REQUEST FOR PROPOSAL

FOR

OPERATION AND MAINTENANCE

OF

PAYRA THERMAL POWER PLANT (2 x 660MW)

Date : 27th February,2019
Memo No. : 458/BCPCL/Payra1320MW/2019
Deadline for Proposal Submission : 12:00 hrs on 4 April, 2019
PART 1 – Bidding Procedures
Section I. Instructions to Bidders

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Section I. Instructions to Bidders

A. General

1. Scope of Proposal

1.1. In connection with the Request for Proposal indicated in the Proposal Data Sheet (PDS), the Employer, as indicated in the PDS, issues this Request for Proposal for the procurement of Services as specified in Part 2 of this Request for Proposal. The project name and identification number are provided in the PDS.

1.2. Throughout this Request for Proposal:

(a) the term “in writing” means communicated in written form and delivered against receipt;

(b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and

(c) “day” means calendar day.

2. Source of Funds

2.1. Employer will be arranging for funds required for this Contract from its own funds.

2.2. Deleted

3. Corrupt Practices

3.1. Employer requires that bidders, suppliers and contractors and their subcontractors observe the highest standard of ethics during the procurement and execution of contracts. In pursuance of this policy, the Employer:

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

i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

ii) “fraudulent practice” 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” 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;

(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;

3.2. Furthermore, Bidders shall be aware of the provisions stated in Sub-Clause 21.6 (h) of the General Conditions.

4. Eligible Bidders

4.1. Bidders shall provide evidence, as the Employer shall reasonably request, of their eligibility in accordance with Section III.

4.2. A Bidder may be a natural person, private entity, government-owned entity—subject to ITB 4.6—or any combination of such entities supported by a letter of intent to enter into an agreement or under an existing agreement in the form of a joint venture (JV). In the case of a JV:

(a) unless otherwise specified in the PDS, all partners shall be jointly and severally liable and

(b) the JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the partners of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.

4.3. A Bidder and all partners constituting the Bidder, may have the nationality of any country except from State of Israel, subject to the restrictions specified in Section V, Eligible Countries. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract.

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

(a) they have at least one controlling partner in common; or

(b) they receive or have received any direct or indirect
subsidy from any of them; or

(c) they have the same legal representative for purposes of this bid; or

(d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the proposal of another Bidder, or influence the decisions of the Purchaser regarding this bidding process; or

(e) a Bidder participates in more than one proposal in this bidding process. Participation by a Bidder in more than one Proposal will result in the disqualification of all Proposals in which the party is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or

(f) a Bidder participated as a consultant in the preparation of the design or technical specifications of any works related to the services that are the subject of the bid;

(g) a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Employer as Employer's Representative for the Contract.

4.5. A firm subject to a declaration of ineligibility by Bangladesh Anti-Corruption policies shall be ineligible during the debarment period.

4.6. Government-owned entities in the Employer’s country shall be eligible only if they can establish that they are legally and financially autonomous and operate under commercial law. Also, they shall not be dependent agencies of the Employer.

4.7. Firms shall be excluded if:

(a) as a matter of law or official regulation, the Employer’s country prohibits commercial relations with that country; or

(b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower’s country prohibits any import of goods or contracting of Works or services from that country or any payments to persons or entities in that country.
B. Contents of Request of Proposal

5. Sections of Request of Proposal

5.1. The Request for Proposal consist of Parts 1, 2 and 3, which include all the Sections indicated below and should be read in conjunction with any addenda issued in accordance with ITB 8.

PART 1 Bidding Procedures

- Section I. Instructions to Bidders (ITB)
- Section II. Proposal Data Sheet (PDS)
- Section III. Evaluation and Qualification Criteria
- Section IV. Standard Forms
- Section V. Eligible Countries

PART 2 Services Requirements

- Section VI. Description of Services

PART 3 Conditions of Contract and Contract Forms

- Section VII. General Conditions (GC)
- Section VIII. Particular Conditions (PC)
- Section IX. Annex to the Particular Conditions - Contract Forms

5.2. The Invitation for Proposal issued by the Employer is not part of the Request of Proposal.

5.3. The Bidder shall obtain the Request of Proposal and its addenda directly from the source stated by the Employer in the Invitation for Proposal. The Employer is not responsible for the completeness of the Request of Proposal and its addenda if they were obtained otherwise.

5.4. The Bidder is expected to examine all instructions, forms, terms and specifications in the Request of Proposal. Failure to furnish all information or documentation required by the Request for Proposal may result in the rejection of the bid.

6. Clarification of Request of Proposal, Site Visit, Pre-Proposal Meeting

6.1. A prospective Bidder requiring any clarification of the Request of Proposal shall contact the Employer in writing at the Employer's address and by the means of communication indicated in the PDS or raise his enquiries during the pre-proposal meeting if provided for in accordance with ITB 6.4. The Employer will respond in writing to any request for clarification, provided that such request is received no later than fourteen (14) days prior to the deadline for submission of Proposal. The Employer shall forward copies of its response to all Bidders who have
acquired the Request of Proposal in accordance with ITB 5.3, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Request of Proposal as a result of a request for clarification, it shall do so following the procedure under ITB 8 and ITB 22.2.

6.2. The Bidder is advised to visit and examine the site or sites that are the subject of the proposed Contract and their surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the proposal and entering into the Contract. Such visits to the sites (hereinafter referred to as Site Visits) shall be conducted in accordance with the procedures and during the dates defined in the PDS.

6.3. The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of inspection, but only upon the express condition that the Bidder, its personnel and agents will release and indemnify the Employer and its advisors, personnel, consultants and agents from and against all liability in respect thereof and will be solely responsible for death or personal injury, loss of or damage to property and any other loss, damage, costs and expenses incurred as a result of the inspection.

6.4. The Bidder’s designated representative is invited to attend a pre-proposal meeting, if and as provided for in the PDS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. A site visit conducted by the Employer will be organized if provided for in the PDS.

6.5. The Bidder is requested to submit, as far as possible, any questions in writing, to reach the Employer not later than one week before the meeting.

6.6. Minutes of the pre-proposal meeting, including the text of the questions raised, without identifying the source and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Request for Proposal in accordance with ITB 5.3. Any modification to the Request for Proposal that may become necessary as a result of the pre-proposal meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-proposal meeting.

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

7. **Data Room**

7.1. If specified in the PDS, the Employer has established a data room (hereinafter called the Data Room) with a selection of relevant data to be accessible to Bidders or their representatives. The address of the Data Room and other information considered relevant by the Employer (such as an inventory of materials, or dates, rules and procedures for access and dates of availability) are as specified in the PDS.

8. **Amendment of Request of Proposal**

8.1. At any time prior to the deadline for submission of Proposal, the Employer may amend the Request for Proposal by issuing addenda.

8.2. Any addendum issued shall be part of the Request of Proposal and shall be communicated in writing to all who have obtained the Request of Proposal from the Employer in accordance with ITB 5.3. No other communications of any kind whatsoever will modify the Request of Proposal.

8.3. To give prospective Bidders reasonable time in which to take an addendum into account in preparing the Proposal, the Employer may, at its discretion, extend the deadline for the submission of Proposal, pursuant to ITB 22.2.

**C. Preparation of Proposal**

9. **Cost of Proposal**

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

10. **Language of Proposal**

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

11. **Documents Comprising the Proposal**

11.1. The Proposal shall comprise the following documents:

(a) A Technical Proposal, with the following parts;

   i) Part I – Letter of Proposal, in accordance with
ITB 14.1;

ii) Part II – The Bid Security, in accordance with ITB 16;

iii) Part III – Written confirmation authorizing the signatory of the Proposal to commit the Bidder, in accordance with ITB 20.3;

iv) Part IV – In the case of a Proposal submitted by a JV, JV agreement, or letter of intent to enter into a JV including a draft agreement, indicating at least the parts of the services to be performed by the respective partners;

v) Part V – Methodology and Approach in accordance with ITB 12.1;

vi) Part VI – documents establishing the qualifications of the bidder in accordance with ITB 17.1;

vii) Part VII – any other documents required by the PDS.

(b) The Financial Proposal in accordance with ITB 13.

12. Documents Comprising the Methodology and Approach

12.1. The Methodology and Approach shall consist of the following sub-parts:

(a) A detailed work plan (hereinafter referred to as the Work Plan) using the corresponding form included in Section IV, Standard Forms and setting out the manner in which the Bidder proposes to carry out the services as defined in the Contract and to meet any performance targets specified in the Contract.

(b) A detailed staffing plan (hereinafter referred to as the Staffing Plan) setting out the Bidder's proposed staffing arrangements as they relate to the requirements in the Contractor's Personnel Schedule (Schedule B), included in Section VI, Schedule of Services Requirements.

(c) Any other information as stipulated in Section IV, Standard Forms.

13. Documents Comprising the Financial Proposal

13.1. The Financial Proposal shall consist of a completed and properly executed Proposal Price Form. The Proposal Price Form is included in Section IV of this Request of Proposal. Bidders shall complete the Proposal Price Form in full and shall not amend or change the form in any way.

13.2. The Bidder may quote its prices in accordance with ITB 18.
13.3. All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Proposal, shall be included in the rates and prices and the total Proposal Price submitted by the Bidder.

14. Letter of Proposal

14.1. Each Bidder shall provide a completed Letter of Proposal in accordance with the Letter of Proposal forms furnished in Section IV, one each for the Technical Proposal, including its attachment (TECH Form) and for the Financial Proposal.

14.2. All forms required in accordance with ITB 14.1 must be completed without any alterations to the text and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

15. Power of Attorney

15.1. Each Bidder shall provide a written power of attorney duly notarized, indicating that the person(s) signing the Proposal has(ve) the authority to sign the Proposal and thus that the Proposal is binding upon the Bidder during the full period of its validity.

16. Bid Security

16.1. The Bidder shall furnish as part of its Proposal, in original form, either a bid security as specified in the PDS. The bid security shall be in the amount and currency specified in the PDS.

16.2. Deleted.

16.3. The bid security shall be an unconditional guarantee issued by a bank from a reputable source from an eligible country. If the unconditional guarantee is issued by an insurance company or a bonding company located outside the Employer’s Country, the issuer shall have a correspondent financial institution located in the Employer’s Country to make it enforceable. In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section IV, Standard Forms or in another substantially similar format approved by the Employer prior to Proposal submission. In either case, the form must include the complete name of the Bidder. The bid security shall be valid for twenty-eight days (28) beyond the original validity period of the Proposal, or beyond any period of extension if requested under ITB 22.2.

16.4. Any Proposal not accompanied by an enforceable and compliant bid security, if one is required in accordance with ITB 16.1, shall be rejected by the Employer as non-responsive.

16.5. The bid security of the unsuccessful Bidders shall be returned as promptly as possible upon the successful
Bidder’s furnishing of the performance security pursuant to ITB 41.

