aware of the provision stated in Clause 9.8 and Clause 41.2 of the General Conditions of Contract.
- 3.3 Any communications between the Bidder and the Authority related to matters of alleged fraud or corruption must be made in writing.
- 3.4 By signing the Bid Submission Form, the Bidder represents that it either is the owner of the Intellectual Property Rights in the hardware, software or materials offered, or that it has proper authorization and/or license to offer them from the owner of such rights. For the purpose of this Clause, Intellectual Property Rights shall be as defined in GCC Clause 1.1 (c) (xvii). Willful misrepresentation of these facts shall be considered a fraudulent practice subject to the provisions of Clauses 3.1 through 3.4 above, without prejudice of other remedies that the Authority may take.

4. Eligible Bidders

- 4.1 A Bidder, and all parties constituting the Bidder, may have the nationality of Zambia or Zimbabwe. A Bidder shall be deemed to have the nationality of Zambia or Zimbabwe 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.
- 4.2 If a prequalification process has been undertaken for the Contract(s) for which these Bidding Documents have been issued, only those Bidders may participate that had been prequalified and continue to meet the eligibility criteria of this Clause. A prequalified Joint Venture may not change partners or its structure when submitting a bid.
- 4.3 A firm may be excluded from bidding if:
 - (a) it was engaged by the Authority to provide consulting services for the preparation of the design, specifications, or other documents to be used for the procurement of the Information System described in these Bidding Documents; or
 - (b) it is a Authority-owned enterprise in the Authority's country.
- 4.4 A firm or individual is or will be disqualified from participation in this bidding if, at any time from advertisement of the bidding until and including contract award, the firm or individual is

under:

- (a) a suspension by the Authority as a result of execution of a Bid-Securing Declaration pursuant to ITB Clause 17.6 in another Authority-financed procurement, or under a suspension by the Authority for other reasons as given; or
- (b) a declaration of ineligibility by Authority in accordance with ITB Clause 3.1 (d).

4.6 A firm or other entity that is ineligible according to any of the above provisions of this Clause, may also not participate as a Joint Venture partner, or as Subcontractor for or supplier of goods, works or services. If a bid becomes materially incomplete after removing ineligible entities, the bid may be disqualified.

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

5. Eligible Goods and Services

5.1 For the purposes of these Bidding Documents, the Information System means all:

- (a) the required information technologies, including all information processing and communications-related hardware, software, supplies, and consumable items that the Supplier is required to supply and install under the Contract, plus all associated documentation, and all other materials and goods to be supplied, installed, integrated, and made operational (collectively called “the Goods” in some clauses of the ITB); and
- (b) the related software development, transportation, insurance, installation, customization, integration, commissioning, training, technical support, maintenance, repair, and other services necessary for proper operation of the Information System to be provided by the selected Bidder and as specified in the Contract.

6. Qualifications of the Bidder

6.1 By submission of documentary evidence in its bid, the Bidder must establish to the Authority’s satisfaction:

- (a) that it has the financial, technical, and production capability necessary to perform the Contract, meets the

qualification criteria **specified in the BDS**, and has a successful performance history. If a prequalification process has been undertaken for the Contract(s) for which these Bidding Documents have been issued, the Bidder shall, as part of its bid, update any information submitted with its application for prequalification;

(For the purposes of establishing a Bidder's qualifications, and unless stated to the contrary in the BDS, the experience and / or resources of any Subcontractor will not contribute to the Bidder's qualifications; only those of a Joint Venture partner will be considered.)

- (b) that, in the case of a Bidder offering to supply key goods components of the Information System, as **identified in the BDS**, that the Bidder does not itself produce, the Bidder is duly authorized by the producer to supply those components in the Authority's country under the Contract(s) that may result from this bidding; (This will be accomplished by including Manufacturer's Authorizations in the bid, based on the sample **found in Section VII.**)
- (c) that, if a Bidder proposes Subcontractors for key services if and as **identified in the BDS**, these Subcontractors have agreed in writing to serve for the Bidder under the Contract(s) that may result from this bidding; and

6.2 Bids submitted by a Joint Venture of two or more firms as partners shall also comply with the following requirements:

- (a) the bid shall be signed so as to be legally binding on all partners;
- (b) one of the partners shall be nominated as being in charge, and this nomination shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners;
- (c) the partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the Joint Venture, and the entire execution of the Contract, including payment, shall be done exclusively with the partner in charge;
- (d) the partner or combination of partners that is responsible for a specific component of the Information System must meet the relevant minimum qualification criteria for that

component;

- (e) a firm may submit bids either as a single Bidder on its own, or as partner in one, and only one, Joint Venture. If, as a result of the bid opening pursuant to ITB Clause 24, this requirement is not met, all bids involving the firm as a single Bidder or Joint Venture partner will be disqualified;
- (f) all partners of the Joint Venture shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms, and a statement to this effect shall be included in the authorization mentioned under ITB Clause 6.2 (b) above, in the bid as well as in the Contract (in case of a successful bid).

6.3 If a Bidder intends to subcontract major items of supply or services, it shall include in the bid details of the name and nationality of the proposed Subcontractor for each of those items and shall be responsible for ensuring that any Subcontractor proposed complies with the requirements of ITB Clause 4, and that any Goods or Services components of the Information System to be provided by the Subcontractor comply with the requirements of ITB Clause 5 and the related evidence required by ITB Clause 13.1 (e) (iii) is submitted. Bidders are free to list more than one Subcontractor against each item. Quoted rates and prices will be deemed to apply, whichever Subcontractor is appointed, and no adjustment of the rates or prices will be permitted. The Authority reserves the right to delete any proposed Subcontractor from the list. This shall be done prior to Contract signature, by deleting such unacceptable Subcontractors from Appendix 3 to the Contract Agreement, which shall list the approved Subcontractors for each item prior to Contract signature. Subsequent additions and deletions from the list of approved Subcontractors shall be performed in accordance with GCC Clause 20 (as revised in the SCC, if applicable) and Appendix 3 to the Contract Agreement.

For the purposes of these Bidding Documents, a Subcontractor is any vendor or service provider with whom the Bidder contracts for the supply or execution of any part of the Information System to be provided by the Bidder under the Contract (such as the supply of major hardware, software, or other components of the required Information Technologies specified, or the performance of related Services, e.g., software development, transportation, installation, customization, integration, commissioning, training, technical support, maintenance, repair, etc.).

6.4 A firm which is a Bidder, whether as a single Bidder or as a partner in a Joint Venture, cannot be a Subcontractor in other bids, except for the supply of commercially available hardware or software by the firm, as well as purely incidental services such as installation/configuration, routine training, and ongoing maintenance/support. If the BDS for ITB Clause 6.1 (a) allows the qualification of Subcontractors nominated for certain components to be taken into account in assessing the Bidder's overall qualifications, any Subcontractor so nominated by any Bidder is automatically disqualified from being a Bidder itself or a partner in a Joint Venture. The same will normally apply to firms that have provided Subcontractor agreements for certain services pursuant to ITB Clause 6.1 (c). Non-compliance may result in the rejection of all bids in which the affected firm participates as Bidder or as partner in a Joint Venture. As long as in compliance with these provisions, or as long as unaffected by them due to not participating as Bidder or as partner in a Joint Venture, a firm may be proposed as a Subcontractor in any number of bids. If the BDS for ITB 28.1 permits the submission of bids for Subsystems, lots, or slices, then the provisions of this Clause 6.4 apply only to bids for the same Subsystem(s), lot(s), or slice(s);

7. Cost of Bidding

7.1 The Bidder shall bear all costs associated with the preparation and submission of its bid, and the Authority will in no case be responsible or liable for those costs.

8. Site Visit

8.1 The Bidder may wish to visit and examine the site or sites of the Information System and obtain for itself, at its own responsibility and risk, all information that may be necessary for preparing the bid and entering into the Contract. The costs of visiting the site or sites shall be at the Bidder's own expense.

8.2 The Authority will arrange for the Bidder and any of its personnel or agents to gain access to the relevant site or sites, provided that the Bidder gives the Authority adequate notice of a proposed visit of at least three (3) days. Alternatively, the Authority may organize a site visit or visits concurrently with the pre-bid meeting, as specified in the BDS for ITB Clause 10.2. It is mandatory for Bidders to make at least ONE site visit/pre-bid conference and failure will be a cause for disqualification.

8.3 No site visits shall be arranged or scheduled after the deadline for the submission of the Bids and prior to the award of Contract.

B. THE BIDDING DOCUMENTS

- 9. Content of Bidding Documents**
- 9.1 The contents of the Bidding Documents are listed below and should be read in conjunction with any addenda issued in accordance with ITB Clause 11:
- Section I Instructions to Bidders (ITB)
 - Section II Bid Data Sheet (BDS)
 - Section III Eligible Countries for the Provision of Goods, Works, and Services in Zambia
 - Section IV General Conditions of Contract (GCC)
 - Section V Special Conditions of Contract (SCC)
 - Section VI Technical Requirements (including Implementation Schedule)
 - Section VII Sample Forms**
- 9.2 Bidders are expected to examine all instructions, forms, terms, specifications, and other information in the Bidding Documents. Failure to furnish all information required by the Bidding Documents or to submit a bid not substantially responsive to the Bidding Documents in every respect will be at the Bidder's risk and may result in the rejection of its bid.
- 9.3 The Invitation to Bid Advertisement is not formally part of the Bidding Documents and is for reference only. In case of inconsistencies, the actual Bidding Documents shall prevail.
- 10. Clarification of Bidding Documents and Pre-bid Meeting**
- 10.1 A prospective Bidder requiring any clarification of the Bidding Documents may notify the Authority in writing at the Authority's address and by one of the means **indicated in the BDS**. Similarly, if a Bidder feels that any important provision in the documents will be unacceptable, such an issue should be raised as soon as possible. The Authority will respond in writing to any request for clarification or modification of the Bidding Documents that it receives no later than seven (7) days prior to the deadline for submission of bids prescribed by the Authority. Copies of the Authority's response (including an explanation of the query but not identifying its source) will be sent to all prospective Bidders that received the Bidding Documents from the Authority.
- 10.2 When **specified in the BDS**, the Authority will organize and Bidders are welcome to attend a pre-bid meeting at the time and place **indicated in the BDS**. The purpose of the meeting will be to clarify issues and answer questions on any matter that may

be raised at this stage, with particular attention to issues related to the Technical Requirements. Bidders are requested to submit any questions in writing to reach the Authority not later than 2 days before the meeting. Questions and answers will be transmitted in accordance with **ITB Clause 10.1**. Minutes of the meeting, including the questions raised and responses given, together with any responses prepared after the meeting, will be transmitted to all those that received the Bidding Documents from the Authority. Any modification to the Bidding Documents listed in ITB Clause 9.1, which may become necessary as a result of the pre-bid meeting, shall be made by the Authority exclusively by issuing an Addendum pursuant to ITB Clause 11. The Addendum will only be issued by e-mail and directly to Bidders who will have bought the tender documents and attended the Pre-Bid meeting.

- 11. Amendment of Bidding Documents**
- 11.1 At any time prior to the deadline for submission of bids, the Authority may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, amend the Bidding Documents. Later amendments on the same subject modify or replace earlier ones.
- 11.2 Amendments will be provided in the form of Addenda to the Bidding Documents, which will be sent in writing to all prospective Bidders that received the Bidding Documents from the Authority. Addenda will be binding on Bidders. Bidders are required to immediately acknowledge receipt of any such Addenda. It will be assumed that the amendments contained in such Addenda will have been taken into account by the Bidder in its bid.
- 11.3 In order to afford prospective Bidders reasonable time in which to take the amendment into account in preparing their bids, the Authority may, at its discretion, extend the deadline for the submission of bids, in which case, the Authority will notify all Bidders in writing of the extended deadline.

C. PREPARATION OF BIDS

- 12. Language of Bid**
- 12.1 The bid prepared by the Bidder and all correspondence and documents related to the bid exchanged by the Bidder and the Authority shall be written in **English**.
- 13. Documents Comprising the Bid**
- 13.1 The bid submitted by the Bidder shall comprise:
- (a) Bid Submission Form completed and signed by a person or

persons duly authorized to bind the Bidder to the Contract;

- (b) all Price Schedules duly completed in accordance with ITB Clauses 14, 15, and 18 and signed by a person or persons duly authorized to bind the Bidder to the Contract;
- (c) if required, Bid-securing Declaration or Bid Security furnished in accordance with ITB Clause 17;
- (d) written confirmation authorizing the signatory of the bid to commit the Bidder, in accordance with ITB Clause 19.2;
- (e) Attachments:

- (i) Attachment 1: Bidder's Eligibility

In the absence of prequalification, documents establishing to the Authority's satisfaction the Bidder's eligibility to bid, including but not limited to documentary evidence that the Bidder is legally incorporated in a territory of an eligible source country as defined under ITB Clause 4;

- (ii) Attachment 2: Bidder's Qualifications

Documentary evidence establishing to the Authority's satisfaction, and in accordance with ITB Clause 6, that the Bidder is qualified to perform the Contract if its bid is accepted. In the case where prequalification of Bidders has been undertaken, and pursuant to ITB Clause 6.1 (a), the Bidder must provide evidence on any changes in the information submitted as the basis for prequalification or, if there has been no change at all in said information, a statement to this effect;

Any Manufacturer's Authorizations and Subcontractor agreements specified as required in the BDS for ITB Clauses 6.1 (b) and 6.1 (c);

- (iii) Attachment 3: Eligibility of Goods and Services

Documents establishing, to the Authority's satisfaction, that the Goods and Services components of the Information System to be supplied, installed, and/or performed by the Bidder are eligible Goods and Services as defined under ITB Clause 5. If awarded the Contract, the Bidder shall submit for such components of the Information System evidence of eligibility, which shall be confirmed by a

certificate of origin issued at the time of shipment;

- (iv) Attachment 4: Conformity of the Information System to the Bidding Documents

Documentary evidence establishing to the Authority's satisfaction, and in accordance with ITB Clause 16, that the Goods and Services components of the Information System to be supplied, installed, and/or performed by the Bidder conform to the Bidding Documents;

- (v) Attachment 5: Proposed Subcontractors

A list of all major items of Goods or Services that the Bidder proposes to purchase or subcontract from others, and the name and nationality of the proposed Subcontractor, including vendors, for each of those items;

- (vi) Attachment 6: Intellectual Property

A list of:

- (1) all Software included in the Bidder's bid, assigning each item to one of the software categories defined in GCC Clause 1.1 (c):

(A) System, General Purpose, and Application Software; and

(B) Standard and Custom Software.

- (2) all Custom Materials, as defined in GCC Clause 1.1 (c), included in the Bidder's bid.

All Materials not identified as Custom Materials shall be deemed Standard Materials, as defined in GCC Clause 1.1 (c).

Re-assignments among the Software and Materials categories, if necessary, will be made during the implementation of the Contract according to GCC Clause 39 (Changes to the System).

14. Bid Prices

- 14.1 All Goods and Services identified in the Supply and Installation Cost Sub-Table and the Recurrent Cost Sub-Table in Section VII (Forms 2.5 and 2.6), and all other Goods and Services proposed by the Bidder to fulfill the requirements of the Information System, must be priced separately in the format of the same tables and summarized in the corresponding Cost Summary

Tables in the same Section. Prices must be quoted in accordance with the instructions provided in **Section VII for the various cost tables, in the manner specified below.**

- 14.2 The price of items that the Bidder has left blank in the cost tables provided in Section VII shall be assumed to be included in the price of other items. Items omitted altogether from the cost tables shall be assumed to be omitted from the bid and, provided that the bid is substantially responsive, an adjustment to the bid price will be made during evaluation in accordance with ITB Clause 28.6 (c) (iii).
- 14.3 Unit prices must be quoted at a level of detail appropriate for calculation of any partial deliveries or partial payments under the contract, in accordance with the Implementation Schedule in Section VI, and with GCC and SCC Clause 12 – Terms of Payment. Bidders may be required to provide a breakdown of any composite or lump-sum items included in the Cost Tables.
- 14.4 The prices for Goods components of the System are to be expressed and inclusive of VAT. **The Authority will assist with a Duty Free Exemption upon request by the Supplier.**
- (b) Locally supplied Goods:
- Unit prices of Goods offered from within the Authority's Country, shall be quoted inclusive of VAT.
- 14.5 The price of Services shall be quoted in total for each service (where appropriate, broken down into unit prices). Prices must include all taxes. Unless otherwise **specified in the BDS**, the prices must include all costs incidental to the performance of the Services, as incurred by the Supplier, such as travel, subsistence, office support, communications, translation, printing of materials, etc. Costs incidental to the delivery of the Services but incurred by the Authority or its staff, or by third parties, must be included in the price only to the extent such obligations are made explicit in these Bidding Documents (as, e.g., a requirement for the Bidder to include the travel and subsistence costs of trainees).
- 14.6 Prices for Recurrent Costs beyond the scope of warranty services to be incurred during the Warranty Period, defined in SCC Clause 29.4 and prices for Recurrent Costs to be incurred during the Post-Warranty Period, defined in SCC Clause 1.1. (e) (xii), shall be quoted as Service prices in accordance with ITB Clause 14.5 on the Recurrent Cost Sub-Table in detail, and on

the Recurrent Cost Summary Table in currency totals. Recurrent costs are all-inclusive of the costs of necessary Goods such as spare parts, software license renewals, labor, etc., needed for the continued and proper operation of the System and, if appropriate, of the Bidder's own allowance for price increases.

- 14.7 Unless otherwise **specified in the BDS**, prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to increases on any account. Bids submitted that are subject to price adjustment will be rejected.

15. Bid Currencies 15.1 Prices shall be quoted in the following currencies:

- (a) The Bidder shall quote its prices in United States Dollars (US\$).

**16. Documents
Establishing
the Conformity
of the
Information
System to the
Bidding
Documents**

16.1 Pursuant to ITB Clause 13.1 (e) (iv), the Bidder shall furnish, as part of its bid, documents establishing the conformity to the Bidding Documents of the Information System that the Bidder proposes to supply and install under the Contract.

16.2 The documentary evidence of conformity of the Information System to the Bidding Documents shall be in the form of written descriptions, literature, diagrams, certifications, and client references, including:

- (a) the Bidder's technical bid, i.e., a detailed description of the Bidder's proposed technical solution conforming in all material aspects with the Technical Requirements (Section VI) and other parts of these Bidding Documents, overall as well as in regard to the essential technical and performance characteristics of each component making up the proposed Information System;
- (b) an item-by-item commentary on the Authority's Technical Requirements, demonstrating the substantial responsiveness of the Information System offered to those requirements. In demonstrating responsiveness, the commentary shall include explicit cross references to the relevant pages in the supporting materials included in the bid. Whenever a discrepancy arises between the item-by-item commentary and any catalogs, technical specifications, or other preprinted materials submitted with the bid, the item-by-item commentary shall prevail;
- (c) a Preliminary Project Plan describing, among other things, the methods by which the Bidder will carry out its overall management and coordination responsibilities if awarded the Contract, and the human and other resources the Bidder proposes to use. The Plan should include a detailed Contract Implementation Schedule in bar chart form, showing the estimated duration, sequence, and interrelationship of all key activities needed to complete the Contract. The Preliminary Project Plan must also address any other topics **specified in the BDS**. In addition, the Preliminary Project Plan should state the Bidder's assessment of what it expects the Authority and any other

party involved in the implementation of the Information System to provide during implementation and how the Bidder proposes to coordinate the activities of all involved parties;

- (d) a written confirmation that the Bidder accepts responsibility for the successful integration and interoperability of all components of the Information System as required by the Bidding Documents.

16.3 For purposes of the commentary to be furnished pursuant to ITB Clause 16.2 (b), the Bidder shall note that references to brand names or model numbers or national or proprietary standards designated by the Authority in its Technical Requirements are intended to be descriptive and not restrictive. Except where explicitly **prohibited in the BDS** for specific items or standards, the Bidder may substitute alternative brand/model names or standards in its bid, provided that it demonstrates to the Authority's satisfaction that the use of the substitute(s) will result in the Information System being able to perform substantially equivalent to or better than that specified in the Technical Requirements.

17. Securing the Bid

17.1 The BDS for this Clause specifies whether bids must be secured, and if so, whether by a Bid-Securing Declaration or by a Bid Security. If a Bid Security is required or optional, the **BDS also specifies the amount**.

17.2 Securing the bids shall be substantially in accordance with the related sample forms included in Section VII or other forms approved by the Authority prior to bid submission. Bids must remain secured for a period of 28 days beyond the validity period of the bids, as extended, if applicable, in accordance with ITB Clause 18.2. In case of a Bid Security, it shall also:

- (a) at the Bidder's option, be in the form of either a certified check, letter of credit, or a bank guarantee from a banking institution, or a bond issued by a surety;
- (b) be issued by a reputable institution selected by the Bidder and located in any eligible country; if the institution issuing the security is located outside the Authority's Country, it shall have a correspondent financial institution located in the Authority's Country to make the security enforceable;
- (c) be payable promptly upon written demand by the Authority in case any of the conditions listed in ITB

Clause 17.6 is/are invoked;

- (d) be submitted in its original form; copies will not be accepted.

17.3 The Bid-Securing Declaration or the Bid Security of a Joint Venture shall be issued in the name of the Joint Venture submitting the bid provided the Joint Venture has legally been constituted, or else it shall be issued in the name of all partners proposed for the Joint Venture in the bid. Sanctions due to a breach of the terms of a Bid-Securing Declaration pursuant to ITB Clause 17.6 will apply to all partners to the Joint Venture.

17.4 If a Bid-Securing Declaration or Bid Security is required in accordance with ITB Clause 17.1, any bid not accompanied by a substantially acceptable Bid-Securing Declaration or Bid Security in accordance with ITB Clauses 17.2 and 17.3, shall be rejected by the Authority as non-responsive.

17.5 Unless executed or forfeited pursuant to ITB Clause 17.6, Bid-Securing Declarations, if any, will expire for, or Bid Securities, if any, will be returned as promptly as possible to,

- (a) all Bidders upon annulment of the bidding pursuant to ITB Clause 34;
- (b) Bidders refusing a request to extend the period of validity of their bids pursuant to ITB Clause 18.2;
- (c) the successful Bidder once it has signed the Contract Agreement and furnished a valid Performance Security as required;
- (d) the unsuccessful Bidders at the same time as in (c), that is, when they are informed about the successful establishment of the contract with the successful Bidder.

17.6 The Bid-Securing Declaration, if any, may be executed, or the Bid Security, if any, may be forfeited:

- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Form or any extension of validity the Bidder has agreed to pursuant to ITB Clause 18.2; or
- (b) in the case of the successful Bidder, if the Bidder fails to:
 - (i) sign the Contract Agreement in accordance with ITB Clause 36; or
 - (ii) furnish the Performance Security in accordance with ITB Clause 37.

17.7 If a bid security is **not required in the BDS**, and

- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid Form, except as provided in ITB 18.2, or
- (b) if the successful Bidder fails to: sign the Contract in accordance with ITB 36; or furnish a performance security in accordance with ITB 37;

the Authority may, **if provided for in the BDS**, declare the Bidder disqualified to be awarded a contract by the Employer for a period of time **as stated in the BDS**.

18. Period of Validity of Bids

18.1 Bids shall remain valid, at a minimum, for the period **specified in the BDS** after the deadline date for bid submission prescribed by the Authority, pursuant to ITB Clause 21. A bid valid for a shorter period shall be rejected by the Authority as non-responsive. For the convenience of Bidders, the BDS spells out the minimal original expiration dates for the validity of the bid and, if applicable pursuant to ITB Clause 17.1, for securing the bid. However, Bidders are responsible for adjusting the dates in the BDS in accordance with any extensions to the deadline date of bid submission pursuant to ITB Clause 21.2.

18.2 In exceptional circumstances, prior to expiry of the bid validity period, the Authority may request that the Bidders extend the period of validity for a specified additional period. The request and the responses to the request shall be made in writing. A Bidder may refuse the request without risking execution of the Bid-Securing Declaration or forfeiting the Bid Security, but in this case the bid will be out of the competition for the award. Except as provided in ITB Clause 18.3, a Bidder agreeing to the

request will not be required or permitted to modify its bid, but will be required to ensure that the bid remains secured for a correspondingly longer period, pursuant to ITB Clause 17.2.

**19. Format and
Signing of Bid**

- 19.1 The Bidder shall prepare an original and the number of copies/sets of the bid **specified in the BDS**, clearly marking each one as “ORIGINAL BID,” “COPY NO. 1,” “COPY NO. 2,” etc., as appropriate. In the event of any discrepancy between them, the original shall govern.
- 19.2 The original and all copies of the bid, each consisting of the documents listed in ITB Clause 13.1, shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder. The authorization must be in writing and included in the bid pursuant to ITB Clause 13.1 (d). The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid, except for unamended printed literature, shall be initialed by the person or persons signing the bid.
- 19.3 The bid shall contain no interlineations, erasures, or overwriting, except to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the bid.
- 19.4 The Bidder shall furnish in the Bid Submission Form (a sample of which is provided in the Sample Forms Section of the Bidding Documents) information regarding commissions or gratuities, if any, paid or to be paid to agents relating to this procurement and to the execution of the Contract should the Bidder be successful.