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

16.7. The bid security may be forfeited:
   (a) if a Bidder withdraws its Proposal during the Period of Validity of Proposal, except as provided in ITB 19.2 or
   (b) if the successful Bidder fails to:
       i) sign the Contract in accordance with ITB 40; or
       ii) furnish a performance security in accordance with ITB 41.1.

16.8. The bid security of a Joint Venture (JV) shall be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of Proposal, the Bid Security shall be in the names of all future partners as named in the letter of intent to execute the JV.

16.9. If a bid security is not required in the PDS pursuant to ITB 16.1 and
   (a) if a Bidder withdraws its Proposal during the Period of Validity of Proposal specified by the Bidder on the Letter of Proposal pursuant to ITB 19.1, except as provided in ITB 19.2, or
   (b) if the Successful Bidder fails to sign the Contract in accordance with ITB 40; or furnish a performance security in accordance with ITB 41; the Employer may, if provided for in the PDS, declare the Bidder disqualified to be awarded a contract by the Employer for a period of time as stated in the PDS.

17. Documents Establishing the Qualifications of the Bidder
17.1. To establish its qualifications to perform the Contract in accordance with Section III, Evaluation and Qualification Criteria, the Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Standard Forms.

18. Currencies of Proposal and Payment
18.1. Bidders may express the price of their proposal in a maximum of three freely convertible currencies, in addition to the currency of the Employer’s country as follows:
   (a) for those inputs to the Services that the bidder expects to supply from within the Employer’s country (referred to as “the local currency requirement”), in the currency of the Employer’s country specified in
the PDS; and

(b) for those inputs to the Services that the bidder expects to supply from outside the Employer’s country (referred to as “the foreign currency requirements”) in up to any three currencies of any country.

18.2. Bidders may be required by the Employer to justify, to the Employer’s satisfaction, their local and foreign currency requirements and to substantiate the amounts included in the Proposal Price Form, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.

19. Period of Validity of Proposal

19.1. Proposal shall remain valid for the period specified in the PDS after the Proposal submission deadline date prescribed by the Employer. A Proposal valid for a shorter period shall be rejected by the Employer as non-responsive.

19.2. In exceptional circumstances, prior to the expiration of the Proposal validity period, the Employer may request Bidders to extend the period of validity of their Proposal. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 16.1, it shall also be extended for twenty-eight days (28) beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid.

20. Format and Signing of Proposal

20.1. The bidder shall prepare one original of the Technical Proposal and one original of the Financial Proposals as described in ITB 11.1 and clearly mark each as “Original.” In addition, the Bidder shall submit copies of the Technical Proposal and the Financial Proposal, in the number specified in the PDS and clearly mark them “Copy.”

20.2. In the event of any discrepancy between the original and the copies, the original shall prevail.

20.3. The original and all copies of each Proposal shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the PDS and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Proposal where entries or amendments have been made shall be signed or initialed by the person signing the Bid.
20.4. Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

D. Submission and Opening of Proposal

21. Sealing and Marking of Proposal

21.1. The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked “Technical Proposal”. Similarly, the original and all copies of the Financial Proposal shall be placed in a sealed envelope clearly marked “Financial Proposal” with a warning “Do Not Open With The Technical Proposal.” The envelopes containing the Technical and Financial Proposals shall be placed into an outer envelope and sealed.

21.2. The inner envelopes and the outer envelope shall:
(a) bear the name and address of the Bidder;
(b) be addressed to the Employer in accordance with ITB 22.1;
(c) bear the specific identification of this bidding process indicated in the PDS pursuant to ITB 1.1; and
(d) bear a warning not to open before the time and date for Proposal opening.

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

22. Deadline for Submission of Proposal

22.1. Proposal must be received by the Employer at the address and no later than the date and time indicated in the PDS. When so specified in the PDS, bidders shall have the option of submitting their Proposal electronically. Bidders submitting Proposal electronically shall follow the electronic Proposal submission procedures specified in the PDS.

22.2. The Employer may, at its discretion, extend the deadline for the submission of Proposal by amending the Request of Proposal in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

23. Late Proposal

23.1. The Employer shall not consider any Proposal that arrives after the deadline for submission of Proposal, in accordance with ITB 22. Any Proposal received by the Employer after the deadline for submission of Proposal shall be declared late, rejected and returned unopened to
24. Withdrawal, Substitution and Modification of Proposal

24.1. A Bidder may withdraw or modify its Proposal after it has been submitted by sending a written notice, duly signed by an authorized representative and shall include copies of the authorization in accordance with ITB 20.3, (except that withdrawal notices do not require copies). A Bidder’s modification or withdrawal must be:

(a) prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawals notices do not require copies) and in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” “Modification;” and

(b) received by the Employer prior to the deadline prescribed for submission of Proposal, in accordance with ITB 22.

24.2. Proposal requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders.

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

25. Technical Proposal Opening

25.1. The Employer shall open the Technical Proposals in public, in the presence of Bidders’ designated representatives and anyone who chooses to attend, at the address and at the date and time specified in the PDS. Any specific electronic Proposal opening procedures required if electronic bidding is permitted in accordance with ITB 22.1, shall be as specified in the PDS.

25.2. First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding proposal shall not be opened but returned to the Bidder. No proposal withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at the proposal opening. Next, envelopes marked “Substitution” shall be opened and read out and exchanged with the corresponding proposal being substituted and the substituted proposal shall not be opened but returned to the Bidder. No proposal substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at proposal opening. Envelopes marked “Modification” shall be opened and read out with the corresponding...
25.3. All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the presence of a bid security, if required; and any other details as the Employer may consider appropriate. No proposal shall be rejected at the proposal opening except for late Proposal, in accordance with ITB 23.1.

25.4. The Employer shall prepare a record of the proposal opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; and the presence or absence of a bid security, if one was required. The Bidders’ representatives who are present shall be requested to sign the attendance sheet. A copy of the record shall be distributed to all Bidders.

26. Financial Proposal Opening

26.1. The Financial Proposals shall not be opened by the Employer until the evaluation of the Technical Proposals has been completed.

26.2. The Employer shall open the Financial Proposals in public, in the presence of Bidders' designated representatives and anyone who chooses to attend and at the address specified in the PDS. Any specific electronic Proposal opening procedures required if electronic bidding is permitted in accordance with ITB 22.1, shall be as specified in the PDS.

26.3. Financial Proposals will be opened only from those bidders who:

(a) have submitted an acceptable Bid Security;
(b) have submitted a responsive proposal pursuant to ITB 31; and
(c) if applicable, have met the minimum technical scores specified in the PDS pursuant to ITB 33.1 (b).

Financial Proposals from bidders who have failed to meet requirements (a) and (b) and, if applicable, requirement (c), above, will be returned unopened.

26.4. First, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding proposal being substituted and the substituted proposal
shall not be opened but returned to the Bidder. No proposal substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at proposal opening. Envelopes marked “MODIFICATION” shall be opened and read out with the corresponding proposal. No proposal modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at the proposal opening. Only envelopes that are opened and read out at the proposal opening shall be considered further.

26.5. All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; and the Proposal Price in the Financial Proposal.

26.6. The Employer shall prepare a record of the Proposal opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Proposal Price and the presence or absence of a bid security, if one was required. The Bidders’ representatives who are present shall be requested to sign the attendance sheet. A copy of the record shall be distributed to all Bidders.

E. Evaluation and Comparison of Proposal

27. Confidentiality

27.1. Information relating to the evaluation of Proposal and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.

27.2. Any attempt by a Bidder to influence the Employer in the evaluation of the Proposal or Contract award decisions may result in the rejection of its bid.

27.3. Notwithstanding ITB 27.2, from the time of Proposal opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it may do so in writing.

28. General Clarification of Proposal

28.1. To assist in the examination, evaluation and comparison of the Proposal and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered and the Employer’s request for clarification and the response shall be in writing. If the Proposal includes a
financial proposal, no change in the prices or substance of the Proposal shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Proposal, in accordance with ITB 35.

28.2. If a Bidder does not provide clarifications of its Proposal by the date and time set in the Employer’s request for clarification, its Proposal may be rejected.

29. Selection Method and Evaluation Process

29.1. Selection of the successful bidder will be conducted using Quality- and Cost-Based Selection (QCBS).

29.2. Deleted.

29.3. Prior to the evaluation of any Bid, the Employer will determine whether each Bid:

(a) has been properly signed;
(b) is accompanied by the required securities; and
(c) is substantially responsive to the Proposal requirements, pursuant to ITB 31.

29.4. Deleted

29.5. After the Proposal is deemed substantially responsive, the evaluation process will consist of two stages: (i) evaluation of the Technical Proposal in accordance with ITB 33 and (ii) Evaluation of the Financial Proposal in accordance with ITB 34.

30. Deviations, Reservations and Omissions

30.1. During the evaluation of Proposal, the following definitions apply:

(a) “Deviation” is a departure from the requirements specified in the Request of Proposal;
(b) “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Request of Proposal; and
(c) “Omission” is the failure to submit part or all of the information or documentation required in the Request of Proposal.

31. Determination of Responsiveness

31.1. The Employer’s determination of a bid’s responsiveness is to be based on the contents of the Proposal itself, as defined in ITB 11.

31.2. A substantially responsive Proposal is one that meets all the requirements, terms, conditions and specifications of
the Request of Proposal without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

(a) if accepted, would

i) affect in any substantial way the scope, quality, or performance of the Services specified in the Schedules in Section VI; or

ii) limit in any substantial way, inconsistent with the Request of Proposal, the Employer’s rights or the Bidder’s obligations under the proposed Contract; or

(b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Proposal.

31.3. Deleted.

31.4. If a Proposal is not substantially responsive to the requirements of the Request of Proposal, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

31.5. If a Proposal is not substantially responsive, the Employer will notify the Bidder that its Proposal has been rejected.

32. Nonmaterial Nonconformities

32.1. Provided that a Proposal is substantially responsive, the Employer may waive any nonconformities in the Proposal that do not constitute a material deviation, reservation or omission.

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

32.3. Provided that a Proposal is substantially responsive, the Employer shall rectify nonmaterial nonconformities related to the Proposal Price. To this effect, the Proposal Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component.

33. Technical

33.1. For those Proposal that are found to be substantially
Proposal Evaluation

responsive pursuant to ITB 31, the Employer shall evaluate the Technical Proposals using the following evaluation methodology:

(a) the Employer shall score Technical Proposals by applying the point system specified in Section III for each evaluation criterion. Each proposal will be given an aggregate technical score (St) by adding the scores assigned under each evaluation criterion;

(b) A proposal shall be rejected at this stage if it fails to achieve the minimum aggregate technical score specified in the PDS; and

(c) The Employer will apply any additional steps to the evaluation methodology as may be indicated in the PDS.

(d) The Employer will the assistance of Owner’s Engineer will carry out the Technical Proposal Evaluation according to the evaluation criterion specified in Section III.

(e) Bidders will then be sorted according to the aggregate technical scores (St) awarded based on the evaluation criterion specified in Section III.

34. Financial Proposal Evaluation

34.1. Only Proposal that, have been found substantially responsive in accordance with ITB 31 and have met the minimum technical score specified in the PDS pursuant to ITB 33.1, shall have their Financial Proposals evaluated.

34.2. To evaluate a Financial Proposal, the Employer shall consider:

(a) price adjustment for correction of arithmetic errors in accordance with ITB 35;

(b) The Employer shall apply any additional steps to the evaluation methodology as may be indicated in the PDS;

(c) converting the amount resulting from applying (a) to (b) above, if relevant, to a single currency in accordance with ITB 36;

(d) adjustment for nonconformities in accordance with ITB 32.

(e) If a Financial Proposal is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed analyses for any or all items of the Technical and Financial Proposals, to demonstrate the internal
consistency of those prices with the methodologies and staffing proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

34.3. The Employer will determine the Successful Bidder by the following procedures:

(a) Deleted.

(b) The financial scores (Sf) of each Financial Proposal will be computed as indicated in the PDS. Proposal will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Bid; P = the weight given to the Financial Proposal; where T + P must equal 1) indicated in the PDS: S = St x T + Sf x P. The Bidder with the highest combined technical and financial score is the Successful Bidder.

(c) Deleted.

35. Correction of Arithmetical Errors

35.1. Provided that the Proposal is substantially responsive, the Employer shall correct arithmetical errors on the following basis:

(a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity in the Technical Proposal, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;

(b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

(c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

35.2. If the Bidder that submitted the successful Proposal does not accept the correction of errors, its Proposal shall be
36. **Conversion to Single Currency**

36.1. For evaluation and comparison purposes, the currency(ies) of the Proposal shall be converted into a single currency as specified in the PDS. The source of the exchange rate shall be as specified in the PDS. The date for the exchange rate shall be the deadline for submission of proposals pursuant to ITB 22.1.

37. **Employer's Right to Accept Any Proposal and to Reject Any or All Proposal**

37.1. The Employer reserves the right to accept or reject any Proposal and to annul the bidding process and reject all Proposal at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all Proposal submitted and specifically, bid securities, shall be promptly returned to the Bidders.

### F. Award of Contract

38. **Award Criteria**

38.1. The Employer shall award the Contract to the Successful Bidder as determined under ITB 34.3, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

39. **Notification of Award**

39.1. Prior to the expiration of the period of Proposal validity, the Employer shall notify the successful Bidder, in writing, that its Proposal has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the “Letter of Acceptance”) shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Services (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”) and the requirement for the Contractor to remedy any defects therein as prescribed by the Contract. At the same time, the Employer shall also notify all other Bidders of the results of the bidding.

39.2. Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.

39.3. The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 39.1, requests in writing the grounds on which its Proposal was not selected.

40. **Signing of Contract**

40.1. Promptly after notification, the Employer shall send the successful Bidder the Contract Agreement.

40.2. The Successful Bidder shall sign, date and return the Contract Agreement to the Employer within the timeframe...
specified in the PDS.

40.3. The PDS specifies whether the Successful Bidder will be required to incorporate in the Employer’s Country as a “special vehicle” company or joint venture and the additional requirement that the Successful Bidder shall comply if required to incorporate locally as a “special vehicle” company or joint venture.

41. Performance Security

41.1. The successful Bidder shall furnish the performance security after receipt of notification of award from the Employer, within 28 days upon the Bidder’s receipt of the Letter of Acceptance and in accordance with the conditions of contract. The Bidder shall use for that purpose the Performance Security Form included in Section IX, Annex to the Particular Conditions - Contract Forms, or another form acceptable to the Employer. If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Employer’s Country.

41.2. Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event the Employer may award the Contract to the next highest scoring Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.
Section II. Proposal Data Sheet

A. Introduction

ITB 1.1 The identification number of the Invitation for Proposal is: 458/BCPCL/Payra1320MW/2019

ITB 1.1 The Employer is: Bangladesh-China Power Company (Pvt.) Limited

ITB 1.1 The name of the Project is: Payra Thermal Power Plant (2 x 660MW)

ITB 4.2(a) The individuals or firms in a joint venture or association shall be jointly and severally liable.

B. Request of Proposal

ITB 6.1 For clarification purposes only, the Employer’s address is:

Attention: Company Secretary
Address: 8, Panthapath, Kawran Bazar, Level 4, UTC Building, Dhaka – 1215, Bangladesh
Telephone: +88-02-9143017
E-mail: cs.nwpogcl@gmail.com with copy to helal1963@gmail.com

Communications may be sent by: Mail / Courier / E-Mail only

ITB 6.2 [Indicate dates for site visits]

ITB 6.4 A Pre-Proposal meeting shall take place at the following date, time and place:

Date: N/A
Time: N/A
Place: N/A

A site visit conducted by the Employer shall not be organized

ITB 7.1 The Employer has not established a Data Room.

C. Preparation of Proposal

ITB 10.1 The language of the Proposal is: English

ITB 11.1(vii) Other documents required as part of the Proposal Documents [list them and provide reference to the relevant forms in Section IV]:

ITB 16.1 A bid security shall be furnished. The amount and currency of the bid security shall be USD One Million (USD1,000,000.00)

ITB 16.3(d) Other type of acceptable securities: N/A

ITB 16.9 A bid security is required.
ITB 18.1 (a) The currency of the Employer’s country is: Bangladeshi Taka (BDT)

ITB 19.1 The Proposal validity period shall be 180 days.

ITB 20.1 In addition to the original of the Technical and Financial Proposals, the number of copies of the Technical Proposal is: four (4) and the number of copies of the Financial Proposal is: four (4) and two (2) soft copies in DVD / CD – both searchable and signed versions.

ITB 20.3 The written confirmation of authorization to sign on behalf of the Bidder shall consist of: Power of Attorney

D. Submission and Opening of Proposal

ITB 22.1 The date and time for submission of Proposal are:

Date: 4th April, 2019

Time: 12.00 hrs (Noon)

For Proposal submission purposes only, the Employer’s address is:

Attention: The Company Secretary
Street Address: 8, Panthapath, Kawran Bazar, Level 4, UTC Building, Dhaka – 1215, Bangladesh

Bidders Shall not have the option of submitting their Proposal electronically.

If bidders have the option of submitting their Proposal electronically, the electronic proposal submission procedures shall be: Not Applicable

ITB 25.1 The opening of the Technical Proposals shall take place at:

Street Address: 8, Panthapath, Kawran Bazar, Level 4, UTC Building, Dhaka – 1215, Bangladesh

Date: 4th April, 2019

Time: 1.00 PM

If bidders have the option of submitting their Proposal electronically, the electronic Proposal opening procedures shall be: Not Applicable

ITB 26.3 The opening of the Financial Proposals shall take place at:

Street Address: 8, Panthapath, Kawran Bazar, Level 4, UTC Building, Dhaka – 1215, Bangladesh

Date: 11th April, 2019

Time: 10.00 AM

If bidders have the option of submitting their Proposal electronically, the electronic Proposal opening procedures shall be: Not Applicable
E. Evaluation and Comparison of Proposal

**ITB 33.1(b)** The minimum aggregate technical score is: Seventy (70)

**ITB 33.1 (c)** The Employer will apply the following additional steps to the evaluation methodology *Not Applicable*

**ITB 34.2 (b)** The Employer will apply the following additional steps to the evaluation methodology *Not Applicable*

**ITB 34.3 (b)** The formula for determining the financial scores is the following:

\[ S_f = 100 \times F_m / F \]

in which \( S_f \) is the financial score, \( F_m \) is the lowest price and \( F \) the price of the proposal under consideration.

The weights given to the Technical and Financial Proposals are:

\[ T = 0.70 \]
\[ F = 0.30 \]

**ITB 36.1** The currency that shall be used for Proposal evaluation and comparison purposes to convert all Proposal prices expressed in various currencies into a single currency is: *Bangladeshi Taka*

The source of exchange rate shall be: Bangladesh Bank Selling Rate

F. Award of Contract

**ITB 40.2** The Successful Bidder shall sign, date and return the Contract Agreement to the Employer within twenty-eight (28) days.

**ITB 40.3** The Successful Bidder shall not incorporate in the Employer’s Country.

**ITB 41.1** The Performance Security will be USD20 million.
# Section III. Evaluation and Qualification Criteria

This Section contains all the criteria that the Employer shall use to evaluate Proposal and qualify Bidders. No other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV.

## 1. Eligibility and Qualifications

<table>
<thead>
<tr>
<th>No.</th>
<th>Subject</th>
<th>Requirement</th>
<th>Single Entity</th>
<th>Joint Venture</th>
<th>Submission Requirements</th>
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<td>Single Entity</td>
<td>Joint Venture</td>
<td>Submission Requirements</td>
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<tr>
<td>1.1</td>
<td>Nationality</td>
<td>Nationality in accordance with ITB Sub-Clause 4.3.</td>
<td>Must meet requirement</td>
<td>Must meet requirement</td>
<td>N/A</td>
</tr>
<tr>
<td>1.2</td>
<td>Conflict of Interest</td>
<td>No conflicts of interest in ITB Sub-Clause 4.4.</td>
<td>Must meet requirement</td>
<td>Must meet requirement</td>
<td>N/A</td>
</tr>
<tr>
<td>1.3</td>
<td>Government Owned Entity</td>
<td>Bidder required to meet conditions of ITB Sub-Clause 4.6</td>
<td>Must meet requirement</td>
<td>Must meet requirement</td>
<td>N/A</td>
</tr>
<tr>
<td>1.4</td>
<td>United Nations resolution or Employer’s Country law</td>
<td>Not having been excluded as a result of the Borrower’s country laws or official regulations, or by an act of compliance with UN Security Council resolution, in accordance with ITB 4.7</td>
<td>Must meet requirement</td>
<td>Must meet requirement</td>
<td>N/A</td>
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## 2. Historical Contract Non-Performance

<table>
<thead>
<tr>
<th>No.</th>
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<tr>
<td>2.1</td>
<td>History of Non-Performing Contracts</td>
<td>Non-performance of a contract did not occur within the last three (3) years prior to the Proposal Closing Date based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the Bidder have been exhausted.</td>
<td>Must meet requirement by itself or as partner to past or existing JV</td>
<td>N / A</td>
<td>Must meet requirement by itself or as partner to past or existing JV</td>
</tr>
<tr>
<td>2.2</td>
<td>Pending Litigation</td>
<td>All pending litigation shall in total not represent more than fifty percent (50%) of the Bidder's net worth and shall be treated as resolved against the Bidder.</td>
<td>Must meet requirement by itself or as partner to past or existing JV</td>
<td>N / A</td>
<td>Must meet requirement by itself or as partner to past or existing JV</td>
</tr>
</tbody>
</table>

## 3. Financial Performance

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<thead>
<tr>
<th>No.</th>
<th>Subject</th>
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<th>Single Entity</th>
<th>Joint Venture</th>
<th>Submission Requirements</th>
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<td>3.1</td>
<td>Financial Performance</td>
<td>Submission of audited balance sheets or if not required by the law of the Bidder's country, other financial statements acceptable to the Employer, for the last three (3) years prior to the Proposal Closing Date to demonstrate: (a) the current soundness of the Bidder financial position and its prospective long-term profitability, and (b) capacity to have a cash flow amount of US$ Thirty (30) Million equivalent</td>
<td>Must meet requirement</td>
<td>N / A</td>
<td>Must meet requirement</td>
</tr>
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<td></td>
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<td>(a) Must meet requirement</td>
<td>(a) N / A</td>
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<td></td>
<td>(b) Must meet requirement</td>
<td>(b) N / A</td>
<td>(b) Must meet requirement</td>
</tr>
<tr>
<td>3.2</td>
<td>Financial Qualifications</td>
<td>Minimum average annual turnover of US$ Two Hundred (200) million, calculated as total certified payments received for contracts in progress or completed, within the last three (3) years prior to the Proposal Closing Date</td>
<td>Must meet requirement</td>
<td>Must meet requirement</td>
<td>N / A</td>
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### 4. Experience

#### 4.1 General Experience
Experience in Operation and Maintenance of Thermal Power Plants for at least the ten (10) years prior to the Proposal Closing Date.