D. SUBMISSION OF BIDS

**20. Sealing and
Marking of
Bids**

- 20.1 The Bidder shall seal the original and each copy of the bid in separate envelopes, duly marking the envelopes as “ORIGINAL BID” and “COPY NO. [number].” The envelopes shall then be sealed in an outer envelope. Alternately, the ORIGINAL BID and COPIES may be put in one envelope.
- 20.2 The inner and outer envelopes shall
- (a) be addressed to the Authority at the address **given in the**

BDS, and

- (b) bear the Tender Number indicated in the BDS for ITB Clause 2.1, the Invitation for Bids title and number, and the Contract name(s), as indicated in the BDS for ITB Clause 1.2, and the statement “DO NOT OPEN BEFORE *[time and date]*,” to be completed with the time and date specified in the BDS for ITB Clause 24.1.

20.3 The inner envelopes shall also indicate the name and address of the Bidder so that the bid can be returned unopened in case it is declared “late.”

20.4 If the outer envelope is not sealed and marked as required by ITB Clause 20.2 above, the Authority will assume no responsibility for the bid’s misplacement or premature opening. If the outer envelope discloses the Bidder’s identity, the Authority will not guarantee the anonymity of the bid submission, but this disclosure will not constitute grounds for bid rejection.

**21. Deadline for
Submission of
Bids**

21.1 Bids must be received by the Authority at the address specified in the BDS for ITB Clause 20.2 no later than the time and date **stated in the BDS.**

21.2 The Authority may, at its discretion, extend this deadline for submission of bids by amending the Bidding Documents in accordance with ITB Clause 11.3, in which case all rights and obligations of the Authority and Bidders will thereafter be subject to the deadline as extended.

22. Late Bids

22.1 Any bid received by the Authority after the bid submission deadline prescribed by the Authority in the BDS for ITB Clause 21, will be rejected and returned unopened to the Bidder.

**23. Withdrawal,
Substitution,
and
Modification of
Bids**

23.1 The Bidder may withdraw, substitute, or modify its bid after submission, provided that written notice of the withdrawal, substitution, or modification is received by the Authority prior to the deadline prescribed for bid submission. All notices must be duly signed by an authorized representative and shall include a copy of the authorization (the power of attorney) in accordance with ITB Sub-Clause 19.2.

23.2 All notices of withdrawal, substitution, or modification shall

- (a) be addressed to the Authority at the address named in the BDS for ITB Clause 20.2 (a), and
- (b) bear the Contract name, the ITB Title and ITB Number,

and the words “BID WITHDRAWAL NOTICE”, BID SUBSTITUTION NOTICE”, or “BID MODIFICATION NOTICE”.

- 23.3 A notice may also be sent by electronic means such as e-mail, but in this case must include a scan of the mailing receipt showing both the sender's and receiver's addresses for the signed hardcopy of the notice, and a scan of the power of attorney.
- 23.4 Bids requested to be withdrawn in accordance with ITB 23.1 shall be returned unopened to the Bidders. Bid withdrawal notices received after the bid submission deadline will be ignored, and the submitted bid will be deemed to be a validly submitted bid.
- 23.5 The substitution or modification of the bid shall be prepared, sealed, marked, and dispatched as follows:
- (a) The Bidders shall provide an original and the number of copies specified in the BDS for ITB Clause 19.1 of any substitution or modification to its bid, clearly identified as such, in two inner envelopes duly marked “BID SUBSTITUTION -- ORIGINAL” or “BID MODIFICATION -- ORIGINAL” and “BID SUBSTITUTION -- COPIES” or “BID MODIFICATION -- COPIES.” The inner envelopes shall be sealed in an outer envelope, which shall be duly marked “BID SUBSTITUTION” or “BID MODIFICATION”.
 - (b) Other provisions concerning the marking and dispatch of a bid substitution or modification shall be in accordance with ITB Clauses 20.2, 20.3, and 20.4.
- 23.6 No bid may be withdrawn, substituted, or modified in the interval between the bid submission deadline and the expiration of the bid validity period specified by the Bidder in the Bid Submission Form, or any extension thereof agreed to by the Bidder. Withdrawal of a bid during this interval may result in the execution of the Bid-Securing Declaration, if any, or forfeiture of the Bid Security, if any, pursuant to ITB Clause 17.6.

E. BID OPENING AND EVALUATION

24. Opening of Bids by Authority

- 24.1 The Authority will open all bids, including withdrawals, substitutions, and modifications, in public, in the presence of Bidders’ representatives who choose to attend, at the time, on the date and at the place **specified in the BDS**. Bidders’

representatives shall sign a register as proof of their attendance.

24.2 First, envelopes marked “BID WITHDRAWAL NOTICE” 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 “BID SUBSTITUTION NOTICE” 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 “BID MODIFICATION NOTICE” 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.

24.3 Bids shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the total bid price including any unconditional discounts, and, if applicable, the prices and unconditional discounts for Subsystems, lots, or slices; the presence or absence of a Bid-Securing Declaration or a Bid Security if one was required; any conditional discounts offered for the award of more than one Subsystem, lot, or slice, if the BDS for ITB Clause 28.1 permits such discounts to be considered in the bid evaluation; and any other such details as the Authority may consider appropriate.

24.4 Bids and modifications that are not opened and read out at bid opening shall not be considered for further evaluation, irrespective of the circumstances. These bids, including any bids validly withdrawn in accordance with ITB Clause 24.2, will promptly be returned, unopened, to their Bidders.

24.5 The Authority will prepare minutes of the bid opening, including the information disclosed to those present in accordance with ITB Clause 24.3. The minutes will promptly be distributed to all Bidders that met the deadline for submitting bids.

25. Clarification of Bids

25.1 During the bid evaluation, the Authority may, at its discretion, ask the Bidder for a clarification of its bid. The request for clarification and the response shall be in writing, and no change in the price or substance of the bid shall be sought, offered, or

permitted.

**26. Preliminary
Examination
of Bids**

- 26.1 The Authority will examine the bids to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the bids are generally in order. In the case where a prequalification process has been undertaken for the Contract(s) for which these Bidding Documents have been issued, the Authority will ensure that each bid is from a prequalified Bidder, and in the case of a Joint Venture, that partners and structure of the Joint Venture are unchanged from those in the prequalification.
- 26.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price, which is obtained by multiplying the unit price and quantity, or between added or subtracted subtotals and totals, the unit or subtotal price shall prevail and the total price shall be corrected, unless in the opinion of the Authority there is an obvious misplacement of the decimal point in the unit or subtotal prices, in which case the line item total as quoted shall govern and the unit price or sub-total shall be corrected. If there is a discrepancy between words and figures, the amount in words will prevail, unless the discrepancy is the result of a typo/error for which the correction is self-evident to the Authority. If the Bidder with the Lowest Evaluated Bid does not accept the correction of errors, the bid shall be rejected.
- 26.3 The Authority may waive any minor informality, nonconformity, or irregularity in a bid that does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Bidder.
- 26.4 Prior to the detailed evaluation, the Authority will determine whether each bid is of acceptable quality, is complete, and is substantially responsive to the Bidding Documents. For purposes of this determination, a substantially responsive bid is one that conforms to all the terms, conditions, and specifications of the Bidding Documents without material deviations, exceptions, objections, conditionalities, or reservations. A material deviation, exception, objection, conditionality, or reservation is one: (i) that limits in any substantial way the scope, quality, or performance of the Information System; or (ii) that limits, in any substantial way that is inconsistent with the Bidding Documents, the Authority's rights or the successful Bidder's obligations under the Contract; or (iii) the acceptance of which would unfairly affect the competitive position of other

Bidders who have submitted substantially responsive bids.

- 26.5 If a bid is not substantially responsive, it will be rejected by the Authority and may not subsequently be made responsive by the Bidder by correction of the nonconformity. The Authority's determination of bid responsiveness will be based on the contents of the bid itself.

27. Conversion to Single Currency

27.1 N/A

28. Evaluation and Comparison of Bids

28.1 The Authority will evaluate and compare the bids that have been determined to be substantially responsive, pursuant to ITB Clause 26. The evaluation will be performed assuming either that:

- (a) the Contract will be awarded to the lowest evaluated Bidder per LOT or
- (b) if **specified in the BDS**, Contracts will be awarded to the Bidders for each individual Subsystem, lot, or slice defined in the Technical Requirements whose bids result in the lowest combined evaluated price for the entire System.

In the latter case, discounts that are conditional on the award of more than one Subsystem, lot, or slice may be offered in bids. However, such discounts will only be considered in the price evaluation if so **confirmed in the BDS**.

28.2 To be considered for Contract award, Bidders must have submitted bids

- (a) for which detailed bid evaluation using the same standards for compliance determination as listed in ITB Clauses 26.3 and 26.4 confirms that the bids are commercially and technically responsive, and include the hardware, Software, related equipment, products, Materials, and other Goods and Services components of the Information System in, substantially, the full required quantities for the entire Information System or, if allowed in the BDS for ITB Clause 28.1, the individual Subsystem, lot or slice bid on; and
- (b) that offer Information Technologies that are proven to perform up to the standards promised in the bid by having successfully passed the performance, benchmark, and/or functionality tests the Authority may require, pursuant to ITB Clause 31.2.

28.3 The Authority's evaluation of a bid will be made on the basis of prices quoted in accordance with ITB Clause 14 (Bid Prices).

28.4 If **indicated by the BDS**, the Authority's evaluation of responsive bids will take into account technical factors, in addition to cost factors. An Evaluated Bid Score (B) will be calculated for each responsive bid using the following formula, which permits a comprehensive assessment of the bid price and the technical merits of each bid:

$$B = \frac{C_{low}}{C} X + \frac{T}{T_{high}} (1 - X)$$

where

C = Evaluated Bid Price

C_{low} = the lowest of all Evaluated Bid Prices among responsive bids

T = the total Technical Score awarded to the bid

T_{high} = the Technical Score achieved by the bid that was scored highest among all responsive bids

X = weight for the Price as **specified in the BDS**

The bid with the highest Evaluated Bid Score (B) among responsive bids shall be termed the Lowest Evaluated Bid and is eligible for Contract award, provided the Bidder was prequalified and/or it was found to be qualified to perform the Contract in accordance with ITB Clause 31 (Postqualification).

28.5 If, in addition to the cost factors, the Authority has chosen to give weight to important technical factors (i.e., the price weight, X , is less than 1 in the evaluation), that cannot be reduced to life-cycle costs or pass/fail criteria, the Total Technical Points assigned to each bid in the Evaluated Bid Formula will be determined by adding and weighting the scores assigned by an evaluation committee to technical features of the bid in accordance with the criteria set forth below.

(a) The technical features to be evaluated are generally defined below and specifically **identified in the BDS**:

(i) Performance, capacity, or functionality features that either exceed levels specified as mandatory in the Technical Requirements; and/or influence the life-cycle cost and effectiveness of the Information

System.

- (ii) Usability features, such as ease of use, ease of administration, or ease of expansion, which influence the life-cycle cost and effectiveness of the Information System.
 - (iii) The quality of the Bidder's Preliminary Project Plan as evidenced by the thoroughness, reasonableness, and responsiveness of: (a) the task and resource schedules, both general and specific, and (b) the proposed arrangements for management and coordination, training, quality assurance, technical support, logistics, problem resolution, and transfer of knowledge, and other such activities as specified by the Authority in Section VI (Technical Requirements) or proposed by the Bidder based on the Bidder's experience.
- (b) Feature scores will be grouped into a small number of evaluation categories, generally defined below and specifically **identified in the BDS**, namely:
 - (i) The technical features that reflect how well the Information System meets the Authority's Business Requirements (including quality assurance and risk-containment measures associated with the implementation of the Information System).
 - (ii) The technical features that reflect how well the Information System meets the System's Functional Performance Standards.
 - (iii) The technical features that reflect how well the Information System meets the General Technical Requirements for hardware, network and communications, Software, and Services.
- (c) As **specified in the BDS**, each category will be given a weight and within each category each feature may also be given a weight.

28.6 The Evaluated Bid Price (C) for each responsive bid will be determined as the sum of the Adjusted Supply and Installation Costs (P) plus the Recurrent Costs (R);

where the Adjusted Supply and Installation Costs (P) are determined as:

- (a) The price of the hardware, Software, related equipment, products, Materials and other Goods offered from within or from outside the Authority's Country, in accordance with ITB 14.4; plus
- (b) The total price for all software development, transportation, insurance, installation, customization, integration, Commissioning, testing, training, technical support, repair, and other Services, in accordance with ITB 14.5;
- (c) with adjustments for:
 - (i) Deviations proposed to the Implementation Schedule in the Technical Requirements resulting in delayed completion of the entire Information System, if **permitted in the BDS** and provided they do not exceed the maximum permissible delay period **specified in the BDS**. For evaluation purposes, a pro rata increase of the total Supply and Installation Costs will be added using the percentage(s) **specified in the BDS** for each week of delay. Bids offering deliveries beyond the maximum permissible delay specified may be rejected.
 - (ii) Deviations taken to the Contract payment schedule specified in the SCC. If deviations are **permitted in the BDS**, for evaluation purposes the total Supply and Installation Costs will be increased pro rata by the amount of interest that could otherwise be earned on the amount of any payments that would fall due under the proposed schedule earlier than the schedule stipulated in the SCC, at the interest rate **specified in the BDS**.
 - (iii) Goods and Services that are required for the Information System but have been left out or are necessary to correct minor deviations of the bid will be added to the total Supply and Installation Costs using costs taken from the highest prices from other responsive bids for the same Goods and Services, or

in the absence of such information, the cost will be estimated at prevailing list prices. If the missing Goods and Services are a scored technical feature, the relevant score will be set at zero.

- (iv) Corrections to errors in arithmetic, in accordance with ITB Clause 26.2.
- (v) Any discounts offered for the award of more than one Subsystem, lot, or slice, if the BDS for ITB Clause 28.1 permits the consideration of discounts in the price evaluation.

29. Domestic Preference

29.1 N/A.

30. Contacting the Authority

30.1 From the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Authority on any matter related to the bid, it should do so in writing.

30.2 If a Bidder tries to directly influence the Authority or otherwise interfere in the bid evaluation process and the Contract award decision, its bid may be rejected.

F. POST QUALIFICATION AND AWARD OF CONTRACT

31. Post-qualification

31.1 The Authority will determine at its own cost and to its satisfaction whether the Bidder (including Joint Venture Partners, and any Subcontractors for which the BDS for ITB Clause 6.1 (a) permits that their qualifications count towards the required Bidder qualifications) that is selected as having submitted the Lowest Evaluated Bid is qualified to perform the Contract satisfactorily, in accordance with ITB Clause 6. If a prequalification process was undertaken for the Contract(s) for which these Bidding Documents were issued, the Authority will determine in the manner described above that no material changes have occurred after the prequalification that negatively

affect the ability of the Bidder that has submitted the Lowest Evaluated Bid to perform the Contract.

31.2 Pursuant to ITB Clauses 6 and 16, and as additionally may be **specified in the BDS**, the determination will evaluate the Bidder's financial, technical, design, integration, customization, production, management, and support capabilities and will be based on an examination of the documentary evidence of the Bidder's qualifications, as well as other information the Authority deems necessary and appropriate. This determination may include the technical offer and compliance by the bidder, visits or interviews with the Bidder's clients referenced in its bid, site inspections, and any other measures. If so **specified in the BDS**, at the time of post qualification the Authority may also carry out tests to determine that the performance or functionality of the Information System offered meets those stated in the Technical Requirements.

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

32. Award Criteria

32.1 Subject to ITB Clause 34, the Authority will award the Contract to the Bidder whose bid has been determined to be substantially responsive and the Lowest Combined Evaluated Bid, provided further that the Bidder has been determined to be qualified to perform the Contract satisfactorily, pursuant to ITB Clause 31.

33. Authority's Right to Vary Quantities at Time of Award

33.1 The Authority reserves the right at the time of Contract award to increase or decrease, by the percentage(s) **indicated in the BDS**, any of the following:

- (a) the quantity of substantially identical Subsystems; or
- (b) the quantity of individual hardware, Software, related equipment, Materials, products, and other Goods components of the Information System; or
- (c) the quantity of Installation or other Services to be performed,

from that originally specified in the Technical Requirements (as amended by any Addenda issued pursuant to ITB Clause 11), without any change in unit prices or other terms and conditions.

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| 34. Authority's Right to Accept Any Bid and to Reject Any or All Bids | <p>34.1 The Authority reserves the right to accept or reject any bid or to annul the bidding process and reject all bids at any time prior to Contract award, without thereby incurring any liability to the Bidders.</p> |
| 35. Notification of Award | <p>35.1 Prior to the expiration of the period of bid validity, the Authority shall notify the successful Bidder, in writing, that its bid has been accepted.</p> <p>35.2 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.</p> <p>35.3 The Authority shall make the results known, identifying the bid and lot numbers and the following information: (i) name of each Bidder who submitted a bid; (ii) bid prices as read out at bid opening; (iii) name, evaluated price and, if the bidding conditions included scoring for technical quality, the technical score of each bid that was evaluated; (iv) name of Bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, the price it offered, as well as the duration and summary scope of the contract awarded. After the award, unsuccessful Bidders may make a request in writing to the Authority for a debriefing seeking explanations on the grounds on which their bids were not selected. The Authority shall respond in writing to any unsuccessful Bidder who, after publication of contract award, requests a debriefing.</p> <p>35.4 Upon the successful Bidder furnishing the signed Contract Agreement and the Performance Security pursuant to ITB Clause 37, the Authority will discharge all remaining Bid Securities, if any, as provided in ITB Clause 17.5 (c) and (d).</p> |
| 36. Signing of Contract | <p>36.1 At the same time as the Authority notifies the successful Bidder that its bid has been accepted, the Authority will send the Bidder the Contract Agreement provided in the Bidding Documents, incorporating all agreements between the parties.</p> <p>36.2 As soon as practically possible, but no more than seven (7) days following receipt of the Contract Agreement, the successful Bidder shall sign and date it, and return it to the Authority.</p> |
| 37. Performance Security | <p>37.1 N/A.</p> <p>37.2 Failure of the successful Bidder to comply with the requirements of ITB Clause 36 or ITB Clause 37.1 shall constitute sufficient grounds for the annulment of the award and, if and as</p> |

applicable, execution of the Bid-Securing Declaration or forfeiture of the Bid Security, in which event the Authority may make the award to the next lowest evaluated bid submitted by a qualified Bidder or call for new bids.

38. Adjudicator

- 38.1 Unless otherwise **stated in the BDS**, the Authority proposes that the person named in the BDS be appointed as Adjudicator under the Contract to assume the role of informal Contract dispute mediator, as described in GCC Clause 6. In this case, a résumé of the named person is **attached to the BDS**. The proposed hourly fee for the Adjudicator is **specified in the BDS**. The expenses that would be considered reimbursable to the Adjudicator are also **specified in the BDS**. If a Bidder does not accept the Adjudicator proposed by the Authority, it should state its non-acceptance in its Bid Submission Form and make a counterproposal of an Adjudicator and an hourly fee, attaching a résumé of the alternative. If the successful Bidder and the Adjudicator nominated in the BDS happen to be from the same country, and this is not the country of the Authority too, the Authority reserves the right to cancel the Adjudicator nominated in the BDS and propose a new one. If by the day the Contract is signed, the Authority and the successful Bidder have not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed, at the request of either party, by the Appointing Authority specified in the SCC clause relating to GCC Clause 6.1.4, or if no Appointing Authority is specified there, the Contract will be implemented without an Adjudicator.
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SECTION II. BID DATA SHEET (BDS)

Bid Data Sheet

The following specific information relating to the System to be procured and the procurement procedures that will be used shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions in the Bid Data Sheet (BDS) shall prevail over those in the ITB.

A. GENERAL

ITB 1.1	<p>Name of Authority: <i>Zambezi River Authority</i></p> <p>Description of the System for which bids are invited:</p> <p><i>Lot 1: Core network optimisation and security enhancement: WAN optimization and acceleration; datacenter router/voice gateways, web security gateway and next-generation firewall; (Location – Harare, Lusaka Kariba)</i></p> <p>Lot 2: Unified communications system; switchboard, unified voicemail, telephony management system and telepresence video conferencing units; ; (Location – Harare, Lusaka Kariba)</p> <p>Lot 3: E-mail security gateway and continuity solution for a period of 36 months: E-mail continuity, e-mail security, email archiving and e-mail branding, antivirus and anti-spam facilities and content examination functions; (Location – Lusaka)</p> <p>Lot 4: Integrated data centres: fire detection system, access control, security and environmental, ups power distribution system, precision (row based) air conditioning (pac), racks and accessories. (Location – Lusaka and Kariba)</p>
ITB 1.2	<p>Title of ITB: Provision and Commissioning of Core ICT Infrastructure & Security Enhancement Project</p> <p>Number of ITB: ZRA/ICT/07/2016</p>
ITB 1.4	Alternative e-Tendering procedures: n/a
ITB 2.1	Name of the Authority: Zambezi River Authority
ITB 6.1 (a)	<p>Qualification requirements for Bidders are: ALL LOTS</p> <p>a) Certificate of company registration</p> <p>b) Certificate of Share Capital</p> <p>c) Valid Tax clearance Certificate</p>

d) Litigation status from a legal practitioner

Mandatory Qualification Requirements for Lot 1

The providers should have these minimal capabilities/requirements for all the lots tendered for:

- 1) Company Supplier Certifications, minimum Premier Partnership Level for the product line, equivalent or higher. Bidders to provide proof of certifications
- 2) Provide a Manufacturers Authorization Letter.
- 3) Employee Professional Supplier Specific Certifications: At least two (2) Cisco Certified Network Professional level certified engineers or equivalent. Bidders to provide proof of certifications for the employees.
- 4) Employee Professional Certifications: At least two (2) ICT security certified engineers. Bidders to provide proof of certifications for the employees.
- 5) Provide details of minimum of three (3) traceable references during the past 7 years in Zambia or Zimbabwe or in the Southern Region where Solutions based on the product proposed has been deployed.
- 6) Should supply within the recommended supply channel and **GREY**_products will not be acceptable. Orders will be verified with the Manufacturer and Serial Numbers will be used to check authenticity of products.
- 7) A technical write up fully giving a description of the solution proposed and the Method Statement for deployment.
- 8) Support Offices in both Zimbabwe & Zambia will be an added advantage.
- 9) At contract stage, the successful supplier will be required to, and before delivery of goods, to provide for approval, brand, part numbers and model of all equipment quoted for.
- 10) All equipment should come with manufacturer's 12 months

	<p>warranty support both hardware and software.</p> <p>11) The bidder should submit audited financials for the previous two years with an annual turnover of US\$ 250 000.</p> <p>12) Training Services should include</p> <ul style="list-style-type: none"> i. Full Administrator Training by the supplier of three (3) ZRA Personnel. ii. User guides and training material is also a requirement. <p>. Mandatory Qualification Requirements for Lot 2</p> <hr/> <p>The providers should have these minimal capabilities/requirements for all the lots tendered for:</p> <ul style="list-style-type: none"> 1.) Company Supplier Certifications, minimum Premier Partnership Level for the product line, equivalent or higher. Bidders to provide proof of certifications 2.) Provide a Manufacturers Authorization Letter. 3.) Employee Professional Supplier Specific Certifications: At least two (2) Cisco Certified Network Professional level certified engineers or equivalent. Bidders to provide proof of certifications for the employees. 4.) Employee Professional Certifications: At least two (2) ICT security certified engineers. Bidders to provide proof of certifications for the employees. 5.) Provide details of minimum of three (3) traceable references during the past 7 years in Zambia or Zimbabwe or in the Southern Region where Solutions based on the product proposed has been deployed. 6.) Should supply within the recommended supply channel and GREY products will not be acceptable. Orders will be verified with the Manufacturer and Serial Numbers will be used to check authenticity of products. 7.) A technical write up fully giving a description of the
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	<p>solution proposed and the Method Statement for deployment.</p> <p>8.) Support Offices in both Zimbabwe & Zambia will be an added advantage.</p> <p>9.) The bidder should submit audited financials for the previous two years with an annual turnover of US\$ 250 000.</p> <p>10.) Training Services should include</p> <ul style="list-style-type: none"> i. Full Administrator Training by the supplier of three (3) ZRA Personnel. ii. User guides and training material is also a requirement <p style="text-align: center;">Mandatory Qualification Requirements for Lot 3</p> <hr/> <p>The providers should have these minimal capabilities/requirements for all the lots tendered for:</p> <ul style="list-style-type: none"> 1.) The principal supplier (Vendor) must be ISO27001 and ISO27018 Information Security Certified. 2.) Company/Supplier Certifications, minimum Premier Partnership Level for the product line, equivalent or higher. Bidders to provide proof of certifications 3.) Provide a Manufacturers Authorization Letter from manufacturer. 4.) Provide details of minimum of three (3) traceable references during the last 7 years in Zambia or Zimbabwe or in the Southern Region where Solutions based on the product proposed has been deployed. 5.) Employee Professional Supplier Specific Certifications: At least two (2) Cisco Certified Network Professional level certified engineers or equivalent. Bidders to provide proof of certifications for the employees. 6.) Support Offices in both Zimbabwe & Zambia will be an
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	<p>added advantage.</p> <p>7.) The bidder should submit audited financials for the previous two years with an annual turnover of US\$ 250 000.</p> <p>8.) For all the lots tendered for Training Services should include</p> <ul style="list-style-type: none"> i. Full Administrator Training and Certification by the supplier of three (3) ZRA Personnel. ii. User guides and training material is also a requirement. <p style="text-align: center;">Mandatory Qualification Requirements for Lot 4</p> <hr/> <p>The providers should have these minimal capabilities/requirements for all the lots tendered for:</p> <ol style="list-style-type: none"> 1. The prospective bidder must be the main contractor to ZRA. In the event that a local supplier goes into partnership with a foreign supplier, the local partner must demonstrate that they have the requisite skills locally by submitting curriculum vitae of their staff showing relevant experience and certification in server room/ data centre installations. 2. The bidder must specify the warranty terms of all equipment and services provided. ZRA expects the winning bidder to go into a service level agreement to maintain the equipment for one year after commissioning. 3. Bidders must submit designs of the server room along with the project schedule. 4. Bidders must have experience in building server rooms and should have a minimum of three traceable installations references of server rooms that are of similar nature to specifications in this tender and the installations should be within the last five years in Zambia or Zimbabwe. The bidder should have installed server rooms / data centres primarily consisting of precision air conditioning, redundant UPS system, electrical distribution and lighting, fire
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	<p>detection and suppression, access control and CCTV including all civil works.</p> <p>5. ZRA will conduct site surveys on previously installed sites as part of due diligence for the highest ranked bidder before award of Contract.</p> <p>6. Bidder should have at least one (1) Certified Data Center Specialist and skill sets in all the areas covered to ease maintenance of the infrastructure. Bidders should attach certificates/certifications for their staff.</p> <p>7. Bids must be for ALL items. Partial bids will be deemed non-responsive.</p> <p>8. The supplier must deliver this project on a turnkey basis and once their bid has been accepted, no variations will be permitted.</p> <p>9. At contract stage, the successful supplier will be required to, and before delivery of goods, to provide for approval, brand, part numbers and model of all equipment quoted for</p> <p>10. All accessories required must be included (for example power cables, interface cables).</p> <p>11. Original manufacturer's manuals and media should be provided for hardware.</p>
ITB 6.1 (b)	<p>Manufacturer's Authorizations for Information Technologies - except for those technologies which the Bidder itself manufactures - are required for all equipment and all software.</p>
ITB 6.1 (c)	<p><i>If the Bidder proposes to use Subcontractors for the provision of certain key services, written agreements by the proposed firms to provide these services in case of contract(s) resulting from this bidding are required for the following types/categories of services:</i></p> <p><i>[specify, for example: “none” / “all” / list of applicable key services]</i></p>

B. THE BIDDING DOCUMENTS

ITB 10.1	<p>Lusaka: Zambezi River Authority, 4th Floor, Kariba House, 32 Cha Cha Road, Lusaka, Zambia. Telephone numbers +260 211 227970/3.</p> <p>Contact Person:</p> <p>Langton Pfaira</p> <p>Procurement Manager</p> <p>Email: pfaira@zaraho.org.zm</p>
ITB 10.2	<p>Dates, times, and places for the pre-bid meeting:</p> <p>Lusaka: Zambezi River Authority, Kariba House, 5th Floor Boardroom, 32 Cha Cha Road, Lusaka, Zambia. Date: 21 July 2016; Time: 1000hrs.</p> <p>Harare: Zambezi River Authority, 4th Floor Boardroom, Club Chambers, Cnr Nelson Mandela/3rd Street, Harare, Zimbabwe. Date: 22 July 2016; Time: 1000hrs.</p> <p>It is compulsory to attend at least one of the two meetings.</p>

C. PREPARATION OF BIDS

ITB 14.1	Recurrent cost items required for a period of 12 months, warranty period.
ITB 14.4	The Incoterms. n/a
ITB 14.4 (a)	<p>For foreign goods priced on a CIP (named place of destination) basis:</p> <p>(i) The contract of carriage shall include the cost of unloading the goods at destination, as well as payment by the Supplier of the cost of custom formalities, duties, taxes or other charges payable on the foreign Goods for their transit through any country other than the Authority's country.</p> <p>(ii) The named place of destination shall be: Lusaka; Harare and Kariba.</p>

ITB 14.7	Prices quoted by the Bidder shall be <i>fixed</i>
ITB 15.1 (b)	The currency to be used is United States Dollars (US\$)
ITB 16.2 (c)	<p>In addition to the topics described in ITB Clause 16.2 (c), the Preliminary Project Plan must address the following topics:</p> <p>The methods by which the Bidder will carry out its overall management and coordination responsibilities if awarded the Contract, and the human and other resources the Bidder proposes to use. The Plan should include a detailed Contract Implementation Schedule in bar chart form, showing the estimated duration, sequence, and interrelationship of all key activities needed to complete the Contract.</p>
ITB 16.3	<p>In the interest of effective integration, standardization, cost-effective technical support, and reduced re-training and staffing costs, Bidders are required to offer specific brand names and models for the following limited number of specific items:</p> <p>Lot 1: Cisco and River bed Solution</p> <p>Lot 2: Cisco based Solution</p> <p>Lot 3: Cisco IronPort or Mimecast Solution</p> <p>Lot 4: APC based solution</p>
ITB 17.1	Bid <i>Securing Declaration Required.</i>
ITB 17.7	If the Bidder incurs any of the actions prescribed in ITB Clause 17.7 (a) or (b), the Authority will declare the Bidder ineligible to be awarded contracts by the Employer for a period not exceeding of five (5) years.
ITB 18.1	The bid validity period shall be 90 days after the deadline for bid submission, as specified below in reference to ITB Clause 21.
ITB 19.1	Required number of bid copies: One (1) original and <i>Four (4)copies</i>

D. SUBMISSION OF BIDS

ITB 20.2 (a)	<p>The address for bid submission is:</p> <p><i>Lusaka:</i> Zambezi River Authority, Kariba House, 5th Floor,</p>
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	<p>Registry Office, 32 Cha Cha Cha Road, Lusaka, Zambia on or before 4th August 2016, 1430hrs or;</p> <p>Harare: Zambezi River Authority, 4th Floor, Club Chambers, Cnr Nelson Mandela/3rd Street, Harare, Zimbabwe on or before 4th August 2016, 1430hrs</p>
ITB 21.1	Deadline for bid submission is: <i>4th August 2016, 1430hrs.</i>

E. BID OPENING AND EVALUATION

ITB 24.1	<p>Time, date, and place for bid opening are:</p> <p>Lusaka: Zambezi River Authority, Kariba House, 5th Floor, Registry Office, 32 Cha Cha Cha Road, Lusaka, Zambia on or before 4th August 2016, 1430hrs or;</p> <p>Harare: Zambezi River Authority, 4th Floor, Club Chambers, Cnr Nelson Mandela/3rd Street, Harare, Zimbabwe on or before 4th August 2016, 1430hrs.</p>
ITB 27.1	<p>The currency chosen for the purpose of converting to a common currency is: <i>n/a</i></p> <p>The source of exchange rate is: n/a</p>
ITB 28.1	<p>Bids for Subsystems, lots, or slices of the overall Information System will be accepted as follows:</p> <p>Lot 1: Core network optimisation and security enhancement: WAN optimization and acceleration; datacenter router/voice gateways, web security gateway and next-generation firewall; (Location – Harare, Lusaka Kariba)</p> <p>Lot 2: Unified communications system; switchboard, unified voicemail, telephony management system and telepresence video conferencing units; ; (Location – Harare, Lusaka Kariba)</p> <p>Lot 3: E-mail security gateway and continuity solution for a period of 36 months: E-mail continuity, e-mail security, email archiving and e-mail branding, antivirus and anti-spam facilities and content examination functions; (Location – Lusaka)</p> <p>Lot 4: Integrated data centres: fire detection system, access control,</p>

	<p>security and environmental, ups power distribution system, precision (row based) air conditioning (pac), racks and accessories. (Location – Lusaka and Kariba)</p> <p>Discounts for the award of multiple Subsystems, lots, or slices will not be considered in bid evaluation.</p>
ITB 28.4	<p>The bid evaluation will take into account technical factors in addition to cost factors.</p> <p>Price: $X = 0.4$ and Technical: $1 - X = 0.6$</p> <p>The applicable Technical scoring is;</p> <ul style="list-style-type: none"> a) Company Certifications/Vendor ISO certification: 5% b) Employee Certifications: 10% c) Specific past experience: 10% d) Description of the technical solution and method statement: 40% e) Compliance with product specifications: 15% f) Manufacturer Authorization: 10% g) Financial capability compliance: 5% h) Project Implementation Plan: 5%
ITB 28.6 (c) (i)	The Authority will not accept deviations in the schedule of installation and commissioning specified in the Implementation Schedule.
ITB 28.6 (c) (ii)	The Authority will not accept deviations in the payment schedule in the SCC.

F. POST QUALIFICATION AND AWARD OF CONTRACT

ITB 31.2	<p>As additional post qualification measures, the Information System (or components/parts of it) offered by the Lowest Evaluated Bidder may be subjected to the following tests and performance benchmarks prior to Contract award:</p> <p><i>Reference site visits and testimonials.</i></p>
ITB 33.1	Percentage for quantity increase or decrease: 15%
ITB 38.1	The proposed Adjudicator is: Zambezi River Authority Legal

	Counsel
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**SECTION III. ELIGIBLE COUNTRIES FOR THE
PROVISION OF GOODS, WORKS, AND SERVICES IN
ZAMBIA AND ZIMBABWE**

Eligible Countries for the Provision of Goods, Works, and Services in Zambia

Non Applicable

SECTION IV. GENERAL CONDITIONS OF CONTRACT

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General Conditions of Contract

A. CONTRACT AND INTERPRETATION

1. Definitions

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

(a) contract elements

- (i) “Contract” means the Contract Agreement entered into between the Authority and the Supplier, together with the Contract Documents referred to therein. The Contract Agreement and the Contract Documents shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly.
- (ii) “Contract Documents” means the documents specified in Article 1.1 (Contract Documents) of the Contract Agreement (including any amendments to these Documents).
- (iii) “Contract Agreement” means the agreement entered into between the Authority and the Supplier using the form of Contract Agreement contained in the Sample Forms Section of the Bidding Documents and any modifications to this form agreed to by the Authority and the Supplier. The date of the Contract Agreement shall be recorded in the signed form.
- (iv) “GCC” means the General Conditions of Contract.
- (v) “SCC” means the Special Conditions of Contract.
- (vi) “Technical Requirements” means the Technical Requirements Section of the Bidding Documents.
- (vii) “Implementation Schedule” means the Implementation Schedule Sub-section of the Technical Requirements.
- viii) “Contract Price” means the price or prices defined in Article 2 (Contract Price and Terms

of Payment) of the Contract Agreement.

- (x) “Bidding Documents” refers to the collection of documents issued by the Authority to instruct and inform potential suppliers of the processes for bidding, selection of the winning bid, and Contract formation, as well as the contractual conditions governing the relationship between the Authority and the Supplier. The General and Special Conditions of Contract, the Technical Requirements, and all other documents included in the Bidding Documents reflect the Procurement Guidelines that the Authority is obligated to follow during procurement and administration of this Contract.
- (b) entities
 - (i) “Authority” means the entity purchasing the Information System, as **specified in the SCC**.
 - (ii) “Project Manager” means the person **named as such in the SCC** or otherwise appointed by the Authority in the manner provided in GCC Clause 18.1 (Project Manager) to perform the duties delegated by the Authority.
 - (iii) “Supplier” means the firm or Joint Venture whose bid to perform the Contract has been accepted by the Authority and is named as such in the Contract Agreement.
 - (iv) “Supplier’s Representative” means any person nominated by the Supplier and named as such in the Contract Agreement or otherwise approved by the Authority in the manner provided in GCC Clause 18.2 (Supplier’s Representative) to perform the duties delegated by the Supplier.
 - (v) “Subcontractor” means any firm to whom any of the obligations of the Supplier, including preparation of any design or supply of any Information Technologies or other Goods or Services, is subcontracted directly or indirectly by the Supplier.
 - (vi) “Adjudicator” means the person named in Appendix 2 of the Contract Agreement,

appointed by agreement between the Authority and the Supplier to make a decision on or to settle any dispute between the Authority and the Supplier referred to him or her by the parties, pursuant to GCC Clause 6.1 (Adjudication).

(c) scope

- (i) “Information System,” also called “the System,” means all the Information Technologies, Materials, and other Goods to be supplied, installed, integrated, and made operational (exclusive of the Supplier’s Equipment), together with the Services to be carried out by the Supplier under the Contract.
- (ii) “Subsystem” means any subset of the System identified as such in the Contract that may be supplied, installed, tested, and commissioned individually before Commissioning of the entire System.
- (iii) “Information Technologies” means all information processing and communications-related hardware, Software, supplies, and consumable items that the Supplier is required to supply and install under the Contract.
- (iv) “Goods” means all equipment, machinery, furnishings, Materials, and other tangible items that the Supplier is required to supply or supply and install under the Contract, including, without limitation, the Information Technologies and Materials, but excluding the Supplier’s Equipment.
- (v) “Services” means all technical, logistical, management, and any other Services to be provided by the Supplier under the Contract to supply, install, customize, integrate, and make operational the System. Such Services may include, but are not restricted to, activity management and quality assurance, design, development, customization, documentation, transportation, insurance, inspection, expediting, site preparation, installation,

integration, training, data migration, Pre-commissioning, Commissioning, maintenance, and technical support.

- (vi) “The Project Plan” means the document to be developed by the Supplier and approved by the Authority, pursuant to GCC Clause 19, based on the requirements of the Contract and the Preliminary Project Plan included in the Supplier’s bid. The “Agreed and Finalized Project Plan” is the version of the Project Plan approved by the Authority, in accordance with GCC Clause 19.2. Should the Project Plan conflict with the Contract in any way, the relevant provisions of the Contract, including any amendments, shall prevail.
- (vii) “Software” means that part of the System which are instructions that cause information processing Subsystems to perform in a specific manner or execute specific operations.
- (viii) “System Software” means Software that provides the operating and management instructions for the underlying hardware and other components, and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Systems Software. Such System Software includes, but is not restricted to, micro-code embedded in hardware (i.e., “firmware”), operating systems, communications, system and network management, and utility software.
- (ix) “General-Purpose Software” means Software that supports general-purpose office and software development activities and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be General-Purpose Software. Such General-Purpose Software may include, but is not restricted to, word processing, spreadsheet, generic database management, and application development software.
- (x) “Application Software” means Software formulated to perform specific business or

technical functions and interface with the business or technical users of the System and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Application Software.

- (xi) “Standard Software” means Software identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Standard Software.
- (xii) “Custom Software” means Software identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Custom Software.
- (xiii) “Source Code” means the database structures, dictionaries, definitions, program source files, and any other symbolic representations necessary for the compilation, execution, and subsequent maintenance of the Software (typically, but not exclusively, required for Custom Software).
- (xiv) “Materials” means all documentation in printed or printable form and all instructional and informational aides in any form (including audio, video, and text) and on any medium, provided to the Authority under the Contract.
- (xv) “Standard Materials” means all Materials not specified as Custom Materials.
- (xvi) “Custom Materials” means Materials developed by the Supplier at the Authority’s expense under the Contract and identified as such in Appendix 5 of the Contract Agreement and such other Materials as the parties may agree in writing to be Custom Materials. Custom Materials includes Materials created from Standard Materials.
- (xvii) “Intellectual Property Rights” means any and all copyright, moral rights, trademark, patent, and other intellectual and proprietary rights, title and interests worldwide, whether vested, contingent, or future, including without

limitation all economic rights and all exclusive rights to reproduce, fix, adapt, modify, translate, create derivative works from, extract or re-utilize data from, manufacture, introduce into circulation, publish, distribute, sell, license, sublicense, transfer, rent, lease, transmit or provide access electronically, broadcast, display, enter into computer memory, or otherwise use any portion or copy, in whole or in part, in any form, directly or indirectly, or to authorize or assign others to do so.

(xviii) “Supplier’s Equipment” means all equipment, tools, apparatus, or things of every kind required in or for installation, completion and maintenance of the System that are to be provided by the Supplier, but excluding the Information Technologies, or other items forming part of the System.

(d) activities

- (i) “Delivery” means the transfer of the Goods from the Supplier to the Authority in accordance with the current edition Incoterms specified in the Contract.
- (ii) “Installation” means that the System or a Subsystem as specified in the Contract is ready for Commissioning as provided in GCC Clause 26 (Installation).
- (iii) “Pre-commissioning” means the testing, checking, and any other required activity that may be specified in the Technical Requirements that are to be carried out by the Supplier in preparation for Commissioning of the System as provided in GCC Clause 26 (Installation).
- (iv) “Commissioning” means operation of the System or any Subsystem by the Supplier following Installation, which operation is to be carried out by the Supplier as provided in GCC Clause 27.1 (Commissioning), for the purpose of carrying out Operational Acceptance Test(s).
- (v) “Operational Acceptance Tests” means the tests specified in the Technical Requirements and

Agreed and Finalized Project Plan to be carried out to ascertain whether the System, or a specified Subsystem, is able to attain the functional and performance requirements specified in the Technical Requirements and Agreed and Finalized Project Plan, in accordance with the provisions of GCC Clause 27.2 (Operational Acceptance Test).

- (vi) “Operational Acceptance” means the acceptance by the Authority of the System (or any Subsystem(s) where the Contract provides for acceptance of the System in parts), in accordance with GCC Clause 27.3 (Operational Acceptance).
- (e) place and time
 - (i) “Authority’s Country” is the **country named in the SCC**.
 - (ii) “Supplier’s Country” is the country in which the Supplier is legally organized, as named in the Contract Agreement.
 - (iii) “Project Site(s)” means the place(s) **specified in the SCC** for the supply and installation of the System.
 - (iv) “Eligible Country” means the countries and territories eligible for participation in procurements financed by Authority.
 - (v) “Day” means calendar day of the Gregorian Calendar.
 - (vi) “Week” means seven (7) consecutive Days, beginning the day of the week as is customary in the Authority’s Country.
 - (vii) “Month” means calendar month of the Gregorian Calendar.
 - (viii) “Year” means twelve (12) consecutive Months.
 - (ix) “Effective Date” means the date of fulfillment of all conditions specified in Article 3 (Effective Date for Determining Time for Achieving Operational Acceptance) of the Contract

Agreement, for the purpose of determining the Delivery, Installation, and Operational Acceptance dates for the System or Subsystem(s).

- (x) “Contract Period” is the time period during which this Contract governs the relations and obligations of the Authority and Supplier in relation to the System, as **specified in the SCC**.
- (xi) “Defect Liability Period” (also referred to as the “Warranty Period”) means the period of validity of the warranties given by the Supplier commencing at date of the Operational Acceptance Certificate of the System or Subsystem(s), during which the Supplier is responsible for defects with respect to the System (or the relevant Subsystem[s]) as provided in GCC Clause 29 (Defect Liability).
- (xii) “The Post-Warranty Services Period” means the number of years **defined in the SCC** (if any), following the expiration of the Warranty Period during which the Supplier may be obligated to provide Software licenses, maintenance, and/or technical support services for the System, either under this Contract or under separate contract(s).
- (xiii) “The Coverage Period” means the Days of the Week and the hours of those Days during which maintenance, operational, and/or technical support services (if any) must be available.

2. Contract Documents

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

3. Interpretation

- 3.1 Governing Language

3.1.1 All Contract Documents and related correspondence exchanged between Authority and Supplier shall be written in **English**, and the Contract shall be construed and interpreted in English.

3.1.2 If any of the Contract Documents or related correspondence are prepared in a language other than

the governing language under GCC Clause 3.1.1 above, the translation of such documents into the governing language shall prevail in matters of interpretation. The originating party, with respect to such documents shall bear the costs and risks of such translation.

3.2 Singular and Plural

The singular shall include the plural and the plural the singular, except where the context otherwise requires.

3.3 Headings

The headings and marginal notes in the GCC are included for ease of reference and shall neither constitute a part of the Contract nor affect its interpretation.

3.4 Persons

Words importing persons or parties shall include firms, corporations, and Authority entities.

3.5 Incoterms

Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by the current Incoterms (“Incoterms 2000” or a more recent version if and as published). Incoterms are the international rules for interpreting trade terms published by the International Chamber of Commerce, 38 Cours Albert 1er, 75008 Paris, France.

3.6 Entire Agreement

The Contract constitutes the entire agreement between the Authority and Supplier with respect to the subject matter of Contract and supersedes all communications, negotiations, and agreements (whether written or oral) of parties with respect to the subject matter of the Contract made prior to the date of Contract.

3.7 Amendment

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

3.8 Independent Supplier

The Supplier shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture, or other joint relationship between the parties to the Contract.

Subject to the provisions of the Contract, the Supplier shall be solely responsible for the manner in which the Contract is performed. 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 Authority, and 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 Authority.

3.9 Joint Venture

If the Supplier is a Joint Venture of two or more firms, all such firms shall be jointly and severally bound to the Authority for the fulfillment of the provisions of the Contract and shall designate one of such firms to act as a leader with authority to bind the Joint Venture. The composition or constitution of the Joint Venture shall not be altered without the prior consent of the Authority.

3.10 Nonwaiver

3.10.1 Subject to GCC Clause 3.10.2 below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

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

3.11 Severability

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

3.12 Country of Origin

“Origin” means the place where the Information Technologies, Materials, and other Goods for the System were produced or from which the Services are supplied. Goods are produced when, through manufacturing, processing, Software development, or substantial and major assembly or integration of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components. The Origin of Goods and Services is distinct from the nationality of the Supplier and may be different.

4. Notices

4.1 Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing and shall be sent, pursuant to GCC Clause 4.3 below, by personal delivery, airmail post, special courier, cable, telegraph, telex, facsimile, electronic mail, or Electronic Data Interchange (EDI), with the following provisions.

4.1.1 Any notice sent by cable, telegraph, telex, facsimile, electronic mail, or EDI shall be confirmed within two (2) days after dispatch by notice sent by airmail post or special courier, except as otherwise specified in the Contract.

4.1.2 Any notice sent by airmail post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered five (5) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped, and conveyed to the postal authorities or courier service for transmission by airmail or special courier.

4.1.3 Any notice delivered personally or sent by cable, telegraph, telex, facsimile, electronic mail, or EDI shall be deemed to have been delivered on the date of its dispatch.

4.1.4 Either party may change its postal, cable, telex, facsimile, electronic mail, or EDI addresses for receipt

of such notices by five (5) days' notice to the other party in writing.

4.2 Notices shall be deemed to include any approvals, consents, instructions, orders, certificates, information and other communication to be given under the Contract.

4.3 Pursuant to GCC Clause 18, notices from/to the Authority are normally given by, or addressed to, the Project Manager, while notices from/to the Supplier are normally given by, or addressed to, the Supplier's Representative, or in its absence its deputy if any. If there is no appointed Project Manager or Supplier's Representative (or deputy), or if their related authority is limited by the SCC for GCC Clauses 18.1 or 18.2.2, or for any other reason, the Authority or Supplier may give and receive notices at their fallback addresses. The address of the Project Manager and the fallback address of the Authority are as **specified in the SCC** or as subsequently established/amended. The address of the Supplier's Representative and the fallback address of the Supplier are as specified in Appendix 1 of the Contract Agreement or as subsequently established/amended.

5. Governing Law

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

6. Settlement of Disputes

6.1 Adjudication

6.1.1 If any dispute of any kind whatsoever shall arise between the Authority and the Supplier in connection with or arising out of the Contract, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, or termination, or the operation of the System (whether during the progress of implementation or after its achieving Operational Acceptance and whether before or after the termination, abandonment, or breach of the Contract), the parties shall seek to resolve any such dispute by mutual consultation. If the parties fail to resolve such a dispute by mutual consultation within fourteen (14) days after one party has notified the other in writing of the dispute, then, if the Contract Agreement in Appendix 2 includes and names an Adjudicator, the dispute shall, within another fourteen (14) days, be referred in writing by either party to the Adjudicator, with a copy to the

other party. If there is no Adjudicator specified in the Contract Agreement, the mutual consultation period stated above shall last twenty-eight (28) days (instead of fourteen), upon expiry of which either party may move to the notification of arbitration pursuant to GCC Clause 6.2.1.

6.1.2 The Adjudicator shall give his or her decision in writing to both parties within twenty-eight (28) days of the dispute being referred to the Adjudicator. If the Adjudicator has done so, and no notice of intention to commence arbitration has been given by either the Authority or the Supplier within fifty-six (56) days of such reference, the decision shall become final and binding upon the Authority and the Supplier. Any decision that has become final and binding shall be implemented by the parties forthwith.

6.1.3 The Adjudicator shall be paid an hourly fee at the rate specified in the Contract Agreement plus reasonable expenditures incurred in the execution of duties as Adjudicator, and these costs shall be divided equally between the Authority and the Supplier.

6.1.4 Should the Adjudicator resign or die, or should the Authority and the Supplier agree that the Adjudicator is not fulfilling his or her functions in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Authority and the Supplier. Failing agreement between the two within twenty-eight (28) days, the new Adjudicator shall be appointed at the request of either party by the Appointing Authority **specified in the SCC**, or, if no Appointing Authority is **specified in SCC**, the Contract shall, from this point onward and until the parties may otherwise agree on an Adjudicator or an Appointing Authority, be implemented as if there is no Adjudicator.

6.2 Arbitration

6.2.1 If

- (a) the Authority or the Supplier is dissatisfied with the Adjudicator's decision and acts before this decision has become final and binding pursuant to GCC Clause 6.1.2, or

- (b) the Adjudicator fails to give a decision within the allotted time from referral of the dispute pursuant to GCC Clause 6.1.2, and the Authority or the Supplier acts within the following fourteen (14) days, or
- (c) in the absence of an Adjudicator from the Contract Agreement, the mutual consultation pursuant to GCC Clause 6.1.1 expires without resolution of the dispute and the Authority or the Supplier acts within the following fourteen (14) days,

then either the Authority or the Supplier may act to give notice to the other party, with a copy for information to the Adjudicator in case an Adjudicator had been involved, of its intention to commence arbitration, as provided below, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.