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Single Entity</th>
<th>Joint Venture</th>
<th>Submission Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Must meet requirement</td>
<td>Must meet requirement</td>
<td>N/A</td>
</tr>
</tbody>
</table>

#### 4.2(a) Specific Experience
Currently carrying out Operation and Maintenance of at least two (2) Units of Supercritical Coal Fired Power Plants of Unit Size 600MW or larger capacity.

- The Units must be in continuous operation for at least one (1) year prior to the Proposal Closing Date without any major unscheduled shutdowns (major defined as shutdown that requires at least seven (7) days of shutdown).
- The Units with similar configuration (similar configuration defined as Pulverized Coal type boiler having front and rear wall offset combustion) will earn extra points.
- Bidders with Ultra-Supercritical Coal Fired Power Plants of Unit Size 600MW or larger capacity will earn extra points.
- Bidders with additional experience will earn extra points.
- Bidders with overseas OM experience will earn extra points.

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Single Entity</th>
<th>Joint Venture</th>
<th>Submission Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Must meet requirement</td>
<td>Must meet requirement</td>
<td>N/A</td>
</tr>
</tbody>
</table>

#### 4.2(b)
Must have good working relationship with Dongfang and Shanghai Electric Company (major equipment OEMs of Payra Project).

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Single Entity</th>
<th>Joint Venture</th>
<th>Submission Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Must meet requirement</td>
<td>Must meet requirement</td>
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</tr>
</tbody>
</table>

#### 4.2(c)
Shall have capacity for Power Plant Simulation Training

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Single Entity</th>
<th>Joint Venture</th>
<th>Submission Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Must meet requirement</td>
<td>Must meet requirement</td>
<td>N/A</td>
</tr>
</tbody>
</table>

### 5. Management Staff

#### 5.1 Key Staff

1) **Project Manager (1 person)**
Minimum of fifteen (15) years’ experience in Power Plant Industry

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Single Entity</th>
<th>Joint Venture</th>
<th>Submission Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Must meet requirement</td>
<td>Must meet requirement</td>
<td>N/A</td>
</tr>
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<td>No.</td>
<td>Subject</td>
<td>Requirement</td>
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<td></td>
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<td>All Parties Combined</td>
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<tr>
<td>2</td>
<td>Deputy Project Manager (Production) (1 person):</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>a) Minimum of fifteen (15) years’ experience in Power Plant Industry</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Minimum of five (5) years’ experience in Operation and Maintenance of Coal Fired Power Plants</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) Must be currently working in similar capacity</td>
<td></td>
</tr>
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<td></td>
<td></td>
<td>d) Fluent in English</td>
<td></td>
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</tr>
<tr>
<td>3</td>
<td>Deputy Project Manager (Management) (1 person):</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>a) Minimum of fifteen (15) years’ experience in Power Plant Industry</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Minimum of five (5) years’ experience in Operation and Maintenance of Coal Fired Power Plants</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) Must be currently working in similar capacity</td>
<td></td>
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<td></td>
<td></td>
<td>d) Fluent in English</td>
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<tr>
<td>4</td>
<td>Lead Engineering Manager (1 person):</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>a) Minimum of fifteen (15) years’ experience in Power Plant Industry</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Minimum of five (5) years’ experience in Operation and Maintenance of Coal Fired Power Plants</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) Must be currently working in similar capacity</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>d) Fluent in English</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Commercial Manager (1 person):</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>a) Minimum of ten (10) years’ experience as Commercial Manager / Assistant for Power Plants / Large Industrial Projects</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Minimum of three (3) years’ experience as</td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Subject</td>
<td>Requirement</td>
<td>Single Entity</td>
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</tr>
<tr>
<td>6)</td>
<td>HSE Manager (1 person):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a)</td>
<td>Minimum of ten (10) years’ experience as HSE Manager / Assistant for Power Plants / Large Industrial Projects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b)</td>
<td>Minimum of three (3) years’ experience as HSE Manager for Coal Fired Power Plants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c)</td>
<td>Must have experience in Environmental Monitoring and preparation of monthly / yearly reports to relevant authorities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d)</td>
<td>Must be currently working in similar capacity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e)</td>
<td>Must have working knowledge of English</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7)</td>
<td>Section Manager for Production and Technology Department (1 person):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a)</td>
<td>Minimum of fifteen (15) years’ experience in Power Plant Industry</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b)</td>
<td>Minimum of five (5) years’ experience in Operation and Maintenance of Coal Fired Power Plants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c)</td>
<td>Must be currently working in similar capacity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d)</td>
<td>Must have working knowledge of English</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8)</td>
<td>Section Manager for Generation Department (1 person):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a)</td>
<td>Minimum of fifteen (15) years’ experience in Power Plant Industry</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b)</td>
<td>Minimum of five (5) years’ experience in Operation and Maintenance of Coal Fired Power Plants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c)</td>
<td>Must be currently working in similar capacity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d)</td>
<td>Must have working knowledge of English</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Subject</td>
<td>Requirement</td>
<td>Single Entity</td>
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<td></td>
<td></td>
<td></td>
<td>All Parties Combined</td>
</tr>
<tr>
<td>9)</td>
<td>Chief Shift Operator (4 personnel):</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>a)</td>
<td>Minimum of fifteen (15) years’ experience in Power Plant Industry</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b)</td>
<td>Minimum of five (5) years’ experience in Operation and Maintenance of Coal Fired Power Plants</td>
<td></td>
</tr>
<tr>
<td></td>
<td>c)</td>
<td>Must be currently working in similar capacity</td>
<td></td>
</tr>
<tr>
<td></td>
<td>d)</td>
<td>Must have working knowledge of English</td>
<td></td>
</tr>
<tr>
<td>10)</td>
<td>Section Manager for Equipment and Maintenance Department (1 person):</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>a)</td>
<td>Minimum of fifteen (15) years’ experience in Power Plant Industry</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b)</td>
<td>Minimum of five (5) years’ experience in Operation and Maintenance of Coal Fired Power Plants</td>
<td></td>
</tr>
<tr>
<td></td>
<td>c)</td>
<td>Must be familiar with maintenance of boiler with front and rear wall offset combustion</td>
<td></td>
</tr>
<tr>
<td></td>
<td>d)</td>
<td>Must be currently working in similar capacity</td>
<td></td>
</tr>
<tr>
<td></td>
<td>e)</td>
<td>Must have working knowledge of English</td>
<td></td>
</tr>
<tr>
<td>11)</td>
<td>Section Manager for Material and Procurement Department (1 person):</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>a)</td>
<td>Minimum of fifteen (15) years’ experience in Power Plant Industry</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b)</td>
<td>Minimum of five (5) years’ experience in Operation and Maintenance of Coal Fired Power Plants</td>
<td></td>
</tr>
<tr>
<td></td>
<td>c)</td>
<td>Must have experience in material management and procurement</td>
<td></td>
</tr>
<tr>
<td></td>
<td>d)</td>
<td>Must be currently working in similar capacity</td>
<td></td>
</tr>
<tr>
<td></td>
<td>e)</td>
<td>Must have working knowledge of English</td>
<td></td>
</tr>
</tbody>
</table>
The Employer will evaluate the Technical Proposals using the following criteria:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Maximum Points</th>
<th>Minimum Required Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Experience</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 3, Clause 4.1</td>
<td>10 Points</td>
<td>7 Points</td>
</tr>
<tr>
<td>Specific Experience</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 3, Clause 4.2 as per breakdown below:</td>
<td>40 Points</td>
<td>30 Points</td>
</tr>
<tr>
<td>Clause 4.2 (a):</td>
<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Currently carrying out Operation and Maintenance of at least two (2) Units of Supercritical Coal Fired Power Plants of Unit Size 600MW or larger capacity. The Units must be in continuous operation for at least one (1) year prior to the Proposal Closing Date without any major unscheduled shutdowns (major defined as shutdown that requires at least seven (7) days of shutdown).</td>
<td>25 Points</td>
</tr>
<tr>
<td>The Units with similar configuration (similar configuration defined as Pulverized Coal type boiler having front and rear wall offset combustion) will earn extra points.</td>
<td></td>
</tr>
<tr>
<td>Bidders with Ultra-Supercritical Coal Fired Power Plants of Unit Size 600MW or larger capacity will earn extra points.</td>
<td>1 Point per Project up to a maximum of 2 Projects</td>
</tr>
<tr>
<td>Bidders with additional experience will earn extra points.</td>
<td>1 Point per Project up to a maximum of 3 Projects</td>
</tr>
</tbody>
</table>
Bidders with overseas OM experience will earn extra points. 1 Point per Project up to maximum of 2 Projects

Clause 4.2 (b):

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Must have good working relationship with Dongfang and Shanghai Electric Company (major equipment OEMs of Payra Project)</td>
<td>3</td>
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</tbody>
</table>

Clause 4.2 (c):

<table>
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<th>Criteria</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shall have capacity for Power Plant Simulation Training</td>
<td>2</td>
</tr>
</tbody>
</table>

Methodology and Approach

Section 1, ITB 12
Clarity, comprehensiveness and level of detail of the Methodology and Approach, the soundness of the proposed Methodology and Approach and the extent to which the Methodology and Approach demonstrates an understanding of the local conditions

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extent to which the Work Plan demonstrates how the Bidder intends to meet the Performance Standards</td>
<td>10</td>
</tr>
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</table>

Work Plan

Section 1, ITB 12.1 (a)

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extent to which the Work Plan demonstrates how the Bidder intends to meet the Performance Standards</td>
<td>10</td>
</tr>
</tbody>
</table>
### Staffing Plan