6.2.2 Any dispute in respect of which a notice of intention to commence arbitration has been given, in accordance with GCC Clause 6.2.1, shall be finally settled by arbitration. Arbitration may be commenced prior to or after Installation of the Information System.

6.2.3 Arbitration proceedings shall be conducted in accordance with the rules of procedure **specified in the SCC**.

6.3 Notwithstanding any reference to the Adjudicator or arbitration in this clause,

- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree;
- (b) the Authority shall pay the Supplier any monies due the Supplier.

B. SUBJECT MATTER OF CONTRACT

7. Scope of the System

7.1 Unless otherwise expressly **limited in the SCC** or Technical Requirements, the Supplier's obligations cover the provision of all Information Technologies, Materials and other Goods as well as the performance of all Services required for the

design, development, and implementation (including procurement, quality assurance, assembly, associated site preparation, Delivery, Pre-commissioning, Installation, Testing, and Commissioning) of the System, in accordance with the plans, procedures, specifications, drawings, codes, and any other documents specified in the Contract and the Agreed and Finalized Project Plan.

7.2 The Supplier shall, unless specifically excluded in the Contract, perform all such work and / or supply all such items and Materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Operational Acceptance of the System as if such work and / or items and Materials were expressly mentioned in the Contract.

7.3 The Supplier's obligations (if any) to provide Goods and Services as implied by the Recurrent Cost tables of the Supplier's bid, such as consumables, spare parts, and technical services (e.g., maintenance, technical assistance, and operational support), are as **specified in the SCC**, including the relevant terms, characteristics, and timings.

8. Time for Commencement and Operational Acceptance

8.1 The Supplier shall commence work on the System within the period **specified in the SCC**, and without prejudice to GCC Clause 28.2, the Supplier shall thereafter proceed with the System in accordance with the time schedule specified in the Implementation Schedule in the Technical Requirements Section and any refinements made in the Agreed and Finalized Project Plan.

8.2 The Supplier shall achieve Operational Acceptance of the System (or Subsystem(s) where a separate time for Operational Acceptance of such Subsystem(s) is specified in the Contract) within the time **specified in the SCC** and in accordance with the time schedule specified in the Implementation Schedule in the Technical Requirements Section and any refinements made in the Agreed and Finalized Project Plan, or within such extended time to which the Supplier shall be entitled under GCC Clause 40 (Extension of Time for Achieving Operational Acceptance).

9. Supplier's Responsibilities

9.1 The Supplier shall conduct all activities with due care and diligence, in accordance with the Contract and with the skill and care expected of a competent provider of information technologies, information systems, support, maintenance, training, and other related services, or in accordance with best industry practices. In particular, the Supplier shall

provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

- 9.2 The Supplier confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the System provided by the Authority and on the basis of information that the Supplier could have obtained from a visual inspection of the site (if access to the site was available) and of other data readily available to the Supplier relating to the System as at the date ten (10) days prior to bid submission. The Supplier acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Contract.
- 9.3 The Supplier shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach a mutually Agreed and Finalized Project Plan (pursuant to GCC Clause 19.2) within the time schedule specified in the Implementation Schedule in the Technical Requirements Section. Failure to provide such resources, information, and decision making may constitute grounds for termination pursuant to GCC Clause 41.2.
- 9.4 The Supplier shall acquire in its name all permits, approvals, and/or licenses from all local, state, or national Authority authorities or public service undertakings in the Authority's Country that are necessary for the performance of the Contract, including, without limitation, visas for the Supplier's and Subcontractor's personnel and entry permits for all imported Supplier's Equipment. The Supplier shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Authority under GCC Clause 10.4 and that are necessary for the performance of the Contract.
- 9.5 The Supplier shall comply with all laws in force in the Authority's Country. The laws will include all national, provincial, municipal, or other laws that affect the performance of the Contract and are binding upon the Supplier. The Supplier shall indemnify and hold harmless the Authority from and against any and all liabilities, damages, claims, fines, penalties, and expenses of whatever nature arising or resulting from the violation of such laws by

the Supplier or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Clause 10.1. The Supplier shall not indemnify the Authority to the extent that such liability, damage, claims, fines, penalties, and expenses were caused or contributed to by a fault of the Authority.

- 9.6 The Supplier shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs, and all local laws and regulations pertaining to the employment of labor.
- 9.7 Any Information Technologies or other Goods and Services that will be incorporated in or be required for the System and other supplies shall have their Origin, as defined in GCC Clause 3.12, in a country that shall be an Eligible Country, as defined in GCC Clause 1.1 (e) (iv).
- 9.8 The Supplier shall permit the Authority and/or persons appointed by the Authority to inspect the Supplier's offices and/or the accounts and records of the Supplier and its sub-contractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Authority if required by Authority. The Supplier's attention is drawn to Sub-Clause 41.2.1(c), which provides, inter alia, that acts intended to materially impede the exercise of the Authority's inspection and audit rights provided for under Sub-Clause 9.8 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility by ZPPA)
- 9.9 Other Supplier responsibilities, if any, are as **stated in the SCC**.

10. Authority's Responsibilities

- 10.1 The Authority shall ensure the accuracy of all information and/or data to be supplied by the Authority to the Supplier, except when otherwise expressly stated in the Contract.
- 10.2 The Authority shall be responsible for timely provision of all resources, information, and decision making under its control that are necessary to reach an Agreed and Finalized Project Plan (pursuant to GCC Clause 19.2) within the time schedule specified in the Implementation Schedule in the Technical Requirements Section. Failure to provide such resources, information, and decision making may constitute grounds for Termination pursuant to GCC Clause 41.3.1 (b).

- 10.3 The Authority shall be responsible for acquiring and providing legal and physical possession of the site and access to it, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract.
- 10.4 If requested by the Supplier, the Authority shall use its best endeavors to assist the Supplier in obtaining in a timely and expeditious manner all permits, approvals, and/or licenses necessary for the execution of the Contract from all local, state, or national Authority authorities or public service undertakings that such authorities or undertakings require the Supplier or Subcontractors or the personnel of the Supplier or Subcontractors, as the case may be, to obtain.
- 10.5 In such cases where the responsibilities of specifying and acquiring or upgrading telecommunications and/or electric power services falls to the Supplier, as specified in the Technical Requirements, SCC, Agreed and Finalized Project Plan, or other parts of the Contract, the Authority shall use its best endeavors to assist the Supplier in obtaining such services in a timely and expeditious manner.
- 10.6 The Authority shall be responsible for timely provision of all resources, access, and information necessary for the Installation and Operational Acceptance of the System (including, but not limited to, any required telecommunications or electric power services), as identified in the Agreed and Finalized Project Plan, except where provision of such items is explicitly identified in the Contract as being the responsibility of the Supplier. Delay by the Authority may result in an appropriate extension of the Time for Operational Acceptance, at the Supplier's discretion.
- 10.7 Unless otherwise specified in the Contract or agreed upon by the Authority and the Supplier, the Authority shall provide sufficient, properly qualified operating and technical personnel, as required by the Supplier to properly carry out Delivery, Pre-commissioning, Installation, Commissioning, and Operational Acceptance, at or before the time specified in the Technical Requirements Section's Implementation Schedule and the Agreed and Finalized Project Plan.
- 10.8 The Authority will designate appropriate staff for the training courses to be given by the Supplier and shall make all appropriate logistical arrangements for such training as specified in the Technical Requirements, SCC, the Agreed and Finalized Project Plan, or other parts of the Contract.

- 10.9 The Authority assumes primary responsibility for the Operational Acceptance Test(s) for the System, in accordance with GCC Clause 27.2, and shall be responsible for the continued operation of the System after Operational Acceptance. However, this shall not limit in any way the Supplier's responsibilities after the date of Operational Acceptance otherwise specified in the Contract.
- 10.10 The Authority is responsible for performing and safely storing timely and regular backups of its data and Software in accordance with accepted data management principles, except where such responsibility is clearly assigned to the Supplier elsewhere in the Contract.
- 10.11 All costs and expenses involved in the performance of the obligations under this GCC Clause 10 shall be the responsibility of the Authority, save those to be incurred by the Supplier with respect to the performance of the Operational Acceptance Test(s), in accordance with GCC Clause 27.2.
- 10.12 Other Authority responsibilities, if any, are **as stated in the SCC**.

C. PAYMENT

11. Contract Price

- 11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.
- 11.2 The Contract Price shall be a firm lump sum not subject to any alteration, except:
- (a) in the event of a Change in the System pursuant to GCC Clause 39 or to other clauses in the Contract;
 - (b) in accordance with the price adjustment formula (if any) **specified in the SCC**.
- 11.3 The Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

12. Terms of Payment

- 12.1 The Supplier's request for payment shall be made to the Authority in writing, accompanied by an invoice describing, as appropriate, the System or Subsystem(s), Delivered, Pre-commissioned, Installed, and Operationally Accepted, and

by documents submitted pursuant to GCC Clause 22.5 and upon fulfillment of other obligations stipulated in the Contract.

The Contract Price shall be paid as **specified in the SCC**.

- 12.2 No payment made by the Authority herein shall be deemed to constitute acceptance by the Authority of the System or any Subsystem(s).
- 12.3 Payments shall be made promptly by the Authority, but in no case later than thirty (30) days after submission of a valid invoice by the Supplier. In the event that the Authority fails to make any payment by its respective due date or within the period set forth in the Contract, the Authority shall pay to the Supplier interest on the amount of such delayed payment at the rate(s) **specified in the SCC** for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.
- 12.4 All payments shall be made in the currency (ies) specified in the Contract Agreement, pursuant to GCC Clause 11. For Goods and Services supplied locally, payments shall be made in the currency of the Authority's Country, unless otherwise **specified in the SCC**.
- 12.5 Unless otherwise **specified in the SCC**, payment of the foreign currency portion of the Contract Price for Goods supplied from outside the Authority's Country shall be made to the Supplier through an irrevocable letter of credit opened by an authorized bank in the Supplier's Country and will be payable on presentation of the appropriate documents. It is agreed that the letter of credit will be subject to Article 10 of the latest revision of Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce, Paris.

13. Securities

13.1 Issuance of Securities

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

13.2 Advance Payment Security

- 13.2.1 As **specified in the SCC**, the Supplier shall provide a security equal in amount and currency to the advance payment, and valid until the System is Operationally

Accepted.

13.2.2 The security shall be in the form provided in the Bidding Documents or in another form acceptable to the Authority. The amount of the security shall be reduced in proportion to the value of the System executed by and paid to the Supplier from time to time and shall automatically become null and void when the full amount of the advance payment has been recovered by the Authority. The way the value of the security is deemed to become reduced and, eventually, voided is as **specified in the SCC**. The security shall be returned to the Supplier immediately after its expiration.

13.3 Performance Security

13.3.1 The Supplier shall, within twenty-eight (28) days of the notification of Contract award, provide a security for the due performance of the Contract in the amount and currency **specified in the SCC**.

13.3.2 The security shall be a bank guarantee in the form provided in the Sample Forms Section of the Bidding Documents, or it shall be in another form acceptable to the Authority.

13.3.3 The security shall automatically become null and void once all the obligations of the Supplier under the Contract have been fulfilled, including, but not limited to, any obligations during the Warranty Period and any extensions to the period. The security shall be returned to the Supplier no later than twenty-eight (28) days after its expiration.

13.3.4 Upon Operational Acceptance of the entire System, the security shall be reduced to the amount **specified in the SCC**, on the date of such Operational Acceptance, so that the reduced security would only cover the remaining warranty obligations of the Supplier.

14. Taxes and Duties

14.1 For Goods or Services supplied from outside the Authority's country, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Authority's country. Any duties, such as importation or customs duties, and taxes and other levies, payable in the Authority's country for the supply of Goods

and Services from outside the Authority's country are the responsibility of the Authority unless these duties or taxes have been made part of the Contract Price in Article 2 of the Contract Agreement and the Price Schedule it refers to, in which case the duties and taxes will be the Supplier's responsibility.

- 14.2 For Goods or Services supplied locally, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods or Services to the Authority. The only exception are taxes or duties, such as value-added or sales tax or stamp duty as apply to, or are clearly identifiable, on the invoices and provided they apply in the Authority's country, and only if these taxes, levies and/or duties are also excluded from the Contract Price in Article 2 of the Contract Agreement and the Price Schedule it refers to.
- 14.3 If any tax exemptions, reductions, allowances, or privileges may be available to the Supplier in the Authority's Country, the Authority shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.
- 14.4 For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies, and charges prevailing at the date ten (10) days prior to the date of bid submission in the Authority's Country (also called "Tax" in this GCC Clause 14.4). If any Tax rates are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the Supplier, its Subcontractors, or their employees in connection with performance of the Contract, an equitable adjustment to the Contract Price shall be made to fully take into account any such change by addition to or reduction from the Contract Price, as the case may be.

D. INTELLECTUAL PROPERTY

15. Copyright

- 15.1 The Intellectual Property Rights in all Standard Software and Standard Materials shall remain vested in the owner of such rights.
- 15.2 The Authority agrees to restrict use, copying, or duplication

of the Standard Software and Standard Materials in accordance with GCC Clause 16, except that additional copies of Standard Materials may be made by the Authority for use within the scope of the project of which the System is a part, in the event that the Supplier does not deliver copies within thirty (30) days from receipt of a request for such Standard Materials.

15.3 The Authority's contractual rights to use the Standard Software or elements of the Standard Software may not be assigned, licensed, or otherwise transferred voluntarily except in accordance with the relevant license agreement or as may be otherwise **specified in the SCC**.

15.4 As applicable, the Authority's and Supplier's rights and obligations with respect to Custom Software or elements of the Custom Software, including any license agreements, and with respect to Custom Materials or elements of the Custom Materials, are specified in the SCC. **Subject to the SCC**, the Intellectual Property Rights in all Custom Software and Custom Materials specified in Appendices 4 and 5 of the Contract Agreement (if any) shall, at the date of this Contract or on creation of the rights (if later than the date of this Contract), vest in the Authority. The Supplier shall do and execute or arrange for the doing and executing of each necessary act, document, and thing that the Authority may consider necessary or desirable to perfect the right, title, and interest of the Authority in and to those rights. In respect of such Custom Software and Custom Materials, the Supplier shall ensure that the holder of a moral right in such an item does not assert it, and the Supplier shall, if requested to do so by the Authority and where permitted by applicable law, ensure that the holder of such a moral right waives it.

15.5 The parties shall enter into such (if any) escrow arrangements in relation to the Source Code to some or all of the Software as are **specified in the SCC** and in **accordance with the SCC**.

16. Software License Agreements

16.1 Except to the extent that the Intellectual Property Rights in the Software vest in the Authority, the Supplier hereby grants to the Authority license to access and use the Software, including all inventions, designs, and marks embodied in the Software.

Such license to access and use the Software shall:

- (a) be:
 - (i) nonexclusive;
 - (ii) fully paid up and irrevocable (except that it shall terminate if the Contract terminates under GCC Clauses 41.1 or 41.3);
 - (iii) valid throughout the territory of the Authority's Country (or such other territory as **specified in the SCC**); and
 - (iv) subject to additional restrictions (if any) as **specified in the SCC**.
- (b) permit the Software to be:
 - (i) used or copied for use on or with the computer(s) for which it was acquired (if specified in the Technical Requirements and/or the Supplier's bid), plus a backup computer(s) of the same or similar capacity, if the primary is(are) inoperative, and during a reasonable transitional period when use is being transferred between primary and backup;
 - (ii) as **specified in the SCC**, used or copied for use on or transferred to a replacement computer(s), (and use on the original and replacement computer(s) may be simultaneous during a reasonable transitional period) provided that, if the Technical Requirements and/or the Supplier's bid specifies a class of computer to which the license is restricted and unless the Supplier agrees otherwise in writing, the replacement computer(s) is(are) within that class;
 - (iii) if the nature of the System is such as to permit such access, accessed from other computers connected to the primary and/or backup computer(s) by means of a local or wide-area network or similar arrangement, and used on or copied for use on those other computers to the extent necessary to that access;
 - (iv) reproduced for safekeeping or backup purposes;
 - (v) customized, adapted, or combined with other computer software for use by the Authority,

provided that derivative software incorporating any substantial part of the delivered, restricted Software shall be subject to same restrictions as are set forth in this Contract;

- (vi) as **specified in the SCC**, disclosed to, and reproduced for use by, support service suppliers and their subcontractors, (and the Authority may sublicense such persons to use and copy for use the Software) to the extent reasonably necessary to the performance of their support service contracts, subject to the same restrictions as are set forth in this Contract; and
- (vii) disclosed to, and reproduced for use by, the Authority and by such other persons as are **specified in the SCC** (and the Authority may sublicense such persons to use and copy for use the Software), subject to the same restrictions as are set forth in this Contract.

16.2 The Standard Software may be subject to audit by the Supplier, in accordance with the terms **specified in the SCC**, to verify compliance with the above license agreements.

17. Confidential Information

17.1 Except if otherwise **specified in the SCC**, the "Receiving Party" (either the Authority or the Supplier) shall keep confidential and shall not, without the written consent of the other party to this Contract ("the Disclosing Party"), divulge to any third party any documents, data, or other information of a confidential nature ("Confidential Information") connected with this Contract, and furnished directly or indirectly by the Disclosing Party prior to or during performance, or following termination, of this Contract.

17.2 For the purposes of GCC Clause 17.1, the Supplier is also deemed to be the Receiving Party of Confidential Information generated by the Supplier itself in the course of the performance of its obligations under the Contract and relating to the businesses, finances, suppliers, employees, or other contacts of the Authority or the Authority's use of the System.

17.3 Notwithstanding GCC Clauses 17.1 and 17.2:

- (a) the Supplier may furnish to its Subcontractor Confidential Information of the Authority to the extent reasonably required for the Subcontractor to perform

its work under the Contract; and

- (b) the Authority may furnish Confidential Information of the Supplier: (i) to its support service suppliers and their subcontractors to the extent reasonably required for them to perform their work under their support service contracts; and (ii) to its affiliates and subsidiaries,

in which event the Receiving Party shall ensure that the person to whom it furnishes Confidential Information of the Disclosing Party is aware of and abides by the Receiving Party's obligations under this GCC Clause 17 as if that person were party to the Contract in place of the Receiving Party.

17.4 The Authority shall not, without the Supplier's prior written consent, use any Confidential Information received from the Supplier for any purpose other than the operation, maintenance and further development of the System. Similarly, the Supplier shall not, without the Authority's prior written consent, use any Confidential Information received from the Authority for any purpose other than those that are required for the performance of the Contract.

17.5 The obligation of a party under GCC Clauses 17.1 through 17.4 above, however, shall not apply to that information which:

- (a) now or hereafter enters the public domain through no fault of the Receiving Party;
- (b) can be proven to have been possessed by the Receiving Party at the time of disclosure and that was not previously obtained, directly or indirectly, from the Disclosing Party;
- (c) otherwise lawfully becomes available to the Receiving Party from a third party that has no obligation of confidentiality.

17.6 The above provisions of this GCC Clause 17 shall not in any way modify any undertaking of confidentiality given by either of the parties to this Contract prior to the date of the Contract in respect of the System or any part thereof.

17.7 The provisions of this GCC Clause 17 shall survive the termination, for whatever reason, of the Contract for three (3) years or such longer period as may be **specified in the**

SCC.

E. SUPPLY, INSTALLATION, TESTING, COMMISSIONING, AND ACCEPTANCE OF THE SYSTEM

18. Representatives 18.1 Project Manager

If the Project Manager is not named in the Contract, then within seven (7) days of the Effective Date, the Authority shall appoint and notify the Supplier in writing of the name of the Project Manager. The Authority may from time to time appoint some other person as the Project Manager in place of the person previously so appointed and shall give a notice of the name of such other person to the Supplier without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the System. Such appointment shall take effect only upon receipt of such notice by the Supplier. Subject to the extensions and/or limitations **specified in the SCC** (if any), the Project Manager shall have the authority to represent the Authority on all day-to-day matters relating to the System or arising from the Contract, and shall normally be the person giving or receiving notices on behalf of the Authority pursuant to GCC Clause 4.

18.2 Supplier's Representative

18.2.1 If the Supplier's Representative is not named in the Contract, then within seven (7) days of the Effective Date, the Supplier shall appoint the Supplier's Representative and shall request the Authority in writing to approve the person so appointed. The request must be accompanied by a detailed curriculum vitae for the nominee, as well as a description of any other System or non-System responsibilities the nominee would retain while performing the duties of the Supplier's Representative. If the Authority does not object to the appointment within seven (7) days, the Supplier's Representative shall be deemed to have been approved. If the Authority objects to the appointment within seven (7) days giving the reason therefor, then the Supplier shall appoint a replacement within seven (7) days of such objection in accordance with this GCC Clause 18.2.1.

18.2.2 Subject to the extensions and/or limitations **specified**

in the SCC (if any), the Supplier's Representative shall have the authority to represent the Supplier on all day-to-day matters relating to the System or arising from the Contract, and shall normally be the person giving or receiving notices on behalf of the Supplier pursuant to GCC Clause 4.

18.2.3 The Supplier shall not revoke the appointment of the Supplier's Representative without the Authority's prior written consent, which shall not be unreasonably withheld. If the Authority consents to such an action, the Supplier shall appoint another person of equal or superior qualifications as the Supplier's Representative, pursuant to the procedure set out in GCC Clause 18.2.1.

18.2.4 The Supplier's Representative and staff are obliged to work closely with the Authority's Project Manager and staff, act within their own authority, and abide by directives issued by the Authority that are consistent with the terms of the Contract. The Supplier's Representative is responsible for managing the activities of its personnel and any subcontracted personnel.

18.2.5 The Supplier's Representative may, subject to the approval of the Authority (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions, and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Supplier's Representative and shall specify the powers, functions, and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until the notice of it has been delivered.

18.2.6 Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with GCC Clause 18.2.5 shall be deemed to be an act or exercise by the Supplier's Representative.

18.3 Objections and Removals

18.3.1 The Authority may by notice to the Supplier object to any representative or person employed by the Supplier

in the execution of the Contract who, in the reasonable opinion of the Authority, may have behaved inappropriately, be incompetent, or be negligent. The Authority shall provide evidence of the same, whereupon the Supplier shall remove such person from work on the System.

18.3.2 If any representative or person employed by the Supplier is removed in accordance with GCC Clause 18.3.1, the Supplier shall, where required, promptly appoint a replacement.

19. Project Plan

19.1 In close cooperation with the Authority and based on the Preliminary Project Plan included in the Supplier's bid, the Supplier shall develop a Project Plan encompassing the activities specified in the Contract. The contents of the Project Plan shall be as **specified in the SCC** and/or Technical Requirements.

19.2 The Supplier shall formally present to the Authority the Project Plan in accordance with the procedure specified in the SCC.

19.3 If required, the impact on the Implementation Schedule of modifications agreed during finalization of the Agreed and Finalized Project Plan shall be incorporated in the Contract by amendment, in accordance with GCC Clauses 39 and 40.

19.4 The Supplier shall undertake to supply, install, test, and commission the System in accordance with the Agreed and Finalized Project Plan and the Contract.

19.5 The Progress and other reports **specified in the SCC** shall be prepared by the Supplier and submitted to the Authority in the format and frequency specified in the Technical Requirements.

20. Subcontracting

20.1 Appendix 3 (List of Approved Subcontractors) to the Contract Agreement specifies critical items of supply or services and a list of Subcontractors for each item that are considered acceptable by the Authority. If no Subcontractors are listed for an item, the Supplier shall prepare a list of Subcontractors it considers qualified and wishes to be added to the list for such items. The Supplier may from time to time propose additions to or deletions from any such list. The Supplier shall submit any such list or any modification to the list to the Authority for its approval in sufficient time so as not to impede the progress of work on

the System. The Authority shall not withhold such approval unreasonably. Such approval by the Authority of a Subcontractor(s) shall not relieve the Supplier from any of its obligations, duties, or responsibilities under the Contract.

- 20.2 The Supplier may, at its discretion, select and employ Subcontractors for such critical items from those Subcontractors listed pursuant to GCC Clause 20.1. If the Supplier wishes to employ a Subcontractor not so listed, or subcontract an item not so listed, it must seek the Authority's prior approval under GCC Clause 20.3.
- 20.3 For items for which pre-approved Subcontractor lists have not been specified in Appendix 3 to the Contract Agreement, the Supplier may employ such Subcontractors as it may select, provided: (i) the Supplier notifies the Authority in writing at least seven (7) days prior to the proposed mobilization date for such Subcontractor; and (ii) by the end of this period either the Authority has granted its approval in writing or fails to respond. The Supplier shall not engage any Subcontractor to which the Authority has objected in writing prior to the end of the notice period. The absence of a written objection by the Authority during the above specified period shall constitute formal acceptance of the proposed Subcontractor. Except to the extent that it permits the deemed approval of the Authority of Subcontractors not listed in the Contract Agreement, nothing in this Clause, however, shall limit the rights and obligations of either the Authority or Supplier as they are specified in GCC Clauses 20.1 and 20.2, in the SCC, or in Appendix 3 of the Contract Agreement.

21. Design and Engineering

21.1 Technical Specifications and Drawings

21.1.1 The Supplier shall execute the basic and detailed design and the implementation activities necessary for successful installation of the System in compliance with the provisions of the Contract or, where not so specified, in accordance with good industry practice.

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

writing to the Supplier by or on behalf of the Authority.

21.1.2 The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification, or other document, or any modification of such design, drawings, specification, or other documents provided or designated by or on behalf of the Authority, by giving a notice of such disclaimer to the Project Manager.

21.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date seven (7) days prior to date of bid submission shall apply unless otherwise **specified in the SCC**. During Contract execution, any changes in such codes and standards shall be applied after approval by the Authority and shall be treated in accordance with GCC Clause 39.3.

21.3 Approval/Review of Technical Documents by the Project Manager

21.3.1 The Supplier shall prepare and furnish to the Project Manager the documents as **specified in the SCC** for the Project Manager's approval or review.

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

GCC Clauses 21.3.2 through 21.3.7 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

21.3.2 Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with GCC Clause 21.3.1, the Project Manager shall either return one copy of the document to the Supplier with its approval endorsed on the document or shall notify the Supplier in writing of its disapproval of the document and the reasons for disapproval and the modifications that the

Project Manager proposes. If the Project Manager fails to take such action within the fourteen (14) days, then the document shall be deemed to have been approved by the Project Manager.

21.3.3 The Project Manager shall not disapprove any document except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good industry practice.

21.3.4 If the Project Manager disapproves the document, the Supplier shall modify the document and resubmit it for the Project Manager's approval in accordance with GCC Clause 21.3.2. If the Project Manager approves the document subject to modification(s), the Supplier shall make the required modification(s), and the document shall then be deemed to have been approved, subject to GCC Clause 21.3.5. The procedure set out in GCC Clauses 21.3.2 through 21.3.4 shall be repeated, as appropriate, until the Project Manager approves such documents.

21.3.5 If any dispute occurs between the Authority and the Supplier in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) to a document that cannot be settled between the parties within a reasonable period, then, in case the Contract Agreement includes and names an Adjudicator, such dispute may be referred to the Adjudicator for determination in accordance with GCC Clause 6.1 (Adjudicator). If such dispute is referred to an Adjudicator, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Supplier shall proceed with the Contract in accordance with the Project Manager's instructions, provided that if the Adjudicator upholds the Supplier's view on the dispute and if the Authority has not given notice under GCC Clause 6.1.2, then the Supplier shall be reimbursed by the Authority for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Adjudicator shall decide, and the Time for Achieving Operational Acceptance shall be extended

accordingly.

21.3.6 The Project Manager's approval, with or without modification of the document furnished by the Supplier, shall not relieve the Supplier of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager or inaccurate information furnished in writing to the Supplier by or on behalf of the Authority.

21.3.7 The Supplier shall not depart from any approved document unless the Supplier has first submitted to the Project Manager an amended document and obtained the Project Manager's approval of the document, pursuant to the provisions of this GCC Clause 21.3. If the Project Manager requests any change in any already approved document and/or in any document based on such an approved document, the provisions of GCC Clause 39 (Changes to the System) shall apply to such request.

22. Procurement, Delivery, and Transport

22.1 Subject to related Authority's responsibilities pursuant to GCC Clauses 10 and 14, the Supplier shall manufacture or procure and transport all the Information Technologies, Materials, and other Goods in an expeditious and orderly manner to the Project Site.

22.2 Delivery of the Information Technologies, Materials, and other Goods shall be made by the Supplier in accordance with the Technical Requirements.

22.3 Early or partial deliveries require the explicit written consent of the Authority, which consent shall not be unreasonably withheld.

22.4 Transportation

22.4.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during shipment. The packing, marking, and documentation within and outside the packages shall comply strictly with the Authority's instructions to the Supplier.

22.4.2 The Supplier will bear responsibility for and cost of transport to the Project Sites in accordance with the

terms and conditions used in the specification of prices in the Price Schedules, including the terms and conditions of the associated Incoterms.

22.4.3 Unless otherwise **specified in the SCC**, the Supplier shall be free to use transportation through carriers registered in any eligible country and to obtain insurance from any eligible source country.

22.5 Unless otherwise **specified in the SCC**, the Supplier will provide the Authority with shipping and other documents, as specified below:

22.5.1 For Goods supplied from outside the Authority's Country:

Upon shipment, the Supplier shall notify the Authority and the insurance company contracted by the Supplier to provide cargo insurance by telex, cable, facsimile, electronic mail, or EDI with the full details of the shipment. The Supplier shall promptly send the following documents to the Authority by mail or courier, as appropriate, with a copy to the cargo insurance company:

- (a) two copies of the Supplier's invoice showing the description of the Goods, quantity, unit price, and total amount;
- (b) usual transportation documents;
- (c) insurance certificate;
- (d) certificate(s) of origin; and
- (e) estimated time and point of arrival in the Authority's Country and at the site.

22.5.2 For Goods supplied locally (i.e., from within the Authority's country):

Upon shipment, the Supplier shall notify the Authority by telex, cable, facsimile, electronic mail, or EDI with the full details of the shipment. The Supplier shall promptly send the following documents to the Authority by mail or courier, as appropriate:

- (a) two copies of the Supplier's invoice showing the Goods' description, quantity, unit price, and total

amount;

- (b) delivery note, railway receipt, or truck receipt;
- (c) certificate of insurance;
- (d) certificate(s) of origin; and
- (e) estimated time of arrival at the site.

22.6 Customs Clearance

- (a) The Authority will bear responsibility for, and cost of, customs clearance into the Authority's country in accordance the particular Incoterm(s) used for Goods supplied from outside the Authority's country in the Price Schedules referred to by Article 2 of the Contract Agreement.
- (b) At the request of the Authority, the Supplier will make available a representative or agent during the process of customs clearance in the Authority's country for goods supplied from outside the Authority's country. In the event of delays in customs clearance that are not the fault of the Supplier:
 - (i) the Supplier shall be entitled to an extension in the Time for Achieving Operational Acceptance, pursuant to GCC Clause 40;
 - (ii) the Contract Price shall be adjusted to compensate the Supplier for any additional storage charges that the Supplier may incur as a result of the delay.

23. Product Upgrades

- 23.1 At any point during performance of the Contract, should technological advances be introduced by the Supplier for Information Technologies originally offered by the Supplier in its bid and still to be delivered, the Supplier shall be obligated to offer to the Authority the latest versions of the available Information Technologies having equal or better performance or functionality at the same or lesser unit prices, pursuant to GCC Clause 39 (Changes to the System).
- 23.2 At any point during performance of the Contract, for Information Technologies still to be delivered, the Supplier will also pass on to the Authority any cost reductions and additional and/or improved support and facilities that it offers to other clients of the Supplier in the Authority's

Country, pursuant to GCC Clause 39 (Changes to the System).

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

**24. Implementation,
Installation, and
Other Services**

- 24.1 The Supplier shall provide all Services specified in the Contract and Agreed and Finalized Project Plan in accordance with the highest standards of professional competence and integrity.
- 24.2 Prices charged by the Supplier for Services, if not included

in the Contract, shall be agreed upon in advance by the parties (including, but not restricted to, any prices submitted by the Supplier in the Recurrent Cost Schedules of its Bid) and shall not exceed the prevailing rates charged by the Supplier to other companies for similar services.

25. Inspections and Tests

- 25.1 The Authority or its representative shall have the right to inspect and/or test any components of the System, as specified in the Technical Requirements, to confirm their good working order and/or conformity to the Contract at the point of delivery and/or at the Project Site.
- 25.2 The Authority or its representative shall be entitled to attend any such inspections and/or tests of the components, provided that the Authority shall bear all costs and expenses incurred in connection with such attendance, including but not limited to all inspection agent fees, travel, and related expenses.
- 25.3 Should the inspected or tested components fail to conform to the Contract, the Authority may reject the component(s), and the Supplier shall either replace the rejected component(s), or make alterations as necessary so that it meets the Contract requirements free of cost to the Authority.
- 25.4 The Project Manager may require the Supplier to carry out any inspection and/or test not specified in the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such inspection and/or test shall be added to the Contract Price. Further, if such inspection and/or test impedes the progress of work on the System and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Achieving Operational Acceptance and the other obligations so affected.
- 25.5 If any dispute shall arise between the parties in connection with or caused by an inspection and/or with regard to any component to be incorporated in the System that cannot be settled amicably between the parties within a reasonable period of time, either party may invoke the process pursuant to GCC Clause 6 (Settlement of Disputes), starting with referral of the matter to the Adjudicator in case an Adjudicator is included and named in the Contract Agreement.

26. Installation of the System

- 26.1 As soon as the System, or any Subsystem, has, in the opinion of the Supplier, been delivered, Pre-commissioned, and

made ready for Commissioning and Operational Acceptance Testing in accordance with the Technical Requirements, the SCC and the Agreed and Finalized Project Plan, the Supplier shall so notify the Authority in writing.

26.2 The Project Manager shall, within fourteen (14) days after receipt of the Supplier's notice under GCC Clause 26.1, either issue an Installation Certificate in the form specified in the Sample Forms Section in the Bidding Documents, stating that the System, or major component or Subsystem (if Acceptance by major component or Subsystem is specified pursuant to the SCC for GCC Clause 27.2.1), has achieved Installation by the date of the Supplier's notice under GCC Clause 26.1, or notify the Supplier in writing of any defects and/or deficiencies, including, but not limited to, defects or deficiencies in the interoperability or integration of the various components and/or Subsystems making up the System. The Supplier shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies that the Project Manager has notified the Supplier of. The Supplier shall then promptly carry out retesting of the System or Subsystem and, when in the Supplier's opinion the System or Subsystem is ready for Commissioning and Operational Acceptance Testing, notify the Authority in writing, in accordance with GCC Clause 26.1. The procedure set out in this GCC Clause 26.2 shall be repeated, as necessary, until an Installation Certificate is issued.

26.3 If the Project Manager fails to issue the Installation Certificate and fails to inform the Supplier of any defects and/or deficiencies within fourteen (14) days after receipt of the Supplier's notice under GCC Clause 26.1, or if the Authority puts the System or a Subsystem into production operation, then the System (or Subsystem) shall be deemed to have achieved successful Installation as of the date of the Supplier's notice or repeated notice, or when the Authority put the System into production operation, as the case may be.

**27. Commissioning
and Operational
Acceptance**

27.1 Commissioning

27.1.1 Commissioning of the System (or Subsystem if specified pursuant to the SCC for GCC Clause 27.2.1) shall be commenced by the Supplier:

- (a) immediately after the Installation Certificate is issued by the Project Manager, pursuant to GCC Clause 26.2; or

- (b) as otherwise specified in the Technical Requirement or the Agreed and Finalized Project Plan; or
- (c) immediately after Installation is deemed to have occurred, under GCC Clause 26.3.

27.1.2 The Authority shall supply the operating and technical personnel and all materials and information reasonably required to enable the Supplier to carry out its obligations with respect to Commissioning.

Production use of the System or Subsystem(s) shall not commence prior to the start of formal Operational Acceptance Testing.

27.2 Operational Acceptance Tests

27.2.1 The Operational Acceptance Tests (and repeats of such tests) shall be the primary responsibility of the Authority (in accordance with GCC Clause 10.9), but shall be conducted with the full cooperation of the Supplier during Commissioning of the System (or major components or Subsystem[s] if **specified in the SCC** and supported by the Technical Requirements), to ascertain whether the System (or major component or Subsystem[s]) conforms to the Technical Requirements and meets the standard of performance quoted in the Supplier's bid, including, but not restricted to, the functional and technical performance requirements. The Operational Acceptance Tests during Commissioning will be conducted as **specified in the SCC**, the Technical Requirements and/or the Agreed and Finalized Project Plan.

At the Authority's discretion, Operational Acceptance Tests may also be performed on replacement Goods, upgrades and new version releases, and Goods that are added or field-modified after Operational Acceptance of the System.

27.2.2 If for reasons attributable to the Authority, the Operational Acceptance Test of the System (or Subsystem[s] or major components, pursuant to the SCC for GCC Clause 27.2.1) cannot be successfully completed within the period **specified in the SCC**, from the date of Installation or any other period agreed upon in writing by the Authority and the Supplier, the

Supplier shall be deemed to have fulfilled its obligations with respect to the technical and functional aspects of the Technical Specifications, SCC and/or the Agreed and Finalized Project Plan, and GCC Clause 28.2 and 28.3 shall not apply.

27.3 Operational Acceptance

27.3.1 Subject to GCC Clause 27.4 (Partial Acceptance) below, Operational Acceptance shall occur in respect of the System, when

- (a) the Operational Acceptance Tests, as specified in the Technical Requirements, and/or SCC and/or the Agreed and Finalized Project Plan have been successfully completed; or
- (b) the Operational Acceptance Tests have not been successfully completed or have not been carried out for reasons that are attributable to the Authority within the period from the date of Installation or any other agreed-upon period as specified in GCC Clause 27.2.2 above; or
- (c) the Authority has put the System into production or use for sixty (60) consecutive days. If the System is put into production or use in this manner, the Supplier shall notify the Authority and document such use.

27.3.2 At any time after any of the events set out in GCC Clause 27.3.1 have occurred, the Supplier may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate.

27.3.3 After consultation with the Authority, and within fourteen (14) days after receipt of the Supplier's notice, the Project Manager shall:

- (a) issue an Operational Acceptance Certificate; or
- (b) notify the Supplier in writing of any defect or deficiencies or other reason for the failure of the Operational Acceptance Tests; or
- (c) issue the Operational Acceptance Certificate, if the situation covered by GCC Clause 27.3.1 (b) arises.

- 27.3.4 The Supplier shall use all reasonable endeavors to promptly remedy any defect and/or deficiencies and/or other reasons for the failure of the Operational Acceptance Test that the Project Manager has notified the Supplier of. Once such remedies have been made by the Supplier, the Supplier shall notify the Authority, and the Authority, with the full cooperation of the Supplier, shall use all reasonable endeavors to promptly carry out retesting of the System or Subsystem. Upon the successful conclusion of the Operational Acceptance Tests, the Supplier shall notify the Authority of its request for Operational Acceptance Certification, in accordance with GCC Clause 27.3.3. The Authority shall then issue to the Supplier the Operational Acceptance Certification in accordance with GCC Clause 27.3.3 (a), or shall notify the Supplier of further defects, deficiencies, or other reasons for the failure of the Operational Acceptance Test. The procedure set out in this GCC Clause 27.3.4 shall be repeated, as necessary, until an Operational Acceptance Certificate is issued.
- 27.3.5 If the System or Subsystem fails to pass the Operational Acceptance Test(s) in accordance with GCC Clause 27.2, then either:
- (a) the Authority may consider terminating the Contract, pursuant to GCC Clause 41.2.2;
 - or
 - (b) if the failure to achieve Operational Acceptance within the specified time period is a result of the failure of the Authority to fulfill its obligations under the Contract, then the Supplier shall be deemed to have fulfilled its obligations with respect to the relevant technical and functional aspects of the Contract, and GCC Clauses 30.3 and 30.4 shall not apply.
- 27.3.6 If within fourteen (14) days after receipt of the Supplier's notice the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Supplier in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the System or Subsystem shall be deemed to have been accepted as of the date of the

Supplier's said notice.

27.4 Partial Acceptance

27.4.1 If so specified in the SCC for GCC Clause 27.2.1, Installation and Commissioning shall be carried out individually for each identified major component or Subsystem(s) of the System. In this event, the provisions in the Contract relating to Installation and Commissioning, including the Operational Acceptance Test, shall apply to each such major component or Subsystem individually, and Operational Acceptance Certificate(s) shall be issued accordingly for each such major component or Subsystem of the System, subject to the limitations contained in GCC Clause 27.4.2.

27.4.2 The issuance of Operational Acceptance Certificates for individual major components or Subsystems pursuant to GCC Clause 27.4.1 shall not relieve the Supplier of its obligation to obtain an Operational Acceptance Certificate for the System as an integrated whole (if so specified in the SCC for GCC Clauses 12.1 and 27.2.1) once all major components and Subsystems have been supplied, installed, tested, and commissioned.

27.4.3 In the case of minor components for the System that by their nature do not require Commissioning or an Operational Acceptance Test (e.g., minor fittings, furnishings or site works, etc.), the Project Manager shall issue an Operational Acceptance Certificate within fourteen (14) days after the fittings and/or furnishings have been delivered and/or installed or the site works have been completed. The Supplier shall, however, use all reasonable endeavors to promptly remedy any defects or deficiencies in such minor components detected by the Authority or Supplier.

F. GUARANTEES AND LIABILITIES

28. Operational Acceptance Time Guarantee

28.1 The Supplier guarantees that it shall complete the supply, Installation, Commissioning, and achieve Operational Acceptance of the System (or Subsystems, pursuant to the SCC for GCC Clause 27.2.1) within the time periods specified in the Implementation Schedule in the Technical Requirements Section and/or the Agreed and Finalized Project Plan pursuant to GCC Clause 8.2, or within such extended time to which the Supplier shall be entitled under

GCC Clause 40 (Extension of Time for Achieving Operational Acceptance).

- 28.2 If the Supplier fails to supply, install, commission, and achieve Operational Acceptance of the System (or Subsystems pursuant to the SCC for GCC Clause 27.2.1) within the time for achieving Operational Acceptance specified in the Implementation Schedule in the Technical Requirement or the Agreed and Finalized Project Plan, or any extension of the time for achieving Operational Acceptance previously granted under GCC Clause 40 (Extension of Time for Achieving Operational Acceptance), the Supplier shall pay to the Authority liquidated damages at the rate **specified in the SCC** as a percentage of the Contract Price, or the relevant part of the Contract Price if a Subsystem has not achieved Operational Acceptance. The aggregate amount of such liquidated damages shall in no event exceed the amount specified in the SCC (“the Maximum”). Once the Maximum is reached, the Authority may consider termination of the Contract, pursuant to GCC Clause 41.2.2.
- 28.3 Unless otherwise **specified in the SCC**, liquidated damages payable under GCC Clause 28.2 shall apply only to the failure to achieve Operational Acceptance of the System (and Subsystems) as specified in the Implementation Schedule in the Technical Requirements and/or Agreed and Finalized Project Plan. This Clause 28.3 shall not limit, however, any other rights or remedies the Authority may have under the Contract for other delays.
- 28.4 If liquidated damages are claimed by the Authority for the System (or Subsystem), the Supplier shall have no further liability whatsoever to the Authority in respect to the Operational Acceptance time guarantee for the System (or Subsystem). However, the payment of liquidated damages shall not in any way relieve the Supplier from any of its obligations to complete the System or from any other of its obligations and liabilities under the Contract.

29. Defect Liability

- 29.1 The Supplier warrants that the System, including all Information Technologies, Materials, and other Goods supplied and Services provided, shall be free from defects in the design, engineering, Materials, and workmanship that prevent the System and/or any of its components from fulfilling the Technical Requirements or that limit in a material fashion the performance, reliability, or extensibility of the System and/or Subsystems. Exceptions and/or limitations, if any, to this warranty with respect to Software

(or categories of Software), shall be as **specified in the SCC**. Commercial warranty provisions of products supplied under the Contract shall apply to the extent that they do not conflict with the provisions of this Contract.

- 29.2 The Supplier also warrants that the Information Technologies, Materials, and other Goods supplied under the Contract are new, unused, and incorporate all recent improvements in design that materially affect the System's or Subsystem's ability to fulfill the Technical Requirements.
- 29.3 In addition, the Supplier warrants that: (i) all Goods components to be incorporated into the System form part of the Supplier's and/or Subcontractor's current product lines, (ii) they have been previously released to the market, and (iii) those specific items **identified in the SCC** (if any) have been in the market for at least the minimum periods **specified in the SCC**.
- 29.4 The Warranty Period shall commence from the date of Operational Acceptance of the System (or of any major component or Subsystem for which separate Operational Acceptance is provided for in the Contract) and shall extend for the length of time **specified in the SCC**.
- 29.5 If during the Warranty Period any defect as described in GCC Clause 29.1 should be found in the design, engineering, Materials, and workmanship of the Information Technologies and other Goods supplied or of the Services provided by the Supplier, the Supplier shall promptly, in consultation and agreement with the Authority regarding appropriate remedying of the defects, and at its sole cost, repair, replace, or otherwise make good (as the Supplier shall, at its discretion, determine) such defect as well as any damage to the System caused by such defect. Any defective Information Technologies or other Goods that have been replaced by the Supplier shall remain the property of the Supplier.
- 29.6 The Supplier shall not be responsible for the repair, replacement, or making good of any defect or of any damage to the System arising out of or resulting from any of the following causes:
- (a) improper operation or maintenance of the System by the Authority;

- (b) normal wear and tear;
- (c) use of the System with items not supplied by the Supplier, unless otherwise identified in the Technical Requirements, or approved by the Supplier; or
- (d) modifications made to the System by the Authority, or a third party, not approved by the Supplier.

29.7 The Supplier's obligations under this GCC Clause 29 shall not apply to:

- (a) any materials that are normally consumed in operation or have a normal life shorter than the Warranty Period; or
- (b) any designs, specifications, or other data designed, supplied, or specified by or on behalf of the Authority or any matters for which the Supplier has disclaimed responsibility, in accordance with GCC Clause 21.1.2.

29.8 The Authority shall give the Supplier a notice promptly following the discovery of such defect, stating the nature of any such defect together with all available evidence. The Authority shall afford all reasonable opportunity for the Supplier to inspect any such defect. The Authority shall afford the Supplier all necessary access to the System and the site to enable the Supplier to perform its obligations under this GCC Clause 29.

29.9 The Supplier may, with the consent of the Authority, remove from the site any Information Technologies and other Goods that are defective, if the nature of the defect, and/or any damage to the System caused by the defect, is such that repairs cannot be expeditiously carried out at the site. If the repair, replacement, or making good is of such a character that it may affect the efficiency of the System, the Authority may give the Supplier notice requiring that tests of the defective part be made by the Supplier immediately upon completion of such remedial work, whereupon the Supplier shall carry out such tests.

If such part fails the tests, the Supplier shall carry out further repair, replacement, or making good (as the case may be) until that part of the System passes such tests. The tests shall be agreed upon by the Authority and the Supplier.

29.10 If the Supplier fails to commence the work necessary to remedy such defect or any damage to the System caused by such defect within the time period **specified in the SCC**, the

Authority may, following notice to the Supplier, proceed to do such work or contract a third party (or parties) to do such work, and the reasonable costs incurred by the Authority in connection with such work shall be paid to the Authority by the Supplier or may be deducted by the Authority from any monies due the Supplier or claimed under the Performance Security.

29.11 If the System or Subsystem cannot be used by reason of such defect and/or making good of such defect, the Warranty Period for the System shall be extended by a period equal to the period during which the System or Subsystem could not be used by the Authority because of such defect and/or making good of such defect.

29.12 Items substituted for defective parts of the System during the Warranty Period shall be covered by the Defect Liability Warranty for the remainder of the Warranty Period applicable for the part replaced or three (3) months, whichever is greater.

29.13 At the request of the Authority and without prejudice to any other rights and remedies that the Authority may have against the Supplier under the Contract, the Supplier will offer all possible assistance to the Authority to seek warranty services or remedial action from any subcontracted third-party producers or licensors of Goods included in the System, including without limitation assignment or transfer in favor of the Authority of the benefit of any warranties given by such producers or licensors to the Supplier.

30. Functional Guarantees

30.1 The Supplier guarantees that, once the Operational Acceptance Certificate(s) has been issued, the System represents a complete, integrated solution to the Authority's requirements set forth in the Technical Requirements and it conforms to all other aspects of the Contract. The Supplier acknowledges that GCC Clause 27 regarding Commissioning and Operational Acceptance governs how technical conformance of the System to the Contract requirements will be determined.

30.2 If, for reasons attributable to the Supplier, the System does not conform to the Technical Requirements or does not conform to all other aspects of the Contract, the Supplier shall at its cost and expense make such changes, modifications, and/or additions to the System as may be necessary to conform to the Technical Requirements and meet all functional and performance standards. The Supplier

shall notify the Authority upon completion of the necessary changes, modifications, and/or additions and shall request the Authority to repeat the Operational Acceptance Tests until the System achieves Operational Acceptance.

- 30.3 If the System (or Subsystem[s]) fails to achieve Operational Acceptance, the Authority may consider termination of the Contract, pursuant to GCC Clause 41.2.2, and forfeiture of the Supplier's Performance Security in accordance with GCC Clause 13.3 in compensation for the extra costs and delays likely to result from this failure.

**31. Intellectual
Property Rights
Warranty**

- 31.1 The Supplier hereby represents and warrants that:

- (a) the System as supplied, installed, tested, and accepted;
- (b) use of the System in accordance with the Contract; and
- (c) copying of the Software and Materials provided to the Authority in accordance with the Contract

do not and will not infringe any Intellectual Property Rights held by any third party and that it has all necessary rights or at its sole expense shall have secured in writing all transfers of rights and other consents necessary to make the assignments, licenses, and other transfers of Intellectual Property Rights and the warranties set forth in the Contract, and for the Authority to own or exercise all Intellectual Property Rights as provided in the Contract. Without limitation, the Supplier shall secure all necessary written agreements, consents, and transfers of rights from its employees and other persons or entities whose services are used for development of the System.