Clarify and level of detail of Staffing Plan / Organization Chart

<table>
<thead>
<tr>
<th>Position</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Manager</td>
<td>3 Points</td>
</tr>
<tr>
<td>Deputy Project Manager (Production)</td>
<td>3 Points</td>
</tr>
<tr>
<td>Deputy Project Manager (Management)</td>
<td>3 Points</td>
</tr>
<tr>
<td>Lead Engineering Manager</td>
<td>3 Points</td>
</tr>
<tr>
<td>Commercial Manager</td>
<td>2 Points</td>
</tr>
<tr>
<td>HSE Manager</td>
<td>2 Points</td>
</tr>
<tr>
<td>Section Manager for Production and Technology Department</td>
<td>3 Points</td>
</tr>
<tr>
<td>Section Manager for Generation Department</td>
<td>3 Points</td>
</tr>
<tr>
<td>Chief Shift Operator</td>
<td>3 Points</td>
</tr>
<tr>
<td>Section Manager for Equipment and Maintenance Department</td>
<td>3 Points</td>
</tr>
<tr>
<td>Section Manager for Material and Procurement Department</td>
<td>2 Points</td>
</tr>
</tbody>
</table>

### Key Staff

Qualifications and competence of the Key Staff as per breakdown below:

- Project Manager: 3 Points
- Deputy Project Manager (Production): 3 Points
- Deputy Project Manager (Management): 3 Points
- Lead Engineering Manager: 3 Points
- Commercial Manager: 2 Points
- HSE Manager: 2 Points
- Section Manager for Production and Technology Department: 3 Points
- Section Manager for Generation Department: 3 Points
- Chief Shift Operator: 3 Points
- Section Manager for Equipment and Maintenance Department: 3 Points
- Section Manager for Material and Procurement Department: 2 Points

### Aggregate Technical Score (St)

The Aggregate Technical Score (St) is equal to the sum of scores earned by the Bidder for each of the categories specified above.

The Employer will evaluate the Financial Proposals using the following criteria: As stipulated in ITB 34, 35 and 36.
Section IV. Standard Forms

Table of Forms

<table>
<thead>
<tr>
<th>Form</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Letter of Proposal - Technical Proposal Form</td>
<td>44</td>
</tr>
<tr>
<td>Description of the Methodology and Work Plan</td>
<td>45</td>
</tr>
<tr>
<td>Form of Bid Security</td>
<td>49</td>
</tr>
<tr>
<td>Letter of Proposal - Financial Proposal Form</td>
<td>50</td>
</tr>
<tr>
<td>Proposal Price Form</td>
<td>51</td>
</tr>
<tr>
<td>Bidder Information Form (Form ELI-1.1)</td>
<td>56</td>
</tr>
<tr>
<td>Bidder’s Party Information Form (Form ELI-1.2)</td>
<td>57</td>
</tr>
<tr>
<td>Historical Contract Non-Performance (Form CON-2)</td>
<td>58</td>
</tr>
<tr>
<td>Financial Situation (Form FIN-3.1)</td>
<td>59</td>
</tr>
<tr>
<td>General Turnover Information (Form FIN-3.2)</td>
<td>60</td>
</tr>
<tr>
<td>General Sector Experience (Form EXP-4.1)</td>
<td>61</td>
</tr>
<tr>
<td>Similar Sector Experience (Form EXP-4.2(a))</td>
<td>63</td>
</tr>
<tr>
<td>Personnel Capabilities for Key Staff (Form PER-5.1)</td>
<td>64</td>
</tr>
<tr>
<td>Key Staff Summary (Form PER-5.1(a))</td>
<td>65</td>
</tr>
</tbody>
</table>
Letter of Proposal - Technical Proposal Form

Date: ____________________________
Request for Proposals No.: _________

To: [Name and address of Employer]

Ladies and/or Gentlemen,

We, the undersigned, offer to provide the Operation and Maintenance Services for [Insert title of assignment] in accordance with your Request for Proposal dated [Insert Date], including Addendum Nos. [insert numbers] and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal and a Financial Proposal sealed under a separate envelope.

We agree to abide by this Technical Proposal, which consists of this letter and Attachments 1 through [number] hereto, for a period of [number] days from the date fixed for submission of proposals as stipulated in the Request for Proposal and it shall remain binding on us, provided that we are invited to negotiate a contract with you before the expiration of that period.

If negotiations are held during the period of validity of the Proposal, we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us and subject to the modifications resulting from Contract negotiations.

If our proposal is accepted, we commit to obtain a performance security in accordance with the Request of Proposal;

We understand you are not bound to accept any Proposal you receive.

We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in bribery.

Name ____________________________ In the capacity of ____________________________

Signed ____________________________
Duly authorized to sign the Proposal for and on behalf of ____________________________
Dated on ____________________________ day of ____________________________, _____

Attachments: [In accordance with ITB Sub-Clause 11.1, plus any additional attachment either specified by the Employer in the Proposal Data Sheet or included by the Bidder.]
Form TECH – Attachment to the Technical Proposal

Description of the Methodology and Work Plan

[in accordance with ITB 12.1]

I. Detailed Work Plan
# II. Detailed Staffing Plan

The Contractor must submit the Detailed Staffing Plan in accordance with the following requirements:

<table>
<thead>
<tr>
<th>No.</th>
<th>Dept.</th>
<th>System</th>
<th>Position</th>
<th>Qty.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Leadership</td>
<td>Management</td>
<td>Project Manager</td>
<td>1</td>
</tr>
<tr>
<td>1.2</td>
<td></td>
<td></td>
<td>Deputy Project Manager (Production)</td>
<td>1</td>
</tr>
<tr>
<td>1.2</td>
<td></td>
<td></td>
<td>Deputy Project Manager (Management)</td>
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</tr>
<tr>
<td>1.4</td>
<td></td>
<td></td>
<td>Lead Engineering Manager</td>
<td>1</td>
</tr>
<tr>
<td>2.1</td>
<td>General Administration Department</td>
<td>Management</td>
<td>Section Manager</td>
<td></td>
</tr>
<tr>
<td>2.2</td>
<td></td>
<td></td>
<td>Commercial Manager</td>
<td>1</td>
</tr>
<tr>
<td>2.3</td>
<td></td>
<td></td>
<td>Archives Manager</td>
<td></td>
</tr>
<tr>
<td>2.4</td>
<td></td>
<td></td>
<td>Integrated Services Manager</td>
<td></td>
</tr>
<tr>
<td>2.5</td>
<td></td>
<td></td>
<td>Personnel Manager</td>
<td></td>
</tr>
<tr>
<td>2.6</td>
<td></td>
<td></td>
<td>Budget Control Manager</td>
<td></td>
</tr>
<tr>
<td>2.7</td>
<td></td>
<td></td>
<td>Cashier</td>
<td></td>
</tr>
<tr>
<td>2.8</td>
<td></td>
<td></td>
<td>Translator</td>
<td></td>
</tr>
<tr>
<td>3.1</td>
<td>Safety Supervision Department</td>
<td>Management</td>
<td>HSE Manager</td>
<td>1</td>
</tr>
<tr>
<td>3.2</td>
<td></td>
<td></td>
<td>Safety Supervisor</td>
<td></td>
</tr>
<tr>
<td>4.1</td>
<td>Production &amp; Technology Department</td>
<td>Management</td>
<td>Section Manager</td>
<td>1</td>
</tr>
<tr>
<td>4.2</td>
<td></td>
<td></td>
<td>Deputy Manager / Assistant</td>
<td></td>
</tr>
<tr>
<td>4.3</td>
<td></td>
<td></td>
<td>Steam Turbine Engineer (including HVAC)</td>
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<td>Boiler Engineer</td>
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<td>Electrical Engineer</td>
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<td>Thermal Engineer</td>
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<td>Chemical Water Engineer</td>
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<td>Coal Handling System Engineer</td>
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<td></td>
<td></td>
<td>Desulfurization and Ash Removal Engineer</td>
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<td></td>
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<td>Laboratory Technician (including laboratory)</td>
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<td>Desulfurization and Ash Removal</td>
<td>Main Operator on Duty</td>
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<td></td>
<td>Turbine Maintenance shift (including Water treatment equipment)</td>
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<td>Electrical Maintenance Shift (once/twice)</td>
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<td>6.14</td>
<td></td>
<td>Electrical Maintenance Shift (once/twice)</td>
<td>Check Man (Communication)</td>
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</table>

**Equipment & Maintenance Department**

<p>| 6.1 | 6.2  | Management | Section Manager | 1    |
| 6.3 |      | Turbine Maintenance shift (including Water treatment equipment) | Shift Leader |      |
| 6.4 |      | Turbine Maintenance shift (including Water treatment equipment) | Technician |      |
| 6.5 |      | Turbine Maintenance shift (including Water treatment equipment) | Chief of Operations |      |
| 6.6 |      | Turbine Maintenance shift (including Water treatment equipment) | Check Man |      |
| 6.7 |      | Boiler Maintenance Shift (including desulphurization and ash removal) | Shift Leader |      |
| 6.8 |      | Boiler Maintenance Shift (including desulphurization and ash removal) | Technician |      |
| 6.9 |      | Boiler Maintenance Shift (including desulphurization and ash removal) | Chief of Operations |      |
| 6.10 |     | Boiler Maintenance Shift (including desulphurization and ash removal) | Check Man |      |
| 6.11 |    | Electrical Maintenance Shift (once/twice) | Shift Leader |      |
| 6.12 |    | Electrical Maintenance Shift (once/twice) | Technician |      |
| 6.13 |    | Electrical Maintenance Shift (once/twice) | Chief of Operations |      |
| 6.14 |    | Electrical Maintenance Shift (once/twice) | Check Man (Communication) |      |</p>
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<th>Position</th>
<th>Qty.</th>
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<td></td>
<td>Check Man (Information)</td>
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<td>6.18</td>
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<td></td>
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<td></td>
<td>Technician</td>
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<td>Shift leader (Welding Major)</td>
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<td>Welder (at least 1 high pressure Welder)</td>
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<td>Framer</td>
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<td>Anticorrosion and Heat Preservation</td>
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<td>Crane Operator</td>
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<td>Local Auxiliary (fixed)</td>
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<td>Machine Shop Operator Concurrent Workshop Manager</td>
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<td>7.2</td>
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<td>Fuel Scheduling &amp; Dispatcher</td>
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<td>Coal Yard Manager</td>
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<td>7.4</td>
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<td>Calibrator (including Weighman)</td>
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<td>7.5</td>
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<td>Sampler</td>
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<td>7.6</td>
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<td>Procurement Plan &amp; Purchase Manager (Equipment and Materials)</td>
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<td>7.7</td>
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<td></td>
<td>Warehouse Keeper</td>
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<td>7.8</td>
<td></td>
<td></td>
<td>Production Support Manager</td>
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<td>7.9</td>
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<td></td>
<td>Periodic Discharge of Stone Coal</td>
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<td>Ash Carrier</td>
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<td></td>
<td>Gypsum treatment (Transportation &amp; Handling)</td>
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<td>7.12</td>
<td></td>
<td></td>
<td>Comprehensive Treatment of Fly Ash (Ash Discharge)</td>
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</table>

The Bidder shall provide details of the proposed personnel and their experience records in the relevant Information Forms included in Section 4 (Bidding Forms).
Form of Bid Security
(Bank Guarantee)

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

Beneficiary: __________________________ [Name and Address of Employer]

Date: __________________________

BID GUARANTEE No.: __________________________

We have been informed that __________________________ [name of the Bidder] (hereinafter called “the Bidder”) has submitted to you its Proposal dated ___________ (hereinafter called “the Proposal”) for the execution of ________________ [name of contract] under Request for Proposals No. ___________ (“the RFP”).

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

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

(a) has withdrawn its Proposal during the period of proposal validity specified by the Bidder in the Letter of Proposal; or
(b) having been notified of the acceptance of its Proposal by the Employer during the period of proposal validity, (i) fails or refuses to execute the Contract Agreement or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

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

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

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

______________________________
[signature(s)]

Note: All italicized text is for use in preparing this form and shall be deleted from the final product.
Letter of Proposal - Financial Proposal Form

Date: __________________________
Request for Proposals No.: _________

To: [Name and address of Employer]

Ladies and/or Gentlemen,

We, the undersigned, offer to provide the Operation and Maintenance Services for [Insert title of assignment] in accordance with your Request for Proposal dated [Insert Date], including Addendum Nos. [insert numbers] and our Technical Proposal.

Our Financial Proposal which consists of this letter and Attachments 1 through [number] hereto, shall be valid for a period of ______________ days from the date fixed for submission of proposals; it shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal.

We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:

<table>
<thead>
<tr>
<th>Name of Recipient</th>
<th>Address</th>
<th>Reason</th>
<th>Amount</th>
</tr>
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</table>

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

We understand that you are not bound to accept any proposal that you may receive.

We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in bribery.

Name ____________________________ In the capacity of ____________________________

Signed ____________________________

Duly authorized to sign the Proposal for and on behalf of ____________________________

Dated on ____________________________ day of _____________________, ______

Attachments: [In accordance with ITB Sub-Clause 13.1, plus any additional attachment either specified by the Employer in the Proposal Data Sheet or included by the Bidder]
Proposal Price Form

Contractor’s Base Remuneration

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<th>Description</th>
<th>Period</th>
<th>Foreign Currency Amount</th>
<th>BDT Amount</th>
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<td>Base Remuneration including salary, bonuses, holiday, per diem and related expenses of Staff as per Detailed Staffing Plan</td>
<td>Per Year</td>
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<tr>
<td>Office Facilities in Bangladesh including all costs for office equipment, stationary, communication, consumables, office support staff, retainer fee payment to Independent Expert (GC20.1.3 (a)), etc.</td>
<td>Per Year</td>
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<tr>
<td>Total Excluding Taxes in Bangladesh (A)</td>
<td>Per Year</td>
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<td>Monthly Payments = (A) / 12</td>
<td>Per Month</td>
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<td>Total Excluding Taxes in Bangladesh for full Contract Term</td>
<td>Per Five Years</td>
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## Breakdown of Base Remuneration

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<th>Unit Price (2)</th>
<th>Cost (3)=(1)×(2)</th>
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<td>Production &amp; Technology Department</td>
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<td>Steam Turbine Engineer (Including HVAC)</td>
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<td>Deputy Manager / Assistant</td>
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<td>Desulfurization and Ash Removal</td>
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<td>BDT</td>
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<td>FC</td>
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<td>Equipment &amp; Maintenance Department</td>
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<td>Chock Man</td>
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<td>Currency</td>
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<td>Check Man (Communication)</td>
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<td>Chief of Coal Transportaion Operations</td>
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<td>Anticorrosion and Heat Preservation</td>
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<td>Crane Operator</td>
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<td>Local Auxiliary (fixed)</td>
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<td>Concurrent Workshop Manager</td>
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<td>Fuel Scheduling &amp; Dispatcher</td>
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<td>Calibrator (including Weighman)</td>
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Payra Thermal Power Plant (2 x 660MW)  
Section 4  
Page 54 of 181
<table>
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<th>Item</th>
<th>Department</th>
<th>Description of System</th>
<th>Position</th>
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<td>Procurement Plan &amp; Purchase Manager (Equipment and Materials)</td>
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<td>7.7</td>
<td>Warehouse Keeper</td>
<td>FC</td>
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<td>7.8</td>
<td>Production Support Manager</td>
<td>BDT</td>
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<td>7.9</td>
<td>Periodic Discharge of Stone Coal</td>
<td>FC</td>
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<td>7.10</td>
<td>Ash Carrier</td>
<td>BDT</td>
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<td>7.11</td>
<td>Gypsum Treatment (Transportation &amp; Handling)</td>
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<td>7.12</td>
<td>Comprehensive Treatment of Fly Ash (Ash Discharge)</td>
<td>BDT</td>
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**Note:** Local Currency Portion shall include Tax and VAT.
## Bidder Information Form (Form ELI-1.1)

Date: [insert day, month, year]
Page [insert page number] of [insert total number] pages

<table>
<thead>
<tr>
<th>Bidder's legal name</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>[insert full legal name]</strong>__</td>
</tr>
</tbody>
</table>

In case of Joint Venture (JV), legal name of each partner:

| [insert full legal name of each partner in JV] |

| Bidder’s Actual or Intended country of constitution: |
| __[indicate country of Constitution]__ |

| Bidder’s actual or Intended year of constitution: |
| __[indicate year of Constitution]__ |

| Bidder’s legal address in country of constitution: |
| __[insert street/ number/ town or city/ country]____ |

| Bidder’s authorized representative information |
| Name: __[insert full legal name]____ |

| Address: __[insert street/ number/ town or city/ country]____ |

| Telephone/Fax numbers: [insert telephone/fax numbers, including country and city codes] |
| E-mail address: __[indicate e-mail address]__ |

Attached are copies of original documents of:

- Articles of Incorporation or Documents of Constitution, and documents of registration of the legal entity named above, in accordance with ITB 4.1.
- In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1.
- In case of Government owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.6.
Bidder’s Party Information Form (Form ELI-1.2)

[The following form shall be filled in for the Bidder’s parties including partner(s) of a joint venture, subcontractors, suppliers and other parties]

Date: [insert day, month, year]
Page [insert page number] of [insert total number] pages

<table>
<thead>
<tr>
<th>JV Bidder legal name:</th>
<th><strong>[insert full legal name]</strong>__</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bidder’s Party legal name:</td>
<td>__[insert full legal name of Bidder’s Party] ________</td>
</tr>
<tr>
<td>Bidder’s Party country of registration:</td>
<td><strong>[indicate country of registration]</strong></td>
</tr>
<tr>
<td>Bidder Party’s year of constitution:</td>
<td><strong>[indicate year of constitution]</strong></td>
</tr>
<tr>
<td>Bidder Party’s legal address in country of constitution:</td>
<td><strong>[insert street/ number/ town or city/ country]</strong>___</td>
</tr>
<tr>
<td>Bidder Party’s authorized representative information</td>
<td></td>
</tr>
<tr>
<td>Name: <strong>[insert full legal name]</strong>__</td>
<td></td>
</tr>
<tr>
<td>Address: <strong>[insert street/ number/ town or city/ country]</strong>___</td>
<td></td>
</tr>
<tr>
<td>Telephone/Fax numbers: [insert telephone/fax numbers, including country and city codes]</td>
<td></td>
</tr>
<tr>
<td>E-mail address: [indicate e-mail address]</td>
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</tr>
</tbody>
</table>

Attached are copies of original documents of:

☐ Articles of Incorporation or Documents of Constitution, and Registration Documents of the legal entity named above, in accordance with ITB 4.1 and 4.2.

☐ In case of a Government owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.6.
**Historical Contract Non-Performance (Form CON-2)**

[The following table shall be filled in for the Bidder and for each partner of a Joint Venture]

Bidder’s Legal Name: [insert full name]
Date: [insert day, month, year]
Joint Venture Party Legal Name: [insert full name]
Page [insert page number] of [insert total number] pages

<table>
<thead>
<tr>
<th>A.1 Non-Performing Contracts in accordance with Section III, Qualification Criteria and Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Contract non-performance did not occur during the [number] years specified in Section III, Qualification Criteria and Requirements, Sub-Factor 2.1.</td>
</tr>
<tr>
<td>□ Contract(s) not performed during the [number] years specified in Section III, Qualification Criteria and Requirements, requirement 2.1</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Non-Performed Portion of Contract</th>
<th>Contract Identification</th>
<th>Total Contract Amount (current value, US$ equivalent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>[insert year]</td>
<td>[insert amount and percentage]</td>
<td>Contract Identification: [indicate complete contract name/ number, and any other identification] Name of Employer: [insert full name] Address of Employer: [insert street/city/country] Reason(s) for non performance: [indicate main reason(s)]</td>
<td>[insert amount]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>A.2 Pending Litigation, in accordance with Section III, Qualification Criteria and Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ No pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor 2.2.</td>
</tr>
<tr>
<td>□ Pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor 2.2 as indicated below.</td>
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<table>
<thead>
<tr>
<th>Year</th>
<th>Outcome as Percent of Total Assets</th>
<th>Contract Identification</th>
<th>Total Contract Amount (current value, US$ equivalent)</th>
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<tbody>
<tr>
<td>[insert year]</td>
<td>[insert percentage]</td>
<td>Contract Identification: [indicate complete contract name/ number, and any other identification] Name of Employer: [insert full name] Address of Employer: [insert street/city/country] Matter in dispute: [indicate main issues in dispute]</td>
<td>[insert amount]</td>
</tr>
</tbody>
</table>
Financial Situation (Form FIN-3.1)

[The following table shall be filled in for the Bidder and for each partner of a Joint Venture]

Bidder’s Legal Name: [insert full name]  
Bidder’s Party Legal Name: [insert full name]  
Date: [insert day, month, year]  
Page [insert page number] of [insert total number] pages

1. Financial data

<table>
<thead>
<tr>
<th>Financial Information in USD Equivalent in 000s</th>
<th>Historic Information for Previous Three (3) years A.3 (USD Equivalent in 000s)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Year 1</td>
</tr>
</tbody>
</table>

Information from Balance Sheet

<table>
<thead>
<tr>
<th></th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Assets (TA)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Liabilities (TL)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Worth (NW)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current Assets (CA)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current Liabilities (CL)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Information from Income Statement

<table>
<thead>
<tr>
<th></th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Revenue (TR)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profits Before Taxes (PBT)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profits After Taxes (PAT)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. Financial documents

The Bidder and its parties shall provide copies of the balance sheets and/or financial statements for [number] years pursuant Section III, Qualifications Criteria and Requirements, Sub-Factor 3.1. The financial statements shall:

- (a) reflect the financial situation of the Bidder or partner to a JV, and not sister or parent companies.
- (b) be audited by a certified accountant.
- (c) be complete, including all notes to the financial statements.
- (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the [number] years required above; and complying with the requirements.
**General Turnover Information (Form FIN-3.2)**

*The following table shall be filled in for the Bidder and for each partner of a Joint Venture*

Bidder’s/Joint Venture Partner’s Legal Name: [insert full name]
Date: [insert day, month, year]
Bidder’s Party Legal Name: [insert full name]
Page [insert page number] of [insert total number] pages

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount and Currency</th>
<th>US$ equivalent</th>
</tr>
</thead>
<tbody>
<tr>
<td>[indicate year]</td>
<td>[Insert amount and indicate currency. Include partial accounting for the year up to the date of Proposal Closing]</td>
<td>[insert amount converted to U.S. dollars at the rate of exchange at the end of the period reported]</td>
</tr>
<tr>
<td>Year 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Year 2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Year 3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average Annual Turnover *</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Average annual turnover calculated as total certified payments received for contracts in progress or completed, divided by the number of years specified in Section III, Qualification Criteria and Requirements, Sub-Factor 3.2.
# General Sector Experience (Form EXP-4.1)

[The following table shall be filled in for the Bidder and each partner of a Joint Venture]

Bidder’s/Joint Venture Partner’s Legal Name: [insert full name]  
Date: [insert day, month, year]  
Bidder JV Party Legal Name: [insert full name]  
Page [insert page number] of [insert total number] pages

[Identify contracts that demonstrate work over the past ten (10) years pursuant to Section III, Qualification Criteria and Requirements, Sub-Factor 4.1. List contracts chronologically, according to their commencement (starting) dates]

<table>
<thead>
<tr>
<th>Starting Month / Year</th>
<th>Ending Month / Year</th>
<th>Contract Identification</th>
<th>Details of Power Plant</th>
</tr>
</thead>
</table>
| [indicate month/year] | [indicate month/year] | Contract Name: [insert full name]  
Brief Description of the Services performed by the Bidder: [describe Services performed briefly]  
Amount of Contract: [insert amount in US$ equivalent]  
Name of Employer: [indicate full name]  
Address: [indicate street/number/town or city/country address]  
Contact Person: [indicate name, position, email address] | Capacity:  
No. of Units / Blocks:  
Type of Power Plant: [Open Cycle / Combined Cycle / Coal Fired / Oil Fired / Gas Fired / Hydro] |
| Contract Name:  
Brief Description of the Services performed by the Bidder:  
Amount of Contract:  
Name of Employer:  
Address:  
Contact Person: | Capacity:  
No. of Units / Blocks:  
Type of Power Plant: |
| Contract Name:  
Brief Description of the Services performed by the Bidder:  
Amount of Contract:  
Name of Employer:  
Address:  
Contact Person: | Capacity:  
No. of Units / Blocks:  
Type of Power Plant: |
| Contract Name:  
Brief Description of the Services performed by the Bidder:  
Amount of Contract:  
Name of Employer:  
Address:  
Contact Person: | Capacity:  
No. of Units / Blocks:  
Type of Power Plant: |
<table>
<thead>
<tr>
<th>Starting Month / Year</th>
<th>Ending Month / Year</th>
<th>Contract Identification</th>
<th>Details of Power Plant</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Contract Came:</td>
<td>Capacity:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Brief Description of the Services performed by the Bidder:</td>
<td>No. of Units / Blocks: Type of Power Plant:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Amount of Contract:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Name of Employer:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contact Person:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contract Came:</td>
<td>Capacity:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Brief Description of the Services performed by the Bidder:</td>
<td>No. of Units / Blocks: Type of Power Plant:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Amount of Contract:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Name of Employer:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contact Person:</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contract Came:</td>
<td>Capacity:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Brief Description of the Services performed by the Bidder:</td>
<td>No. of Units / Blocks: Type of Power Plant:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Amount of Contract:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Name of Employer:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contact Person:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contract Came:</td>
<td>Capacity:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Brief Description of the Services performed by the Bidder:</td>
<td>No. of Units / Blocks: Type of Power Plant:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Amount of Contract:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Name of Employer:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Address:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contact Person:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Similar Sector Experience (Form EXP-4.2(a))

[The following table shall be filled in for contracts performed by the Bidder and each partner of a Joint Venture]

Bidder’s/Joint Venture Partner’s Legal Name: [insert full name]
Date: [insert day, month, year]
JV Party Name: [insert full name]
Page [insert page number] of [insert total number] pages

[Identify contracts that demonstrate work over the past [number] years pursuant to Section III, Qualification Criteria and Requirements, Sub-Factor 4.2 (a). List contracts chronologically, according to their commencement (starting) dates.]

<table>
<thead>
<tr>
<th>Similar Contract No. 1 of xxx</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Identification</td>
<td>[insert contract name and number, if applicable]</td>
</tr>
<tr>
<td>Award date</td>
<td>[insert day, month, year]</td>
</tr>
<tr>
<td>Completion date</td>
<td>[insert day, month, year]</td>
</tr>
<tr>
<td>Number of Units</td>
<td>[insert Number of Units]</td>
</tr>
<tr>
<td>Type of Coal Fired Power Plant</td>
<td>[Sub-Critical / Super Critical / Ultra Super Critical]</td>
</tr>
<tr>
<td>Type of Boiler Firing</td>
<td>[insert Type of Firing]</td>
</tr>
<tr>
<td>Role in Contract</td>
<td>Operation / Maintenance / Operation and Maintenance</td>
</tr>
<tr>
<td>Total Contract Amount</td>
<td>US$  [insert total contract amount in US$ equivalent]</td>
</tr>
<tr>
<td>If partner in a JV, or subcontractor, specify participation in total contract amount</td>
<td>[insert a percentage amount]  [insert total contract amount in US$ equivalent]</td>
</tr>
<tr>
<td>Employer’s Name:</td>
<td>[insert full name]</td>
</tr>
<tr>
<td>Address:</td>
<td>[indicate street / number / town or city / country]</td>
</tr>
<tr>
<td>Telephone number</td>
<td>[insert telephone numbers, including country and city area codes]</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>[insert name, position and email]</td>
</tr>
</tbody>
</table>
Personnel Capabilities for Key Staff (Form PER-5.1)

[Bidders should provide the names of candidates qualified to meet the specified requirements stated for each position pursuant to Section III, Qualification Criteria and Requirements, Sub-Factor 5.1]

<table>
<thead>
<tr>
<th>Name of Candidate’s Employer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Title of position*</td>
</tr>
<tr>
<td>Name of prime candidate</td>
</tr>
<tr>
<td>Name of alternate candidate</td>
</tr>
<tr>
<td>2. Title of position*</td>
</tr>
<tr>
<td>Name of prime candidate</td>
</tr>
<tr>
<td>Name of alternate candidate</td>
</tr>
</tbody>
</table>
Key Staff Summary (Form PER-5.1(a))

[Bidders should demonstrate how each of the candidates listed in Form PER 5.1 are qualified to meet the specified requirements stated for each position pursuant to Section III, Qualification Criteria and Requirements, Sub-Factor 5.1(a). One form should be filled out for each candidate proposed]

<table>
<thead>
<tr>
<th>Name of Candidate’s Employer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Candidate Information</td>
</tr>
<tr>
<td>Name of Candidate</td>
</tr>
<tr>
<td>Professional Qualifications</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Present Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Employer</td>
</tr>
<tr>
<td>Address of Employer</td>
</tr>
<tr>
<td>Telephone</td>
</tr>
<tr>
<td>Email</td>
</tr>
<tr>
<td>Details of Power Plant, Job Title and Responsibilities</td>
</tr>
</tbody>
</table>

[Summarize professional experience in reverse chronological order. Indicate particular technical experience relevant to the project.]

<table>
<thead>
<tr>
<th>Present Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Employer</td>
</tr>
<tr>
<td>Address of Employer</td>
</tr>
<tr>
<td>Start Date</td>
</tr>
<tr>
<td>Details of Power Plant / Industrial Project, Job Title and Responsibilities</td>
</tr>
</tbody>
</table>

Payra Thermal Power Plant (2 x 660MW)  Section 4  Page 65 of 181
Section V. Eligible Countries

No nationality restrictions apply, other than any restrictions arising from ITB 4.7
PART 2 – Services Requirements
Section VI. Schedules of Services Requirements

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## Schedule A: Recitals and Objectives

### A.1 Recitals

Bangladesh-China Power Company (Pvt.) Limited (BCPCL), (“Employer”) a joint venture of North-West Power Generation Company Limited (NWPCL) (An Enterprise of Bangladesh Power Development Board (BPDB)) and China Machinery Import and Export Corporation (CMC) is developing a 1,320MW (2 x 660MW) Ultra Supercritical Coal Fired Power Plant in Patuakhali.

PAYRA Thermal Power Plant 2x660MW or “PAYRA”, is located in the east of Kalapara and the west of Rabnabad Channel. The Site is adjacent to the Kazol River or upstream of Rabnabad Channel at Dhankhali Union, Kalapara Upazila, Patuakhali District of Bangladesh. The longitude and latitude of the Site is 21°59’40.1"N, 90°18’23.51”E. The distance between the Site and Patuakhali is 39km (linear distance, similarly hereinafter), and the distance between the Site and Barisal is 78km. The east of the Site is the Rabnabad Channel and the south is the Andharmanik River.

The construction of this Facility is about 60% complete and is expected to start operation later in 2019. As this is the first time an Ultra Supercritical Coal Fired Power Plant will start operations in Bangladesh, there is limited resources and man-power available to operate and maintain this complex power plant. Hence, now Employer intends to appoint an experienced and qualified Contractor to carry out the Operation and Maintenance of this 1,320MW (2 x 660MW) during initial period of five (5) years and also to train and transfer technology to Operators and Maintenance Personnel of Employer so that they will be able to carryout the routine Operation and Maintenance independently by the end of this Operation and Maintenance Contract.

General information and technical data of main equipment of PAYRA are summarized as follow:

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>COD (Expected)</td>
<td></td>
</tr>
<tr>
<td>Operation Certificate (SLO)</td>
<td></td>
</tr>
<tr>
<td>Capacity</td>
<td>1320MW</td>
</tr>
<tr>
<td>Net Dependable Capacity</td>
<td>1244MW</td>
</tr>
<tr>
<td>Auxiliary Power</td>
<td>5.7%</td>
</tr>
<tr>
<td>Net Plant Heat Rate per Unit</td>
<td>8746.35kJ/kWh</td>
</tr>
<tr>
<td>Consumption of limestone per Unit</td>
<td>3ton/h</td>
</tr>
<tr>
<td>Boiler</td>
<td>DG1922.32/28.25-II3(DEC)</td>
</tr>
<tr>
<td>Turbine</td>
<td>N660-27/600/610(SEC)</td>
</tr>
<tr>
<td>Generator</td>
<td>QFSN-660-2(SEC)</td>
</tr>
<tr>
<td>Power Evacuation Voltage</td>
<td>400kV</td>
</tr>
<tr>
<td>Target Availability (TAn)</td>
<td>85%</td>
</tr>
</tbody>
</table>
A.2 Objectives

The Objectives of this Operation and Maintenance Contract are:

1) Advice Employer and carry out necessary checks along with Owner’s Engineer in taking over from EPC Contract of the 1,320MW (2 x 660) Thermal Power Plant and associated facilities.