**32. Intellectual
Property Rights
Indemnity**

- 32.1 The Supplier shall indemnify and hold harmless the Authority and its employees and officers from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability), that the Authority or its employees or officers may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights by reason of:

- (a) installation of the System by the Supplier or the use of the System, including the Materials, in the country where the site is located;
- (b) copying of the Software and Materials provided the

Supplier in accordance with the Agreement; and

- (c) sale of the products produced by the System in any country, except to the extent that such losses, liabilities, and costs arise as a result of the Authority's breach of GCC Clause 32.2.

32.2 Such indemnity shall not cover any use of the System, including the Materials, other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the System, or any products of the System produced thereby in association or combination with any other goods or services not supplied by the Supplier, where the infringement arises because of such association or combination and not because of use of the System in its own right.

32.3 Such indemnities shall also not apply if any claim of infringement:

- (a) is asserted by a parent, subsidiary, or affiliate of the Authority's organization;
- (b) is a direct result of a design mandated by the Authority's Technical Requirements and the possibility of such infringement was duly noted in the Supplier's Bid; or
- (c) results from the alteration of the System, including the Materials, by the Authority or any persons other than the Supplier or a person authorized by the Supplier.

32.4 If any proceedings are brought or any claim is made against the Authority arising out of the matters referred to in GCC Clause 32.1, the Authority shall promptly give the Supplier notice of such proceedings or claims, and the Supplier may at its own expense and in the Authority's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Supplier fails to notify the Authority within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Authority shall be free to conduct the same on its own behalf. Unless the Supplier has so failed to notify the Authority within the twenty-eight (28) days, the Authority shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Authority shall, at the Supplier's

request, afford all available assistance to the Supplier in conducting such proceedings or claim and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

32.5 The Authority shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Supplier or its employees, officers, or Subcontractors may suffer as a result of any infringement or alleged infringement of any Intellectual Property Rights arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided to the Supplier in connection with this Contract by the Authority or any persons (other than the Supplier) contracted by the Authority, except to the extent that such losses, liabilities, and costs arise as a result of the Supplier's breach of GCC Clause 32.8.

32.6 Such indemnity shall not cover

- (a) any use of the design, data, drawing, specification, or other documents or materials, other than for the purpose indicated by or to be reasonably inferred from the Contract;
- (b) any infringement resulting from the use of the design, data, drawing, specification, or other documents or materials, or any products produced thereby, in association or combination with any other Goods or Services not provided by the Authority or any other person contracted by the Authority, where the infringement arises because of such association or combination and not because of the use of the design, data, drawing, specification, or other documents or materials in its own right.

32.7 Such indemnities shall also not apply:

- (a) if any claim of infringement is asserted by a parent, subsidiary, or affiliate of the Supplier's organization;
- (b) to the extent that any claim of infringement is caused by the alteration, by the Supplier, or any persons contracted by the Supplier, of the design, data, drawing, specification, or other documents or materials

provided to the Supplier by the Authority or any persons contracted by the Authority.

32.8 If any proceedings are brought or any claim is made against the Supplier arising out of the matters referred to in GCC Clause 32.5, the Supplier shall promptly give the Authority notice of such proceedings or claims, and the Authority may at its own expense and in the Supplier's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Authority fails to notify the Supplier within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Supplier shall be free to conduct the same on its own behalf. Unless the Authority has so failed to notify the Supplier within the twenty-eight (28) days, the Supplier shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Supplier shall, at the Authority's request, afford all available assistance to the Authority in conducting such proceedings or claim and shall be reimbursed by the Authority for all reasonable expenses incurred in so doing.

33. Limitation of Liability

33.1 Provided the following does not exclude or limit any liabilities of either party in ways not permitted by applicable law:

- (a) the Supplier shall not be liable to the Authority, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Authority; and
- (b) the aggregate liability of the Supplier to the Authority, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to any obligation of the Supplier to indemnify the Authority with respect to intellectual property rights infringement.

G. RISK DISTRIBUTION

34. Transfer of Ownership

34.1 With the exception of Software and Materials, the ownership of the Information Technologies and other Goods shall be transferred to the Authority at the time of Delivery or otherwise under terms that may be agreed upon and specified

in the Contract Agreement.

- 34.2 Ownership and the terms of usage of the Software and Materials supplied under the Contract shall be governed by GCC Clause 15 (Copyright) and any elaboration in the Technical Requirements.
- 34.3 Ownership of the Supplier's Equipment used by the Supplier and its Subcontractors in connection with the Contract shall remain with the Supplier or its Subcontractors.

35. Care of the System

- 35.1 The Authority shall become responsible for the care and custody of the System or Subsystems upon their Delivery. The Authority shall make good at its own cost any loss or damage that may occur to the System or Subsystems from any cause from the date of Delivery until the date of Operational Acceptance of the System or Subsystems, pursuant to GCC Clause 27 (Commissioning and Operational Acceptance), excepting such loss or damage arising from acts or omissions of the Supplier, its employees, or subcontractors.
- 35.2 If any loss or damage occurs to the System or any part of the System by reason of:
 - (a) (insofar as they relate to the country where the Project Site is located) nuclear reaction, nuclear radiation, radioactive contamination, a pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance taken out under GCC Clause 37;
 - (b) any use not in accordance with the Contract, by the Authority or any third party;
 - (c) any use of or reliance upon any design, data, or specification provided or designated by or on behalf of the Authority, or any such matter for which the Supplier has disclaimed responsibility in accordance with GCC Clause 21.1.2,

the Authority shall pay to the Supplier all sums payable in respect of the System or Subsystems that have achieved

Operational Acceptance, notwithstanding that the same be lost, destroyed, or damaged. If the Authority requests the Supplier in writing to make good any loss or damage to the System thereby occasioned, the Supplier shall make good the same at the cost of the Authority in accordance with GCC Clause 39. If the Authority does not request the Supplier in writing to make good any loss or damage to the System thereby occasioned, the Authority shall either request a change in accordance with GCC Clause 39, excluding the performance of that part of the System thereby lost, destroyed, or damaged, or, where the loss or damage affects a substantial part of the System, the Authority shall terminate the Contract pursuant to GCC Clause 41.1.

35.3 The Authority shall be liable for any loss of or damage to any Supplier's Equipment which the Authority has authorized to locate within the Authority's premises for use in fulfillment of Supplier's obligations under the Contract, except where such loss or damage arises from acts or omissions of the Supplier, its employees, or subcontractors.

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

36.1 The Supplier and each and every Subcontractor shall abide by the job safety, insurance, customs, and immigration measures prevalent and laws in force in the Authority's Country.

36.2 Subject to GCC Clause 36.3, the Supplier shall indemnify and hold harmless the Authority and its employees and officers from and against any and all losses, liabilities and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Authority or its employees or officers may suffer as a result of the death or injury of any person or loss of or damage to any property (other than the System, whether accepted or not) arising in connection with the supply, installation, testing, and Commissioning of the System and by reason of the negligence of the Supplier or its Subcontractors, or their employees, officers or agents, except any injury, death, or property damage caused by the negligence of the Authority, its contractors, employees, officers, or agents.

36.3 If any proceedings are brought or any claim is made against the Authority that might subject the Supplier to liability under GCC Clause 36.2, the Authority shall promptly give the Supplier notice of such proceedings or claims, and the Supplier may at its own expense and in the Authority's name conduct such proceedings or claim and any negotiations for

the settlement of any such proceedings or claim. If the Supplier fails to notify the Authority within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Authority shall be free to conduct the same on its own behalf. Unless the Supplier has so failed to notify the Authority within the twenty-eight (28) day period, the Authority shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Authority shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

- 36.4 The Authority shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from any and all losses, liabilities, and costs (including losses, liabilities, and costs incurred in defending a claim alleging such a liability) that the Supplier or its employees, officers, or Subcontractors may suffer as a result of the death or personal injury of any person or loss of or damage to property of the Authority, other than the System not yet achieving Operational Acceptance, that is caused by fire, explosion, or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 37 (Insurances), provided that such fire, explosion, or other perils were not caused by any act or failure of the Supplier.
- 36.5 If any proceedings are brought or any claim is made against the Supplier that might subject the Authority to liability under GCC Clause 36.4, the Supplier shall promptly give the Authority notice of such proceedings or claims, and the Authority may at its own expense and in the Supplier's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Authority fails to notify the Supplier within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Supplier shall be free to conduct the same on its own behalf. Unless the Authority has so failed to notify the Supplier within the twenty-eight (28) days, the Supplier shall make no admission that may be prejudicial to the defense of any such proceedings or claim. The Supplier shall, at the Authority's request, afford all available assistance to the Authority in conducting such proceedings or claim and shall be reimbursed by the Authority for all reasonable expenses

incurred in so doing.

- 36.6 The party entitled to the benefit of an indemnity under this GCC Clause 36 shall take all reasonable measures to mitigate any loss or damage that has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

37. Insurances

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

(a) Cargo Insurance During Transport

as applicable, 110 percent of the price of the Information Technologies and other Goods in a freely convertible currency, covering the Goods from physical loss or damage during shipment through receipt at the Project Site.

(b) Installation "All Risks" Insurance

as applicable, 110 percent of the price of the Information Technologies and other Goods covering the Goods at the site from all risks of physical loss or damage (excluding only perils commonly excluded under "all risks" insurance policies of this type by reputable insurers) occurring prior to Operational Acceptance of the System.

(c) Third-Party Liability Insurance

On terms as **specified in the SCC**, covering bodily injury or death suffered by third parties (including the Authority's personnel) and loss of or damage to property (including the Authority's property and any Subsystems that have been accepted by the Authority) occurring in connection with the supply and installation of the Information System.

(d) Automobile Liability Insurance

In accordance with the statutory requirements prevailing in the Authority's Country, covering use of all vehicles used by the Supplier or its Subcontractors (whether or not owned by them) in connection with the

execution of the Contract.

(e) Other Insurance (if any), as **specified in the SCC**.

- 37.2 The Authority shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GCC Clause 37.1, except for the Third-Party Liability, and the Supplier's Subcontractors shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to GCC Clause 37.1 except for Cargo Insurance During Transport. All insurer's rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.
- 37.3 The Supplier shall deliver to the Authority certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect.
- 37.4 The Supplier shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Supplier.
- 37.5 If the Supplier fails to take out and/or maintain in effect the insurance referred to in GCC Clause 37.1, the Authority may take out and maintain in effect any such insurance and may from time to time deduct from any amount due the Supplier under the Contract any premium that the Authority shall have paid to the insurer or may otherwise recover such amount as a debt due from the Supplier.
- 37.6 Unless otherwise provided in the Contract, the Supplier shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 37, and all monies payable by any insurers shall be paid to the Supplier. The Authority shall give to the Supplier all such reasonable assistance as may be required by the Supplier in connection with any claim under the relevant insurance policies. With respect to insurance claims in which the Authority's interest is involved, the Supplier shall not give any release or make any compromise with the insurer without the prior written consent of the Authority. With respect to insurance claims in which the Supplier's interest is involved, the Authority shall not give any release or make any compromise with the insurer without the prior written

consent of the Supplier.

38. Force Majeure

38.1 “Force Majeure” shall mean any event beyond the reasonable control of the Authority or of the Supplier, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected and shall include, without limitation, the following:

- (a) war, hostilities, or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, and civil war;
- (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military Authority, conspiracy, riot, civil commotion, and terrorist acts;
- (c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any Authority or de jure or de facto authority or ruler, or any other act or failure to act of any local state or national authority;
- (d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, and plague;
- (e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;
- (f) failure, by the Supplier, to obtain the necessary export permit(s) from the Authorities of the Country(s) of Origin of the Information Technologies or other Goods, or Supplier’s Equipment provided that the Supplier has made all reasonable efforts to obtain the required export permit(s), including the exercise of due diligence in determining the eligibility of the System and all of its components for receipt of the necessary export permits.

38.2 If either party is prevented, hindered, or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the

circumstances of the event of Force Majeure within fourteen (14) days after the occurrence of such event.

- 38.3 The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered, or delayed. The Time for Achieving Operational Acceptance shall be extended in accordance with GCC Clause 40 (Extension of Time for Achieving Operational Acceptance).
- 38.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under GCC Clause 38.6.
- 38.5 No delay or nonperformance by either party to this Contract caused by the occurrence of any event of Force Majeure shall:
- (a) constitute a default or breach of the Contract;
 - (b) (subject to GCC Clauses 35.2, 38.3, and 38.4) give rise to any claim for damages or additional cost or expense occasioned by the delay or nonperformance,
- if, and to the extent that, such delay or nonperformance is caused by the occurrence of an event of Force Majeure.
- 38.6 If the performance of the Contract is substantially prevented, hindered, or delayed for a single period of more than thirty (30) days or an aggregate period of more than sixty (60) days on account of one or more events of Force Majeure during the time period covered by the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which, either party may terminate the Contract by giving a notice to the other.
- 38.7 In the event of termination pursuant to GCC Clause 38.6, the rights and obligations of the Authority and the Supplier shall be as specified in GCC Clauses 41.1.2 and 41.1.3.
- 38.8 Notwithstanding GCC Clause 38.5, Force Majeure shall not apply to any obligation of the Authority to make payments to the Supplier under this Contract.

H. CHANGE IN CONTRACT ELEMENTS

39. Changes to the System

39.1 Introducing a Change

39.1.1 Subject to GCC Clauses 39.2.5 and 39.2.7, the Authority shall have the right to propose, and subsequently require, the Project Manager to order the Supplier from time to time during the performance of the Contract to make any change, modification, addition, or deletion to, in, or from the System (interchangeably called “Change”), provided that such Change falls within the general scope of the System, does not constitute unrelated work, and is technically practicable, taking into account both the state of advancement of the System and the technical compatibility of the Change envisaged with the nature of the System as originally specified in the Contract.

A Change may involve, but is not restricted to, the substitution of updated Information Technologies and related Services in accordance with GCC Clause 23 (Product Upgrades).

39.1.2 The Supplier may from time to time during its performance of the Contract propose to the Authority (with a copy to the Project Manager) any Change that the Supplier considers necessary or desirable to improve the quality or efficiency of the System. The Authority may at its discretion approve or reject any Change proposed by the Supplier.

39.1.3 Notwithstanding GCC Clauses 39.1.1 and 39.1.2, no change made necessary because of any default of the Supplier in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Achieving Operational Acceptance.

39.1.4 The procedure on how to proceed with and execute Changes is specified in GCC Clauses 39.2 and 39.3, and further details and sample forms are provided in the Sample Forms Section in the Bidding Documents.

39.1.5 Moreover, the Authority and Supplier will agree, during development of the Project Plan, to a date

prior to the scheduled date for Operational Acceptance, after which the Technical Requirements for the System shall be “frozen.” Any Change initiated after this time will be dealt with after Operational Acceptance.

39.2 Changes Originating from Authority

39.2.1 If the Authority proposes a Change pursuant to GCC Clauses 39.1.1, it shall send to the Supplier a “Request for Change Proposal,” requiring the Supplier to prepare and furnish to the Project Manager as soon as reasonably practicable a “Change Proposal,” which shall include the following:

- (a) brief description of the Change;
- (b) impact on the Time for Achieving Operational Acceptance;
- (c) detailed estimated cost of the Change;
- (d) effect on Functional Guarantees (if any);
- (e) effect on any other provisions of the Contract.

39.2.2 Prior to preparing and submitting the “Change Proposal,” the Supplier shall submit to the Project Manager an “Change Estimate Proposal,” which shall be an estimate of the cost of preparing the Change Proposal, plus a first approximation of the suggested approach and cost for implementing the changes. Upon receipt of the Supplier’s Change Estimate Proposal, the Authority shall do one of the following:

- (a) accept the Supplier’s estimate with instructions to the Supplier to proceed with the preparation of the Change Proposal;
- (b) advise the Supplier of any part of its Change Estimate Proposal that is unacceptable and request the Supplier to review its estimate;
- (c) advise the Supplier that the Authority does not intend to proceed with the Change.

39.2.3 Upon receipt of the Authority’s instruction to proceed under GCC Clause 39.2.2 (a), the Supplier

shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Clause 39.2.1. The Supplier, at its discretion, may specify a validity period for the Change Proposal, after which if the Authority and Supplier has not reached agreement in accordance with GCC Clause 39.2.6, then GCC Clause 39.2.7 shall apply.

39.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If the nature of the Change is such that the Contract rates and prices are inequitable, the parties to the Contract shall agree on other specific rates to be used for valuing the Change.

39.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate impact of compliance with the Request for Change Proposal and with all other Change Orders that have already become binding upon the Supplier under this GCC Clause 39 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract Agreement by more than fifteen (15) percent, the Supplier may give a written notice of objection to this Request for Change Proposal prior to furnishing the Change Proposal. If the Authority accepts the Supplier's objection, the Authority shall withdraw the proposed Change and shall notify the Supplier in writing of its acceptance.

The Supplier's failure to so object to a Request for Change Proposal shall neither affect its right to object to any subsequent requested Changes or Change Orders, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Supplier represents.

39.2.6 Upon receipt of the Change Proposal, the Authority and the Supplier shall mutually agree upon all matters contained in the Change Proposal. Within fourteen (14) days after such agreement, the Authority shall, if it intends to proceed with the

Change, issue the Supplier a Change Order. If the Authority is unable to reach a decision within fourteen (14) days, it shall notify the Supplier with details of when the Supplier can expect a decision. If the Authority decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Supplier accordingly. Under such circumstances, the Supplier shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Supplier in its Change Estimate Proposal submitted in accordance with GCC Clause 39.2.2.

- 39.2.7 If the Authority and the Supplier cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Achieving Operational Acceptance, or any other matters identified in the Change Proposal, the Change will not be implemented. However, this provision does not limit the rights of either party under GCC Clause 6 (Settlement of Disputes).

39.3 Changes Originating from Supplier

If the Supplier proposes a Change pursuant to GCC Clause 39.1.2, the Supplier shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GCC Clause 39.2.1. Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Clauses 39.2.6 and 39.2.7. However, should the Authority choose not to proceed or the Authority and the Supplier cannot come to agreement on the change during any validity period that the Supplier may specify in its Application for Change Proposal, the Supplier shall not be entitled to recover the costs of preparing the Application for Change Proposal, unless subject to an agreement between the Authority and the Supplier to the contrary.

40. Extension of Time for Achieving Operational Acceptance

- 40.1 The time(s) for achieving Operational Acceptance specified in the Schedule of Implementation shall be extended if the Supplier is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- (a) any Change in the System as provided in GCC Clause 39 (Change in the Information System);
- (b) any occurrence of Force Majeure as provided in GCC Clause 38 (Force Majeure);
- (c) default of the Authority; or
- (d) any other matter specifically mentioned in the Contract;

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Supplier.

40.2 Except where otherwise specifically provided in the Contract, the Supplier shall submit to the Project Manager a notice of a claim for an extension of the time for achieving Operational Acceptance, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Authority and the Supplier shall agree upon the period of such extension. In the event that the Supplier does not accept the Authority's estimate of a fair and reasonable time extension, the Supplier shall be entitled to refer the matter to the provisions for the Settlement of Disputes pursuant to GCC Clause 6.

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

41. Termination

41.1 Termination for Authority's Convenience

41.1.1 The Authority may at any time terminate the Contract for any reason by giving the Supplier a notice of termination that refers to this GCC Clause 41.1.

41.1.2 Upon receipt of the notice of termination under GCC Clause 41.1.1, the Supplier shall either as soon as reasonably practical or upon the date specified in the notice of termination

- (a) cease all further work, except for such work as the Authority may specify in the notice of termination for the sole purpose of protecting

that part of the System already executed, or any work required to leave the site in a clean and safe condition;

- (b) terminate all subcontracts, except those to be assigned to the Authority pursuant to GCC Clause 41.1.2 (d) (ii) below;
- (c) remove all Supplier's Equipment from the site, repatriate the Supplier's and its Subcontractors' personnel from the site, remove from the site any wreckage, rubbish, and debris of any kind;
- (d) in addition, the Supplier, subject to the payment specified in GCC Clause 41.1.3, shall
 - (i) deliver to the Authority the parts of the System executed by the Supplier up to the date of termination;
 - (ii) to the extent legally possible, assign to the Authority all right, title, and benefit of the Supplier to the System, or Subsystem, as at the date of termination, and, as may be required by the Authority, in any subcontracts concluded between the Supplier and its Subcontractors;
 - (iii) deliver to the Authority all nonproprietary drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the System.

41.1.3 In the event of termination of the Contract under GCC Clause 41.1.1, the Authority shall pay to the Supplier the following amounts:

- (a) the Contract Price, properly attributable to the parts of the System executed by the Supplier as of the date of termination;
- (b) the costs reasonably incurred by the Supplier in the removal of the Supplier's Equipment from the site and in the repatriation of the Supplier's and its Subcontractors' personnel;
- (c) any amount to be paid by the Supplier to its Subcontractors in connection with the

termination of any subcontracts, including any cancellation charges;

- (d) costs incurred by the Supplier in protecting the System and leaving the site in a clean and safe condition pursuant to GCC Clause 41.1.2 (a); and
- (e) the cost of satisfying all other obligations, commitments, and claims that the Supplier may in good faith have undertaken with third parties in connection with the Contract and that are not covered by GCC Clauses 41.1.3 (a) through (d) above.

41.2 Termination for Supplier's Default

41.2.1 The Authority, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefore to the Supplier, referring to this GCC Clause 41.2:

- (a) if the Supplier becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Supplier is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Supplier takes or suffers any other analogous action in consequence of debt;
- (b) if the Supplier assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 42 (Assignment); or
- (c) if the Supplier, in the judgment of the Authority, has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, including but not limited to willful misrepresentation of facts concerning ownership of Intellectual Property Rights in, or proper authorization and/or licenses from the owner to offer, the hardware, software, or materials provided under this Contract.

For the purposes of this Clause:

- (i) “corrupt practice”¹ 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”² is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) “collusive practice”³ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice”⁴ 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;
- (v) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Authority investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from

¹ “Another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

² A “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

³ “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

⁴ A “party” refers to a participant in the procurement process or contract execution.

disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

- (bb) acts intended to materially impede the exercise of the Authority's inspection and audit rights provided for under Sub-Clause 9.8.

41.2.2 If the Supplier:

- (a) has abandoned or repudiated the Contract;
- (b) has without valid reason failed to commence work on the System promptly;
- (c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause;
- (d) refuses or is unable to provide sufficient Materials, Services, or labor to execute and complete the System in the manner specified in the Agreed and Finalized Project Plan furnished under GCC Clause 19 at rates of progress that give reasonable assurance to the Authority that the Supplier can attain Operational Acceptance of the System by the Time for Achieving Operational Acceptance as extended; then the Authority may, without prejudice to any other rights it may possess under the Contract, give a notice to the Supplier stating the nature of the default and requiring the Supplier to remedy the same. If the Supplier fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Authority may terminate the Contract forthwith by giving a notice of termination to the Supplier that refers to this GCC Clause 41.2.

41.2.3 Upon receipt of the notice of termination under GCC Clauses 41.2.1 or 41.2.2, the Supplier shall, either immediately or upon such date as is specified in the notice of termination:

- (a) cease all further work, except for such work as the Authority may specify in the notice of termination for the sole purpose of protecting

that part of the System already executed or any work required to leave the site in a clean and safe condition;

- (b) terminate all subcontracts, except those to be assigned to the Authority pursuant to GCC Clause 41.2.3 (d) below;
- (c) deliver to the Authority the parts of the System executed by the Supplier up to the date of termination;
- (d) to the extent legally possible, assign to the Authority all right, title and benefit of the Supplier to the System or Subsystems as at the date of termination, and, as may be required by the Authority, in any subcontracts concluded between the Supplier and its Subcontractors;
- (e) deliver to the Authority all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as at the date of termination in connection with the System.

41.2.4 The Authority may enter upon the site, expel the Supplier, and complete the System itself or by employing any third party. Upon completion of the System or at such earlier date as the Authority thinks appropriate, the Authority shall give notice to the Supplier that such Supplier's Equipment will be returned to the Supplier at or near the site and shall return such Supplier's Equipment to the Supplier in accordance with such notice. The Supplier shall thereafter without delay and at its cost remove or arrange removal of the same from the site.

41.2.5 Subject to GCC Clause 41.2.6, the Supplier shall be entitled to be paid the Contract Price attributable to the portion of the System executed as at the date of termination and the costs, if any, incurred in protecting the System and in leaving the site in a clean and safe condition pursuant to GCC Clause 41.2.3 (a). Any sums due the Authority from the Supplier accruing prior to the date of termination shall be deducted from the amount to be paid to the Supplier under this Contract.

41.2.6 If the Authority completes the System, the cost of

completing the System by the Authority shall be determined. If the sum that the Supplier is entitled to be paid, pursuant to GCC Clause 41.2.5, plus the reasonable costs incurred by the Authority in completing the System, exceeds the Contract Price, the Supplier shall be liable for such excess. If such excess is greater than the sums due the Supplier under GCC Clause 41.2.5, the Supplier shall pay the balance to the Authority, and if such excess is less than the sums due the Supplier under GCC Clause 41.2.5, the Authority shall pay the balance to the Supplier. The Authority and the Supplier shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

41.3 Termination by Supplier

41.3.1 If:

- (a) the Authority has failed to pay the Supplier any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause **pursuant to the SCC**, or commits a substantial breach of the Contract, the Supplier may give a notice to the Authority that requires payment of such sum, with interest on this sum as stipulated in GCC Clause 12.3, requires approval of such invoice or supporting documents, or specifies the breach and requires the Authority to remedy the same, as the case may be. If the Authority fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Supplier's notice; or
- (b) the Supplier is unable to carry out any of its obligations under the Contract for any reason attributable to the Authority, including but not limited to the Authority's failure to provide possession of or access to the site or other areas or failure to obtain any permit necessary for the execution and/or completion of the System;

then the Supplier may give a notice to the Authority

of such events, and if the Authority has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Supplier is still unable to carry out any of its obligations under the Contract for any reason attributable to the Authority within twenty-eight (28) days of the said notice, the Supplier may by a further notice to the Authority referring to this GCC Clause 41.3.1, forthwith terminate the Contract.

41.3.2 The Supplier may terminate the Contract immediately by giving a notice to the Authority to that effect, referring to this GCC Clause 41.3.2, if the Authority becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Authority takes or suffers any other analogous action in consequence of debt.

41.3.3 If the Contract is terminated under GCC Clauses 41.3.1 or 41.3.2, then the Supplier shall immediately:

- (a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the System already executed, or any work required to leave the site in a clean and safe condition;
- (b) terminate all subcontracts, except those to be assigned to the Authority pursuant to Clause 41.3.3 (d) (ii);
- (c) remove all Supplier's Equipment from the site and repatriate the Supplier's and its Subcontractor's personnel from the site.
- (d) In addition, the Supplier, subject to the payment specified in GCC Clause 41.3.4, shall:
 - (i) deliver to the Authority the parts of the System executed by the Supplier up to the

date of termination;

- (ii) to the extent legally possible, assign to the Authority all right, title, and benefit of the Supplier to the System, or Subsystems, as of the date of termination, and, as may be required by the Authority, in any subcontracts concluded between the Supplier and its Subcontractors;
- (iii) to the extent legally possible, deliver to the Authority all drawings, specifications, and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the System.

41.3.4 If the Contract is terminated under GCC Clauses 41.3.1 or 41.3.2, the Authority shall pay to the Supplier all payments specified in GCC Clause 41.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Supplier arising out of, in connection with, or in consequence of such termination.

41.3.5 Termination by the Supplier pursuant to this GCC Clause 41.3 is without prejudice to any other rights or remedies of the Supplier that may be exercised in lieu of or in addition to rights conferred by GCC Clause 41.3.

41.4 In this GCC Clause 41, the expression “portion of the System executed” shall include all work executed, Services provided, and all Information Technologies, or other Goods acquired (or subject to a legally binding obligation to purchase) by the Supplier and used or intended to be used for the purpose of the System, up to and including the date of termination.

41.5 In this GCC Clause 41, in calculating any monies due from the Authority to the Supplier, account shall be taken of any sum previously paid by the Authority to the Supplier under the Contract, including any advance payment paid **pursuant to the SCC.**

42. Assignment

- 42.1 Neither the Authority nor the Supplier shall, without the express prior written consent of the other, assign to any third party the Contract or any part thereof, or any right, benefit, obligation, or interest therein or thereunder, except that the Supplier shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.
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SECTION V. SPECIAL CONDITIONS OF CONTRACT (SCC)

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Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions of the SCC shall prevail over those in the General Conditions of Contract. For the purposes of clarity, any referenced GCC clause numbers are indicated in the left column of the SCC.

A. CONTRACT AND INTERPRETATION

1. Definitions (GCC Clause 1)

GCC 1.1 (b) (i)	The Authority is: <i>Zambezi River Authority</i>
GCC 1.1 (b) (ii)	The Project Manager is: <i>ICT Manager</i>
GCC 1.1 (e) (i)	The Authority's Country is: <i>Zambia and Zimbabwe</i>
GCC 1.1 (e) (iii)	The Project Site(s) is/are: <i>Lusaka (Zambia) Harare and Kariba (Zimbabwe)</i>
GCC 1.1 (e) (x)	"The Contract shall continue in force until the Information System and all the Services have been provided unless the Contract is terminated earlier in accordance with the terms set out in the Contract." .
GCC 1.1. (e) (xii)	The Post-Warranty Services Period is 12 months starting with the completion of the Warranty Period.

2. Contract Documents (GCC Clause 2)

GCC 2	<i>There are no Special Conditions of Contract applicable to GCC Clause 2.</i>
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4. Notices (GCC Clause 4)

GCC 4.3	Address of the Project Manager: Lusaka: Zambezi River Authority, Kariba House, 5 th Floor Boardroom, 32 Cha Cha Cha Road,
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	Lusaka, Zambia.
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5. Governing Law (GCC Clause 5)

GCC 5.1	The Contract shall be interpreted in accordance with the laws of: <i>Zambia or Zimbabwe (depending on the nationality of the Supplier)</i>
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6. Settlement of Disputes (GCC Clause 6)

GCC 6.1.4	The Appointing Authority for the Adjudicator is: <i>Zambezi River Authority</i>
GCC 6.2.3	<i>If the Supplier is foreign (including a Joint Venture when at least one partner is foreign), the Contract shall contain the following provision: Arbitration proceedings shall be conducted in accordance with the rules of arbitration of either of the following: UNCITRAL / the International Chamber of Commerce (ICC) / the Arbitration Institute of the Stockholm Chamber of Commerce / the London Court of International Arbitration. These rules, in the version in force at the time of the request for arbitration, will be deemed to form part of this Contract.</i>

B. SUBJECT MATTER OF CONTRACT

7. Scope of the System (GCC Clause 7)

GCC 7.3	The Supplier's obligations under the Contract will include the following recurrent cost items, as identified in the Recurrent Cost tables in the Supplier's Bid: E-mail gateways, antivirus and anti-spam facilities and data centre maintenance.
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8. Time for Commencement and Operational Acceptance (GCC Clause 8)

GCC 8.1	The Supplier shall commence work on the System within: <i>14 days</i> of days from the Effective Date of the Contract.
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GCC 8.2	Operational Acceptance will occur on or before: <i>Operational Acceptance date consistent with the Implementation Schedule</i>
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9. Supplier's Responsibilities (GCC Clause 9)

GCC 9.9	The Supplier shall have the following additional responsibilities: <i>none.</i>
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10. Authority's Responsibilities (GCC Clause 10)

GCC 10.12	The Authority shall have the following additional responsibilities: <i>Seconding Personnel to work with the Supplier on the Project.</i>
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C. PAYMENT

11. Contract Price (GCC Clause 11)

GCC 11.2 (b)	Adjustments to the Contract Price shall be as follows: <i>None</i>
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12. Terms of Payment (GCC Clause 12)

GCC 12.1	<p>Subject to the provisions of GCC Clause 12 (Terms of Payment), the Authority shall pay the Contract Price to the Supplier according to the categories and in the manner specified below.</p> <p>(a) Advance Payment</p> <p>25% percent of the entire Contract Price, exclusive of all Recurrent Costs, shall be paid against receipt of a claim accompanied by the Advance Payment Security specified in GCC Clause 13.2.</p> <p>(b) Information Technologies, Materials, Equipment and other Goods, with the exception of Software.</p> <p>Sixty five percent (65%) of the Contract Price for this category against full delivery of equipment, Installation, commissioning and Operational Acceptance of the System/Equipment as an integrated whole.</p> <p>(c) Ten (10) percent of the Contract Price shall paid after 6 months</p>
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	<p>from date of commissioning and Operational Acceptance, being end of the defects liability period.</p> <p>(d) Software</p> <p>One hundred percent (100%) of the total Contract Price for this category against Installation, commission and acceptance by the Authority.</p> <p>(e) Recurrent Costs</p> <p>One hundred percent (100%) of the price of the services actually delivered per month will be paid monthly in arrears, on submission and Authority's approval of invoices.</p>
GCC 12.3	The Authority shall pay to the Supplier interest on the delayed payments at a rate of: <i>n/a</i>
GCC 12.4	For Goods and Services supplied locally, the Authority will pay the Supplier in <i>United States Dollars (US\$)</i> .
GCC 12.5	Payment for Goods supplied from outside the Authority's Country shall be in <i>United States Dollars (US\$)</i> .

13. Securities (GCC Clause 13)

GCC 13.2.1	The Supplier shall provide within fourteen (14) days of the notification of Contract award an Advance Payment Security in the amount and currency of the Advance Payment specified in SCC for GCC Clause 12.1 above.
GCC 13.2.2	<i>n/a</i>
GCC 13.3.1	<i>n/a</i>
GCC 13.3.4	<i>n/a</i>

14. Taxes and Duties (GCC Clause 14)

GCC 14	There are no Special Conditions of Contract applicable to GCC
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	Clause 14.
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D. INTELLECTUAL PROPERTY

15. Copyright (GCC Clause 15)

GCC 15.3	The Authority may assign, license, or otherwise voluntarily transfer its contractual rights to use the Standard Software or elements of the Standard Software, without the Supplier's prior written consent, under the following circumstances: <i>none</i> .
GCC 15.4	<p>The Authority's and Supplier's rights and obligations with respect to Custom Software or elements of the Custom Software are applicable. The Intellectual Property Rights in all Custom Software and Custom Materials specified in Appendices 4 and 5 of the Contract Agreement (if any) shall, at the date of this Contract or on creation of the rights (if later than the date of this Contract), vest in the Authority</p> <p>The Authority's and Supplier's rights and obligations with respect to Custom Materials or elements of the Custom Materials are applicable. In respect of such Custom Materials, the Supplier shall ensure that the holder of a moral right in such an item does not assert it, and the Supplier shall, if requested to do so by the Authority and where permitted by applicable law, ensure that the holder of such a moral right waives it.</p>
GCC 15.5	<i>n/a</i>

16. Software License Agreements (GCC Clause 16)

GCC 16.1 (a) (iii)	The Standard Software license shall be valid <i>in Zambia and Zimbabwe</i>
GCC 16.1 (a) (iv)	Use of the software shall be subject to the following additional restrictions <i>"none"</i>
GCC 16.1 (b) (ii)	The Software license shall permit the Software to be used or copied for use or transferred to a replacement computer: Yes

GCC 16.1 (b) (vi)	The Software license shall permit the Software to be disclosed to and reproduced for use (including a valid sublicense) by “support service suppliers or their subcontractors, exclusively for such suppliers or subcontractors in the performance of their support service contracts subject to the same restrictions set forth in this Contract.
GCC 16.1 (b) (vii)	In addition to the persons specified in GCC Clause 16.1 (b) (vi), the Software may be disclosed to, and reproduced for use by the ICT Manager subject to the same restrictions as are set forth in this Contract.
GCC 16.2	n/a

17. Confidential Information (GCC Clause 17)

GCC 17.1	There are no modifications to the confidentiality terms expressed in GCC Clause 17.1.
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E. SUPPLY, INSTALLATION, TESTING, COMMISSIONING, AND ACCEPTANCE OF THE SYSTEM

18. Representatives (GCC Clause 18)

GCC 18.1	The Authority’s Project Manager shall have the following additional powers and / or limitations to his or her authority to represent the Authority in matters relating to the Contract “no additional powers or limitations.”
GCC 18.2.2	The Supplier’s Representative shall have the following additional powers and / or limitations to his or her authority to represent the Supplier in matters relating to the Contract “no additional powers or limitations.”

19. Project Plan (GCC Clause 19)

GCC 19.1	Chapters in the Project Plan shall address the following subject: <i>Specify:</i> (a) <i>Project Organization and Management Plan;</i> (b) <i>Delivery and Installation Plan</i>
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	<p>(c) <i>Training Plan</i></p> <p>(d) <i>Pre-commissioning and Operational Acceptance Testing Plan</i></p> <p>(e) <i>Warranty Service Plan</i></p> <p>(f) <i>Task, Time, and Resource Schedules</i></p> <p>(g) <i>Post-Warranty Service Plan (if applicable)</i></p> <p>(h) <i>Technical Support Plan (if applicable)</i></p> <p><i>Further details regarding the required contents of each of the above chapters are contained in the Technical Requirements</i></p>
GCC 19.2	<p>Within, <i>seven (7)</i> days from the Effective Date of the Contract, the Supplier shall present a Project Plan to the Authority. The Authority shall, within, <i>seven (7)</i>] days of receipt of the Project Plan, notify the Supplier of any respects in which it considers that the Project Plan does not adequately ensure that the proposed program of work, proposed methods, and/or proposed Information Technologies will satisfy the Technical Requirements and/or the SCC (in this Clause 19.2 called “non-conformities” below). The Supplier shall, within <i>five (5)</i> days of receipt of such notification, correct the Project Plan and resubmit to the Authority. The Authority shall, within <i>five (5)</i> days of resubmission of the Project Plan, notify the Supplier of any remaining non-conformities. This procedure shall be repeated as necessary until the Project Plan is free from non-conformities. When the Project Plan is free from non-conformities, the Authority shall provide confirmation in writing to the Supplier. This approved Project Plan (“the Agreed and Finalized Project Plan”) shall be contractually binding on the Authority and the Supplier.</p>
GCC 19.5	<p>The Supplier shall submit to the Authority the following reports:</p> <p>(a) <i>Monthly progress reports, summarizing:</i></p> <p>(i) <i>results accomplished during the prior period;</i></p> <p>(ii) <i>cumulative deviations to date from schedule of progress milestones as specified in the Agreed and Finalized Project Plan;</i></p> <p>(iii) <i>corrective actions to be taken to return to planned schedule of progress; proposed revisions to planned schedule;</i></p> <p>(iv) <i>other issues and outstanding problems; proposed actions to be taken;</i></p> <p>(v) <i>resources that the Supplier expects to be provided by the Authority and/or actions to be taken by the</i></p>

	<i>Authority in the next reporting period;</i> <i>(vi) other issues or potential problems the Supplier foresees that could impact on project progress and/or effectiveness.</i>
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20. Subcontracting (GCC Clause 20)

GCC 20	<i>“There are no Special Conditions of Contract applicable to GCC Clause 20.”</i>
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21. Design and Engineering (GCC Clause 21)

GCC 21.2	The Contract shall be executed in accordance with the edition or the revised version of all referenced codes and standards current at <i>the date 10 days before bid submission.</i>
GCC 21.3.1	The Supplier shall prepare and furnish to the Project Manager the following documents for which the Supplier must obtain the Project Manager's approval before proceeding with work on the System or any Subsystem covered by the documents. <i>-detailed site surveys</i> <i>-final Subsystem configurations;</i>

22. Procurement, Delivery, and Transport (GCC Clause 22)

GCC 22.4.3	The Supplier <i>shall be</i> free to use transportation through carriers and <i>shall obtain</i> insurance.
GCC 22.5	n/a

23. Product Upgrades (GCC Clause 23)

GCC 23.4	The Supplier shall provide the Authority <i>with all new versions, releases, and updates to all Standard Software during the Warranty Period, for free, as specified in the GCC,</i>
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24. Implementation, Installation, and Other Services (GCC Clause 24)

GCC 24	<i>There are no Special Conditions of Contract applicable to GCC Clause 24.</i>
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25. Inspections and Tests (GCC Clause 25)

GCC 25	<i>"There are no Special Conditions of Contract applicable to GCC Clause 25."</i>
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26. Installation of the System (GCC Clause 26)

GCC 26	<i>There are no Special Conditions of Contract applicable to GCC Clause 26.”</i>
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27. Commissioning and Operational Acceptance (GCC Clause 27)

GCC 27.2.1	<p>Operational Acceptance Testing shall be conducted in accordance with <i>the System or the Subsystems, the tests, the test procedures, and the required results for acceptance</i></p> <p><i>The Authority assumes primary responsibility for the Operational Acceptance Test(s) for the System, in accordance with GCC Clause 27.2, and shall be responsible for the continued operation of the System after Operational Acceptance. However, this shall not limit in any way the Supplier’s responsibilities after the date of Operational Acceptance otherwise specified in the Contract</i></p>
GCC 27.2.2	<p>If the Operational Acceptance Test of the System, or Subsystem(s), cannot be successfully completed within thirty (30) days from the date of Installation or any other period agreed upon by the Authority and the Supplier, then GCC Clause 27.3.5 (a) or (b) shall apply, as the circumstances may dictate.</p>

F. GUARANTEES AND LIABILITIES

28. Operational Acceptance Time Guarantee (GCC Clause 28)

GCC 28.2	Liquidated damages shall be assessed at 0.5 percent per week. The maximum liquidated damages are 10% percent of the Contract Price, or relevant part of the Contract Price if the liquidated damages apply to a Subsystem.
GCC 28.3	Liquidated damages shall be assessed <i>only with respect to achieving Operational Acceptance.</i>

29. Defect Liability (GCC Clause 29)

GCC 29.1	The Supplier warrants that the System, including all Information Technologies, Materials, and other Goods supplied and Services provided, shall be free from defects in the design, engineering, Materials, and workmanship that prevent the System and/or any of its components from fulfilling the Technical Requirements or that limit in a material fashion the performance, reliability, or extensibility of the System
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	and/or Subsystems The defects liability is 6 months.
GCC 29.3 (iii)	The Supplier warrants that the following items have been released to the market for the following specific minimum time periods: <i>“No specific minimum time requirements are established for this Contract other than that the Information Technologies must have been previously released to the market;”</i>
GCC 29.4	The Warranty Period shall begin from the date of Operational Acceptance of the System or Subsystem and extend for <i>12 months;”</i>
GCC 29.10	During the Warranty Period, the Supplier must commence the work necessary to remedy defects or damage within <i>five (5)</i> days of notification.

30. Functional Guarantees (GCC Clause 30)

GCC 30	<i>There are no Special Conditions of Contract applicable to GCC Clause 30.</i>
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31. Intellectual Property Rights Warranty (GCC Clause 31)

GCC 31	<i>There are no Special Conditions of Contract applicable to GCC Clause 31.”</i>
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32. Intellectual Property Rights Indemnity (GCC Clause 32)

GCC 32	<i>“There are no Special Conditions of Contract applicable to GCC Clause 32.”</i>
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33. Limitation of Liability (GCC Clause 33)

GCC 33	<i>“There are no Special Conditions of Contract applicable to GCC Clause 33.”</i>
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G. RISK DISTRIBUTION

34. Transfer of Ownership (GCC Clause 34)

GCC 34	There are no Special Conditions of Contract applicable to GCC Clause 34.
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35. Care of the System (GCC Clause 35)

GCC 35	There are no Special Conditions of Contract applicable to GCC Clause 35.
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36. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification (GCC Clause 36)

GCC 36	<i>There are no Special Conditions of Contract applicable to GCC Clause 36</i>
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37. Insurances (GCC Clause 37)

GCC 37.1 (c)	The Supplier shall obtain appropriate insurance which shall cover all liabilities during the duration of the contract.
GCC 37.1 (e)	<i>n/a</i>

38. Force Majeure (GCC Clause 38)

GCC 38	<i>There are no Special Conditions of Contract applicable to GCC Clause 38</i>
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H. CHANGE IN CONTRACT ELEMENTS

39. Changes to the System (GCC Clause 39)

GCC 39	<i>“There are no Special Conditions of Contract applicable to GCC Clause 39.”</i>
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40. Extension of Time for Achieving Operational Acceptance (GCC Clause 40)

GCC 40	<i>“There are no Special Conditions of Contract applicable to GCC Clause 40.”</i>
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41. Termination (GCC Clause 41)

GCC 41	<i>“There are no Special Conditions of Contract applicable to GCC Clause 41.”</i>
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42. Assignment (GCC Clause 42)

GCC 42	<i>“There are no Special Conditions of Contract applicable to GCC Clause 42.”</i>
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SECTION VI. TECHNICAL REQUIREMENTS AND SPECIFICATIONS

Attached

A. REQUIRED FORMAT OF TECHNICAL BIDS

5.1 Description of Information Technologies, Materials, Other Goods, and Services

- 5.1.0 The Bidder must provide detailed descriptions of the essential technical, performance, or other relevant characteristics of all key Information Technologies, Materials, other Goods, and Services offered in the bid (e.g., version, release, and model numbers). Without providing sufficient clear detail, Bidders run the risk of their bids being declared non-responsive.
- 5.1.1 To assist in the bid evaluation, the detailed descriptions should be organized and cross referenced in the same manner as the Bidder's item-by-item commentary on the Technical Requirements described in Section 5.2 below. All information provided by cross reference must, at a minimum, include clear titles and page numbers.

5.2 Item-by-Item Commentary on the Technical Requirements

- 5.2.0 The Bidder must provide an item-by-item commentary on the Authority's Technical Requirements, demonstrating the substantial responsiveness of the overall design of the System and the individual Information Technologies, Goods, and Services offered to those Requirements, see ITB Clause 16.2 (b) (ITB Clause 14.2 (b) in the two-stage SBD).
- 5.2.1 In demonstrating the responsiveness of its bid, the Bidder is strongly urged to use the Responsiveness Checklist .Failure to do so, increases significantly the risk that the Bidder's Technical Bid will be declared technically non-responsive. Among other things, the checklist should contain explicit cross references to the relevant pages in the Bidder's Technical Bid.

5.3 Preliminary Project Plan

- 5.3.0 The Bidder must prepare a Preliminary Project Plan describing, among other things, the methods and human and material resources that the Bidder proposes to employ in the design, management, coordination, and execution of all its responsibilities, if awarded the Contract, as well as the estimated duration and completion date for each major activity. The Preliminary Project Plan should also state the Bidder's assessment of the major responsibilities of the Authority and any other involved third parties in System supply and installation, as well as the Bidder's proposed means for coordinating activities by each of the involved parties to avoid delays or interference.

5.4 Confirmation of Responsibility for Integration and Interoperability of Information Technologies

- 5.4.0 The Bidder must submit a written confirmation that, if awarded the Contract, it shall accept responsibility for successful integration and interoperability of

all the proposed Information Technologies included in the System, as further specified in the Bidding Document.

SECTION VII. SAMPLE FORMS

Notes to Bidders on working with the Sample Forms

The Authority has prepared the forms in this section of the Bidding Documents to suit the specific requirements of the System being procured. In its bid, the Bidder must use these forms (or forms that present in the same sequence substantially the same information). Bidders should not introduce changes without the Authority's prior written consent. If the Bidder has a question regarding the meaning or appropriateness of the contents or format of the forms and/or the instructions contained in them, these questions should be brought to the Authority's attention as soon as possible during the bid clarification process, either at the pre-bid meeting or by addressing them to the Authority in writing pursuant to ITB Clause 10.

The Authority has tried to provide explanatory text and instructions to help the Bidder prepare the forms accurately and completely. The instructions that appear directly on the forms themselves are indicated by use of typographical aides such as italicized text within square brackets as is shown in the following example taken from the Bid Submission Form:

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

In preparing its bid, the Bidder must ensure all such information is provided and that the typographical aides are removed.

The sample forms provide a standard set of documents that support the procurement process as it moves forward from the stage of bidding, through Contract formation and onto Contract performance. The first set of forms must be completed and submitted as part of the bid prior to the deadline for bid submission. These include: (i) the Bid Submission Form; (ii) the Price Schedules; (iii) the Manufacturer's Authorizations and key Subcontractor agreements; (iv) the List of Proposed Subcontractors; (v) the form(s) for securing the bid (if and as required); and other forms as found in sub-sections 1 through 4 of this Section VII of the Bidding Documents.

- Bid Submission Form: In addition to being the place where official confirmation of the bid price, the currency breakdown, the completion date(s), and other important Contract details are expressed, the Bid Submission Form is also used by the Bidder to confirm - in case adjudication applies in this Contract - its acceptance of the Authority's proposed Adjudicator, or to propose an alternative. If the bid is being submitted on behalf of a Joint Venture, it is essential that the Bid Submission Form be signed by the partner in charge and that it be supported by the authorizations and power of attorney required pursuant to ITB Clause 6.2. Given widespread concern about illegal use of licensed software, Bidders will be asked to certify in the Bid Submission Form that either the Software included in the bid was developed and is owned by the Bidder, or, if not, the Software is covered by valid licenses with the proprietor of the Software.

- **Price Schedules:** The prices quoted in the Price Schedules should constitute full and fair compensation for supply, installation, and achieving Operational Acceptance of the System as described in the Technical Requirements based on the Implementation Schedule, and the terms and conditions of the proposed Contract as set forth in the Bidding Documents. Prices should be given for each line item provided in the Schedules, with costs carefully aggregated first at the Subsystem level and then for the entire System. If the Price Schedules provide only a summary breakdown of items and components, or do not cover some items unique to the Bidder's specific technical solution, the Bidder may extend the Schedules to capture those items or components. If supporting price and cost tables are needed for a full understanding of the bid, they should be included.

Arithmetical errors should be avoided. If they occur, the Authority will correct them according to ITB Clause 26.2 (ITB Clause 38.2 in the two-stage SBD) without consulting the Bidder. Major omissions, inconsistencies, or lack of substantiating detail can lead to rejection of a bid for commercial non-responsiveness. Presenting prices according to the breakdown prescribed in the Price Schedules is also essential for another reason. If a bid does not separate prices in the prescribed way, and, as a result, the Authority cannot apply the domestic preference provision described in ITB Clause 29 (ITB Clause 41 in the two-stage SBD), if they are applicable in this bidding, the Bidder will lose the benefit of the preference. Once bids are opened, none of these problems can be rectified. At that stage, Bidders are not permitted to change their bid prices to overcome errors or omissions.

- **Manufacturer's Authorizations and written agreements by key Subcontractors:** In accordance with ITB Clauses 6.1 (b) and (c), a Bidder may be required to submit, as part of its bid, Manufacturer's Authorizations in the format provided in the Bidding Documents, and agreements by Subcontractors proposed for key services, for all items specified in the Bid Data Sheet. There is no particular format (or sample form) for Subcontractor agreements.
- **List of Proposed Subcontractors:** In accordance with ITB Clause 6.3, a Bidder must submit, as part of its bid, a list of proposed subcontracts for major items of Technologies, Goods, and/or Services. The list should also include the names and places of registration of the Subcontractors proposed for each item and a summary of their qualifications.
- **List of Software and Materials:** In accordance with ITB Clause 13.1 (e) (vi) (ITB Clauses 13.1 (c) (vi) and 25.1 (e) (vi) in the two-stage SBD), Bidders must submit, as part of their bids, lists of all the Software included in the bid assigned to one of the following categories: (A) System, General-Purpose, or Application Software; or (B) Standard or Custom Software. Bidders must also submit a list of all Custom Materials. If provided for in the Bid Data Sheet, the Authority may reserve the right to reassign certain key Software to a different category.
- **Qualification information forms:** In accordance with ITB Clause 6, the Authority will determine whether the Bidder is qualified to undertake the Contract. This entails financial, technical as well as performance history criteria which are specified in the

BDS for ITB Clause 6. The Bidder must provide the necessary information for the Authority to make this assessment through the forms in this sub-section. The forms contain additional detailed instructions which the Bidder must follow.

- Securing the bid: If the BDS for ITB Clause 17 (ITB Clause 29 in the two-stage SBD) requires that bids be secured, the Bidder shall do so in accordance with the type and details specified in the same ITB/BDS Clause, either using the form(s) included in these Sample Forms or using another form acceptable to the Authority. If a Bidder wishes to use an alternative form, it should ensure that the revised format provides substantially the same protection as the standard format; failing that, the Bidder runs the risk of rejection for commercial non-responsiveness.

Bidders need not provide the Performance Security and Advance Payment Security with their bids. Only the Bidder selected for award by the Authority will be required to provide these securities.

The following forms are to be completed and submitted by the successful Bidder following notification of award: (i) Contract Agreement, with all Appendices; (ii) Performance Security; and (iii) Advance Payment Security.

- Contract Agreement: In addition to specifying the parties and the Contract Price, the Contract Agreement is where the: (i) Supplier Representative; (ii) if applicable, agreed Adjudicator and his/her compensation; and (iii) the List of Approved Subcontractors are specified. In addition, modifications to the successful Bidder's Bid Price Schedules are attached to the Agreement. These contain corrections and adjustments to the Supplier's bid prices to correct errors, adjust the Contract Price to reflect – if applicable - any extensions to bid validity beyond the last day of original bid validity plus 56 days, etc.
- Performance Security: Pursuant to GCC Clause 13.3, the successful Bidder is required to provide the Performance Security in the form contained in this section of these Bidding Documents and in the amount specified in accordance with the SCC.
- Advance Payment Security: Pursuant to GCC Clause 13.2, the successful Bidder is required to provide a bank guarantee for the full amount of the Advance Payment - if an Advance Payment is specified in the SCC for GCC 12.1 - in the form contained in this section of these Bidding Documents or another form acceptable to the Authority. If a Bidder wishes to propose a different Advance Payment Security form, it should submit a copy to the Authority promptly for review and confirmation of acceptability before the bid submission deadline.

The Authority and Supplier will use the following additional forms during Contract implementation to formalize or certify important Contract events: (i) the Installation and Operational Acceptance Certificates; and (ii) the various Change Order forms. These and the procedures for their use during performance of the Contract are included in the Bidding Documents for the information of Bidders.

1. BID SUBMISSION FORM (SINGLE-STAGE BIDDING)

Date: [Bidder insert: **date of bid**]
Tender No.: ZRA/ICT/07/2016
ITB: Provision & commissioning of Core ICT
Infrastructure & Security Enhancement.

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

Dear Sir or Madam:

Having examined the Bidding Documents, including Addenda Nos. [insert **numbers**], the receipt of which is hereby acknowledged, we, the undersigned, offer to supply, install, achieve Operational Acceptance of, and support the Information System under the above-named Contract in full conformity with the said Bidding Documents for the total sum of:

[insert: **amount and currency**
in words]

The above amounts are in accordance with the Price Schedules attached herewith and made part of this bid.

We undertake, if our bid is accepted, to commence work on the Information System and to achieve Installation and Operational Acceptance within the respective times stated in the Bidding Documents.

If our bid is accepted, and if these Bidding Documents so require, we undertake to provide an advance payment security and a performance security in the form, in the amounts, and within the times specified in the Bidding Documents.

We hereby certify that the Software offered in this bid and to be supplied under the Contract (i) either is owned by us, or (ii) if not owned by us, is covered by a valid license (owner/manufacture authorization) from the proprietor of the Software.

We agree to abide by this bid, which, in accordance with ITB Clauses 13 and 16, consists of this letter (Bid Submission Form) and the enclosures listed below, for a period of 90 days from the date fixed for submission of bids as stipulated in the Bidding Documents, and it shall remain binding upon us and may be accepted by you at any time before the expiration of that period.

Until the formal final Contract is prepared and executed between us, this bid, together with your written acceptance of the bid and your notification of award, shall constitute a binding contract between us. We understand that you are not bound to accept the lowest or any bid you may receive.

Dated this [*insert: ordinal*] day of [*insert: month*], [*insert: year*].

Signed:

Date:

In the capacity of [*insert: title or position*]

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

2. Bid Table of Contents and Checklist

Note: Bidders should expand and (if appropriate) modify and complete the following table. The purpose of the table is to provide the Bidder with a summary checklist of items that must be included in the bid as described in ITB Clauses 13.1 and 16, in order for the bid to be considered for Contract award. The table also provides a summary page reference scheme to ease and speed the Authority's bid evaluation process.

Item	present: y/n	page no.
Power of Attorney.....		
Bid Submission Form.....		
Price Schedules..... (per Lot)		
Payment schedule (per Lot)ref: GCC 12.1		
Bid-Securing Declaration		
Signature Authorization (for Joint Ventures additionally including the authorizations listed in ITB Clause 6.2)....		
Manufacturer's Authorizations (Per Lot)		
Company Certifications (Per Lot)		
Employee Certifications (Per Lot)		
Specific past experience (Per Lot)		
Description of the technical solution and method statement (Per Lot)		
Product specifications (Per Lot)		
Project Implementation Schedule (Per Lot)		

3. PRICE SCHEDULE FORMS

Note: in information systems procurement, the Contract Price (and payment schedule) should be linked as much as possible to achievement of operational capabilities, not just to the physical delivery of technology.

4. Grand Summary Cost Table:

Lot No.	Description	<i>US\$</i> Total Price
1	Supply and Installation and commissioning Costs	
2	Supply and Installation and commissioning Costs	
3	Supply and Installation and commissioning Costs	
4	Supply and Installation and commissioning Costs	
Grand Total (as indicated in the Bid Submission Form)		

Name of Bidder:		
Authorized Signature of Bidder:		
Date		

5. Price Schedule: Lot 1:

Item No.	Description	US\$ Total Price
1	Network Load Balancer and WAN Acceleration	
2	Datacenter Router/ Voice Gateways	
3	Branch Router/ Voice Gateways	
4	Datacenter Switch	
5	Web security Gateway	
6	Content Security Management Appliance	
7	Next-generation firewall (NGFW) with Firepower services with Remote access licenses	
8	Services: Installation, Configuration, commissioning, travel & Accommodation; Project Management; Documentation	
Total Price		

Note to bidders: Please attach a complete breakdown with unit prices of hardware and software and the complete specifications including brochures.

Name of Bidder:		
Authorized Signature of Bidder:		
Date		

6. Price Schedule: Lot 2:

Item No.	Description	US\$ Total Price
1	Unified Communications System	
2	Purpose built UCS Servers	
3	Switchboard	
4	Unified Voicemail	
5	Telephony Management System	
6	Standard IP Phones	
7	Executive IP Phones	
8	Services: Installation, Configuration, commissioning, travel & Accommodation; Project Management; Documentation	
9	Conference Phones	
10	Telepresence Video Conferencing Unit (Lusaka)	
11	Telepresence Video Conferencing Unit (Kariba)	
12	Telepresence Video Conferencing Unit (Harare)	
13	Room Ambience (Lusaka)	
14	Room Ambience (Kariba)	
15	Room Ambience (Harare)	
16	Services: Installation, Configuration, Commissioning, Travel & Accommodation (Lusaka)	
17	Services: Installation, Configuration, Commissioning, Travel & Accommodation (Kariba)	
18	Services: Installation, Configuration, Commissioning, Travel & Accommodation (Harare)	
Total Price		

Note to bidders: Please attach a complete breakdown with unit prices of hardware and software and the complete specifications including brochures.

Name of Bidder:		
Authorized Signature of Bidder:		
Date		

7. Price Schedule: Lot 3:

Item No.	Description	<i>US\$</i> Total Price
1	Email security gateway and continuity solution for a period of 36 months (mimecast/cisco iron port for mail	
2	Implementation and Support Services	
Total Price		

Note to bidders: Please attach a complete breakdown with unit prices of hardware and software and the complete specifications including brochures.

Name of Bidder:		
Authorized Signature of Bidder:		
Date		

8. Price Schedule: Lot 4- Lusaka Data Centre

Item No.	Description	US\$ Total Price
1	Fire Detection and Suppression System	
2	Access Control	
3	Security and Environmental	
4	Power Distribution System (APC	
5	Precision (Row Based) Air Conditioning (PAC)- APC	
6	Racks and Accessories (APC)	
7	Partitioning	
8	Server	
9	Startup and scheduled Assembly services	
10	Other costs (specify)	
Total Price		

Note to bidders: Please attach a complete breakdown with unit prices of hardware/equipment and software and the complete specifications including brochures.

Name of Bidder:		
Authorized Signature of Bidder:		
Date		

9. Price Schedule: Lot 4- Kariba Data Centre

Item No.	Description	US\$ Total Price
1	Fire Detection and Suppression System	
2	Access Control	
3	Security and Environmental	
4	Power Distribution System (APC)	
5	Precision (Row Based) Air Conditioning (PAC)- APC	
6	Racks and Accessories (APC)	
7	Partitioning	
8	Server	
9	Startup and scheduled Assembly services	
10	Installation, Commissioning, Travel & Accommodation (Kariba)	
11	Other costs (specify)	
Total Price		

Note to bidders: Please attach a complete breakdown with unit prices of hardware/equipment and software and the complete specifications including brochures.

Name of Bidder:		
Authorized Signature of Bidder:		
Date		

10. Recurrent Cost Summary Table

Please provide this costs information per lot.

Item No.	Description
Lot 1	Hourly support rates for Core Network Optimization and Security Enhancement.
Lot 2	Hourly support rates for Unified Communications System
Lot 3	Annual Maintenance/ renewal for Email security gateway and continuity solution for a period of 36 months (mimecast/cisco iron port for mail (Attach Service Level Agreement)
Lot 4	Hourly support rates and per diem rates for Integrated Data Centres for Kariba
	Hourly support rates for Integrated Data Centres for Lusaka

11. OTHER BID FORMS AND LISTS

12. Manufacturer's Authorization

Invitation for Bids Title and No.:

[If applicable:] Lot, Slice, Subsystem No(s).:

To: _____

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

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

Name _____ In the capacity of _____

Signed _____

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

Dated on _____ day of _____, _____.

Note: This authorization should be written on the letterhead of the Manufacturer and be signed by a person with the proper authority to sign documents that are binding on the Manufacturer.

13. List of Proposed Subcontractors

[illegible]

14. Software List

[illegible]

15. General Information Form (*Per Lot*)

All individual firms and each partner of a Joint Venture that are bidding must complete the information in this form. Nationality information should be provided for all owners or Bidders that are partnerships or individually owned firms.

Where the Bidder proposes to use named Subcontractors for highly specialized components of the Information System, the following information should also be supplied for the Subcontractor(s).

1.	Name of firm	
2.	Head office address	
3.	Telephone	Contact
4.	Fax	Telex
5.	Place of incorporation / registration	Year of incorporation / registration

Nationality of owners ¹		
	Name	Nationality
1.		
2.		
3.		
4.		
5.		
^{1/} To be completed by all owners of partnerships or individually owned firms.		

16. Information Systems Experience Record (*Per Lot*)

Name of Bidder or partner of a Joint Venture
--

All individual firms and all partners of a Joint Venture must complete the information in this form with regard to the management of Information Systems contracts generally. The information supplied should be the annual turnover of the Bidder (or each member of a Joint Venture), in terms of the amounts billed to clients for each year for work in progress or completed, converted to U.S. dollars at the rate of exchange at the end of the period reported. The annual periods should be calendar years, with partial accounting for the year up to the date of submission of applications. This form may be included for Subcontractors only if the Bid Data Sheet for ITB Clause 6.1 (a) explicitly permits experience and resources of (certain) Subcontractors to contribute to the Bidder's qualifications.

A brief note on each contract should be appended, describing the nature of the Information System, duration and amount of contract, managerial arrangements, Authority, and other relevant details.

Use a separate page for each partner of a Joint Venture, and number these pages.

Bidders should not enclose testimonials, certificates, and publicity material with their applications; they will not be taken into account in the evaluation of qualifications.

Annual turnover data (applicable activities only)		
Year ¹	Turnover	US\$ equivalent
1.		
2.		
3.		
4.		
5.		
¹ / Commencing with the partial year up to the date of submission of bids		

17. Particular Information Systems Experience Record (*Per Lot*)

Name of Bidder or partner of a Joint Venture
--

On separate pages, using the format of Form 3.5.3a, the Bidder is requested to list contracts of a similar nature, complexity, and requiring similar information technology and methodologies to the contract or contracts for which these Bidding Documents are issued, and which the Bidder has undertaken during the period, and of the number, specified in the BDS for ITB Clause 6.1 (a). Each partner of a Joint Venture should separately provide details of its own relevant contracts. The contract value should be based on the payment currencies of the contracts converted into U.S. dollars, at the date of substantial completion, or for ongoing contracts at the time of award.

17 (a) Details of Contracts of Similar Nature and Complexity (per lot)

Name of Bidder or partner of a Joint Venture
--

Use a separate sheet for each contract.

1.	Number of contract	
	Name of contract	
	Country	
2.	Name of Authority	
3.	Authority address	
4.	Nature of Information Systems and special features relevant to the contract for which the Bidding Documents are issued	
5.	Contract role (check one) <input type="checkbox"/> Prime Supplier <input type="checkbox"/> Management Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Partner in a Joint Venture	
6.	Amount of the total contract/subcontract/partner share (in specified currencies at completion, or at date of award for current contracts) <div style="display: flex; justify-content: space-between; margin-top: 5px;"> Currency Currency Currency </div>	
7.	Equivalent amount US\$ Total contract: \$_____; Subcontract: \$_____; Partner share: \$_____;	
8.	Date of award/completion	
9.	Contract was completed ____ months ahead/behind original schedule (if behind, provide explanation).	
10.	Contract was completed US\$ _____ equivalent under/over original contract amount (if over, provide explanation).	
11.	Special contractual/technical requirements.	
12.	Indicate the approximate percent of total contract value (and US\$ amount) of Information System undertaken by subcontract, if any, and the nature of such Information System.	

18. Financial Capabilities

Name of Bidder or partner of a Joint Venture
--

Bidders, including each partner of a Joint Venture, shall provide financial information to demonstrate that they meet the requirements stated in the BDS for ITB Clause 6.1 (a). Each Bidder or partner of a Joint Venture shall complete this form. If necessary, separate sheets shall be used to provide complete banker information. A copy of the audited balance sheets shall be attached.

Autonomous subdivisions of parent conglomerate businesses shall submit financial information related only to the particular activities of the subdivision.

Banker	Name of banker	
	Address of banker	
	Telephone	Contact name and title
	Fax	Telex

Summarize actual assets and liabilities in U.S. dollar equivalent (at the rates of exchange current at the end of each year) for the previous five calendar years. Based upon known commitments, summarize projected assets and liabilities in U.S. dollar equivalent for the next two calendar years, unless the withholding of such information by stock market listed public companies can be substantiated by the Bidder.

Financial information in US\$ equivalent	Actual:				
	Previous five years				
	5	4	3	2	1
1. Total assets					
2. Current assets					
3. Total liabilities					
4. Current liabilities					
5. Profits before taxes					
6. Profits after taxes					

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 the BDS for ITB Clause 6.1 (a).

Source of financing	Amount (US\$ equivalent)
1.	
2.	
3.	
4.	

Attach audited financial statements—including, as a minimum, profit and loss account, balance sheet, and explanatory notes—for the period stated in the BDS for ITB Clause 6.1 (a) (for the individual Bidder or each partner of a Joint Venture).

If audits are not required by the laws of Bidders' countries of origin, partnerships and firms owned by individuals may submit their balance sheets certified by a registered accountant, and supported by copies of tax returns,

19. Personnel Capabilities (per lot)

Name of Bidder

For specific positions essential to contract management and implementation (and/or those specified in the Bidding Documents, if any), Bidders should provide the names of at least two candidates qualified to meet the specified requirements stated for each position. The data on their experience should be supplied on separate sheets using one Form 3.5.6a for each candidate.

Bidders may propose alternative management and implementation arrangements requiring different key personnel, whose experience records should be provided.

1.	Title of position
	Name of prime candidate
2.	Title of position
	Name of prime candidate
3.	Title of position
	Name of prime candidate
4.	Title of position
	Name of prime candidate

19 (b) Candidate Summary (per lot)

Name of Bidder

Position	Candidate <input type="checkbox"/> Prime <input type="checkbox"/> Alternate	
Candidate information	Name of candidate	Date of birth
	Professional qualifications	
Present employment	Name of Employer	
	Address of Employer	
	Telephone	Contact (manager / personnel officer)
	Fax	Telex
	Job title of candidate	Years with present Employer

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

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

20. Technical Capabilities (per lot)

Name of Bidder

The Bidder shall provide adequate information to demonstrate clearly that it has the technical capability to meet the requirements for the Information System. With this form, the Bidder should summarize important certifications, proprietary methodologies, and/or specialized technologies which the Bidder proposes to utilize in the execution of the Contract or Contracts.

22. BID-SECURING DECLARATION

ITB: *[insert: title and number of ITB]*

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

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, and in the case of a Joint Venture all partners to it, will automatically be suspended from being eligible for participating in bidding for any contract with you for the period of time of *[Authority insert: number of months or years]*, in case of, and starting from the date of, breaching our obligation(s) under the bidding conditions due to:

- (a) withdrawing our bid, or any part of our bid, during the period of bid validity specified in the Bid Submission Form or any extension of the period of bid validity which we subsequently agreed to; or
- (b) having been notified of the acceptance of our bid by you during the period of bid validity, (i) failing or refusing to execute the Contract Agreement, or (ii) failing or refusing to furnish the performance security, if required, in accordance with the Instructions to Bidders.

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 the period of bid validity.

If the submission of alternative bids was permitted, and in case we did submit one or more alternative bids, this Bid-Securing Declaration applies to these parts of our bid as well.

Signed: *[insert: signature of person whose name and capacity are shown below]*

Name: *[insert: name of person signing the Bid-Securing Declaration]*, in the capacity of *[insert: legal capacity of person signing the Bid-Securing Declaration]*

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

Dated on _____ day of _____, 20__

[add Corporate Seal (where appropriate)]

[Note to Bidders: Joint Ventures need to ensure that, their Bid-Securing Declaration meets the requirements for Joint Ventures as stated in the ITB Clause on "Securing the Bid".]

23. CONTRACT AGREEMENT

THIS CONTRACT AGREEMENT is made

the *[insert: ordinal]* day of *[insert: month]*, *[insert: year]*.

BETWEEN

- (1) *[insert: Name of Authority]*, a *[insert: description of type of legal entity,]* and having its principal place of business at *[insert: address of Authority]* (hereinafter called “the Authority”), and
- (2) *[insert: name of Supplier]*, a corporation incorporated under the laws of *[insert: country of Supplier]* and having its principal place of business at *[insert: address of Supplier]* (hereinafter called “the Supplier”).

WHEREAS the Authority desires to engage the Supplier to supply, install, achieve Operational Acceptance of, and support the following Information System *[insert: brief description of the Information System]* (“the System”), and the Supplier has agreed to such engagement upon and subject to the terms and conditions appearing below in this Contract Agreement.

NOW IT IS HEREBY AGREED as follows:

Article 1.

1.1 Contract Documents (Reference GCC Clause 1.1 (a) (ii))

Contract Documents

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

- (a) This Contract Agreement and the Appendices attached to the Contract Agreement
- (b) Special Conditions of Contract
- (c) General Conditions of Contract
- (d) Technical Requirements (including Implementation Schedule)
- (e) The Supplier’s bid and original Price Schedules
- (f) *[Add here: any other documents]*

1.2 Order of Precedence (Reference GCC Clause 2)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above, provided that Appendix 7 shall prevail over all provisions of the Contract Agreement and the other Appendices attached to the Contract Agreement and all the other Contract Documents listed in Article 1.1 above.

1.3 Definitions (Reference GCC Clause 1)

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

Article 2.

Contract Price and Terms of Payment

2.1 Contract Price (Reference GCC Clause 1.1(a)(viii) and GCC Clause 11)

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

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

Article 3.

Effective Date for Determining Time for Operational Acceptance

3.1 Effective Date (Reference GCC Clause 1.1 (e) (ix))

The time allowed for supply, installation, and achieving Operational Acceptance of the System shall be determined from the date when all of the following conditions have been fulfilled:

- (a) This Contract Agreement has been duly executed for and on behalf of the Authority and the Supplier;
- (b) The Supplier has submitted to the Authority the performance security and the advance payment security, in accordance with GCC Clause 13.2 and GCC Clause 13.3;
- (c) The Authority has paid the Supplier the advance payment, in accordance with GCC Clause 12;
- (d) *[specify here: any other conditions, for example, opening/confirmation of letter of credit]*.

Each party shall use its best efforts to fulfill the above conditions

for which it is responsible as soon as practicable.

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

Article 4.

Appendixes

- 4.1 The Appendixes listed below shall be deemed to form an integral part of this Contract Agreement.
- 4.2 Reference in the Contract to any Appendix shall mean the Appendixes listed below and attached to this Contract Agreement, and the Contract shall be read and construed accordingly.

APPENDIXES

- Appendix 1. List of Approved Subcontractors
- Appendix 2. Categories of Software
- Appendix 3. Revised Price Schedules (if any)
- Appendix 4. Minutes of Contract Finalization Discussions and Agreed-to Contract Amendments

IN WITNESS WHEREOF the Authority and the Supplier have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

For and on behalf of the Authority

Signed:

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

in the presence of

For and on behalf of the Supplier

Signed:

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

in the presence of

CONTRACT AGREEMENT

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

BETWEEN

[*insert: name of Authority*], “the Authority”

and

[*insert: name of Supplier*], “the Supplier”

Appendix 3. Price Schedules

The attached Revised Price Schedules (if any) shall form part of this Contract Agreement and, where differences exist, shall supersede the Price Schedules contained in the Supplier's Bid. These Revised Price Schedules reflect any corrections or adjustments to the Supplier's bid price, pursuant to the ITB Clauses 18.3, 26.2, and 33.1 (ITB Clauses 30.3, 38.2, and 45.1 in the two-stage SBD).

Appendix 4. Minutes of Contract Finalization Discussions and Agreed-to Contract Amendments

5. ADVANCE PAYMENT SECURITY FORMS

5.2 Advance Payment Security Form (Bank Guarantee)

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

Beneficiary: *[insert: Name and Address of Authority]*

Date: *[insert: date]*

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

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

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

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

For each payment after the advance payment, which you will make to the Supplier under this Contract, the maximum amount of this guarantee shall be reduced by the ninth part of such payment.¹ At the time at which the amount guaranteed becomes nil, this guarantee shall become null and void, whether the original is returned to us or not.

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

[Signature(s)]

6. INSTALLATION AND ACCEPTANCE CERTIFICATES

6.1 Installation Certificate

Date: [*insert: date*]

ITB: [*insert: title and number of ITB*]

Contract: [*insert: name and number of Contract*]

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

Dear Sir or Madam:

Pursuant to GCC Clause 26 (Installation of the System) of the Contract entered into between yourselves and the [*insert: name of Authority*] (hereinafter the “Authority”) dated [*insert: date of Contract*], relating to the [*insert: brief description of the Information System*], we hereby notify you that the System (or a Subsystem or major component thereof) was deemed to have been correctly installed on the date specified below.

1. Description of the System (or relevant Subsystem or major component: [*insert: description*]
2. Date of Installation: [*insert: date*]

Notwithstanding the above, you are required to complete the outstanding items listed in the attachment to this certificate as soon as practicable. This letter shall not relieve you of your obligation to achieve Operational Acceptance of the System in accordance with the Contract nor of your obligations during the Warranty Period.

For and on behalf of the Authority

Signed:

Date:

in the capacity of: [*state: “Project Manager” or state the title of a higher level authority in the Authority’s organization*]

6.2 Operational Acceptance Certificate

Date: *[insert: date]*

ITB: *[insert: title and number of ITB]*

Contract: *[insert: name of System or Subsystem and number of Contract]*

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

Dear Sir or Madam:

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

1. Description of the System (or Subsystem or major component): *[insert: description]*
2. Date of Operational Acceptance: *[insert: date]*

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

For and on behalf of the Authority

Signed:

Date:

in the capacity of: *[state: “Project Manager” or higher level authority in the Authority’s organization]*