2) Carry out routine Operation and Maintenance of 1,320MW (2 x 660MW) Ultra Supercritical Coal Fired Power Plant after Employer takes over the facilities.

3) Carry out scheduled and unscheduled maintenance of 1,320MW (2 x 660MW) Ultra Supercritical Coal Fired Power Plant after Employer takes over the facilities.

4) Provide all spare parts, tools and consumables required for the performance of the O&M Works. Assist the Employer with Spare parts and Materials inventory management. Contractor to note that spare parts, tools and consumables required during the two (2) years Defect Liability Period shall be provided by the EPC Contract. Contractor is expected to coordinate with the EPC Contractor to timely procurement and delivery to Site.

5) Ensure Guarantees and commitments as per PPA are met.

6) Ensure compliance with other statutory requirements including but not limited to requirements of Department of Environment, Payra Port Authority, Depart of Communications, Power Grid Company of Bangladesh, Bangladesh Power Development Board, etc.

7) Administrative Management and Technical Supervision of works to further improve performance in specific aspects of the power plant with the Employer’s approval.

8) Assist the Employer with the management of security works within the power plant, ensure the security of the site.

9) To ensure the habitability of the site, the contractor shall take part in the management of logistic works within the power plant, including but not limited to: dining room management, dorm room management, hospital or clinic management, cleaning work management, vehicle management etc.

10) Carry out training and transfer technology to Operators and Maintenance Personnel of BCPCL so that they will be able to carry out the routine Operation and Maintenance independently by the end of this Operation and Maintenance Contract.

11) To ensure obligations and commitments as per Facility Agreement.

Schedule B: Services

Article 1: Definitions

Unless otherwise required by the context in which a defined term appears, the following terms shall have the meanings specified in this Article 1. Terms that are defined in other Articles shall have the meanings given to them in those Articles.

- "Annual Budget" has the meaning set forth in Article 5.2(a).
- "Annual Facility Operating Plan" has the meaning set forth in Article 5.2.
- "Annual Operating Fee" means an annual operating fee paid to Contractor during
each Contract Year as set forth in Article 4.2.

- "Bankruptcy" means a situation in which
  a) a party’s actions under applicable debtor relief laws demonstrate an inability to pay its debts as they mature or a need for protection from its creditors;
  b) a court of competent jurisdiction approves a petition filed against a party, which petition sought relief for the party’s creditors, and the action of the court remains in effect for an aggregated period of 60 days (whether or not consecutive);
  c) a party admits in writing its inability to pay its debts as they mature;
  d) a party gives notice to any person or entity of its current (or pending) insolvency or suspension of operations; or
  e) a party makes an assignment for the benefit of creditors or takes other similar action for the protection or benefit of its creditors.

- "Business Day" means any day other than a Friday, Saturday or other day on which commercial banks are authorized or required to close in Republic of Bangladesh.

- "Contract Year" means:
  a) in respect of the first Contract Year, the period commencing at the beginning of the Commercial Operations Date and ending as of the end of the Day immediately preceding the Financial Year subsequent to the Commercial Operations Date; and
  b) thereafter, the period commencing at the beginning of each Financial Year subsequent to the Commercial Operations Date and ending as of the end of the Day of each Financial Year.

- “Contracted Facility Capacity” means the net electric power generating capacity (only with coal burner) of the Facility operating on a continuous basis that the Employer commits to deliver hereunder, which is 1,244MW (net at Reference Site Conditions and at a power factor of 0.85 lagging) measured at Delivery Point.

- “Declared Capacity” means, for each hour, the net capacity after Commercial Operations Date, respectively and notified to the National Load Dispatch Center by the Employer which shall equal to then-prevailing Dependable Capacity less any reductions due to any Scheduled Outage, Forced Outage, or Maintenance Outage, as the case may be.

- Provided that in case of Force Majeure Events and outage of PGCB and/or BPDB system, Declared Capacity shall be equal to the Dependable Capacity except for Scheduled Outages and Maintenance Outages for the purpose of determination of Availability Factor for the Month or Availability Factor for the Year, as the case may be.

- “Dependable Capacity” means at any given time the net amount of capacity, expressed in kW, as determined by the most recent Dependable Capacity Test.

- “Dependable Capacity Test” means the test scheduled to determine the Dependable Capacity of the Facility by measuring at the Delivery Point, the average Net Energy Output.

- “Facility” means the Coal fired power station of 1,320MW (2×660MW) capacity, to be constructed and owned by the Employer on the Site, all permanent structures, all work intended to perform a continuing function at the Site, including without limitation or regard to level of development, the land, all energy producing equipment and its auxiliary equipment and all transmission facilities on the Employer’s side of the Delivery Point, water intake and discharge facilities(if any), water treatment facilities, solid waste disposal facilities, Coal receiving, handling and storage facilities, the
Metering System, the electrical interconnection facilities, together with the residential facilities made available to the Employees of the Employer, the Contractor and any subcontractors.

- "Financial Year" means the period commencing from 1st July and ending on 30th June.
- "Forced Outage" means an interruption or a reduction in the generating capability of the Facility, during the operational period as the case may be that is not the result of any or all of the following:
  - a request by the Government Authorities;
  - a Scheduled Outage or a Maintenance Outage;
  - a Force Majeure Event;
  - a condition caused by the Government.
- "Forced Outage Energy" means the sum of the products of
  a) the reduction in the generating capability of the Facility (from the then-prevailing Dependable Capacity) as a result of each Forced Outage occurring during the relevant Contract Year, expressed in MW; multiplied by
  b) the number of hours that each such Forced Outage was in effect during the relevant Contract Year;
- "Maintenance Outage" means an interruption or reduction of the Facility's generating capability, during the operational period, as the case may be, that is not a Scheduled Outage and has been scheduled under the Maintenance Schedule for the purpose of performing work on specific components, which should not, in the reasonable opinion of the Contractor, be postponed until the next Schedule Outage;
- "Maintenance Outage Energy" means the sum of the products of
  a) the reduction in the Facility's generating capability (from the Contract Facility Capacity) as a result of each Maintenance Outage occurring during the relevant Contract Year, expressed in MW; multiplied by
  b) the number of hours that such Maintenance Outage was in effect during the relevant Contract Year;
- "Metering System" means all meters and metering devices owned by the Employer and used to measure Dependable Capacity and Net Energy Output;
- "Operation & Maintenance" or "O&M" means combination of technical and administration actions intended to enable the Plant to perform a required function.
- "Operating Procedures" means the procedures issued by the Contractor and approved by the Employer.
- "O&M Manual" means the manual relating to operating and maintaining the Facility as provided under the EPC Works describing the procedures for operation and maintenance of the Facility(s) under the Contract.
- "Performance Guarantees" means the minimum value of minimum Gross Output of the Unit and maximum Net Heat Rate of the Plant guaranteed by the Contractor to be performed during Operation Period set out in Schedule B, Article 7.
- "Plant" means and includes all and complete machinery, apparatus, equipment, materials, Spare Parts, articles, and things of all kinds to be provided under the Contract which will form part of the Facility.
- "Scheduled Outage" means a planned interruption of the generating capacity of the Facility that:
  a) is not a Maintenance Outage,
b) has been scheduled and allowed by the Employer, and
c) is for inspection, testing, overhauls, preventive and corrective maintenance, repairs, replacement or improvement of the Facility;

- “Scheduled Outage Energy” means the sum of the products (a) reduction in the Facility’s generating capacity (from the Contracted Facility Capacity) as a result of each Scheduled Outage during the relevant Contract Year, expressed in MW, multiplied by (b) the number of hours that such Scheduled Outage was in effect during the relevant Contract Year;
- "Three-Year Budget" has the meaning set forth in Article 5.2(d).
- "Force Majeure Event" has meaning set forth in Section 7, Clause 1.1.7.
- "Lender(s)" means
  a) any person that has made loans to Employer, its successors or permitted assigns for the financing or refinancing of the Facility (or any part thereof) or which loans are secured by the Facility (or any part thereof),
  b) the holder(s) of indebtedness evidencing any such loans or any person or entity lawfully acting on behalf of such holders, or
  c) any person or entity that purchases the Facility in connection with a sale-leaseback or other lease arrangement in which Employer is the lessee of the Facility pursuant to a net lease.
- "Operating Manuals" means the operating data, design drawings, specifications, vendors’ manuals, warranty requirements, procedures (including those for maintenance of the Facility and environmental and safety compliance) and similar materials with respect to the Facility.
- "Procedures Manual" has the meaning set forth in Article 4.1.
- "Project Agreements" means the agreements relating to the Facility, including any Power Purchase Agreement, Interconnection Agreement, Loan Agreements, this Agreement and all other agreements applicable to the Facility, permits, and licenses required for the operation, maintenance and management of the Facility, as identified in writing by Employer.
- "Prudent Utility Practice" means:
  a) any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry in the country and geographic region where the Facility is located during the relevant time period, or
  b) practices, methods and acts that, in the exercise of reasonable judgment on the facts known (or that reasonably should have been known) at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.
- "Reference Rate" means the three-month US Dollar Rate published by London Interbank Offered Rate (LIBOR), plus 1%.
- "Reimbursable Costs" has the meaning set forth in Article 4.3.
- "Services" has the meaning set forth in Article 2.1.
ARTICLE 2: SERVICES

2.1 Scope of Services:

2.1.1 Physical Boundaries:

a) Boundary of the Plant: Inside the wall of the Plant, from the gate of the power plant, including all facilities, systems, buildings, dining room and dorm room etc.

b) Boundary from the Port (Jetty): Where all coal is unloaded, include ship docking.

c) Boundary of Electrical System: From start-up/standby transformer to 440kV knife-switch of the power grid.

d) Boundary of the Water System: From seawater intake to waste-water outlets.

2.1.2. Contractor’s General Scope of Work

The following are the general scope of the O&M Works to be performed by the Contractor which shall including but not limited to:

a) Operation and maintenance work of all main systems including but not limited to Boiler, Turbine, Generator, DCS, and all auxiliary systems including but not limited to ash handling system, coal handling system, compressed air system, FGD system, transformers, hydrogen plant, waste-water treatment, coal yard management, jetty, etc.

b) Maintenance works shall at least consist of specialty system as following, including but not limit to:
   - Turbine and its auxiliary systems.
   - Boiler and its auxiliary systems.
   - Electric maintenance.
   - BOP system maintenance (which includes: coal handling system, ash handling system, water treatment system, FGD system, hydrogen plant, waste-water treatment etc.)
   - Relay Protection.
   - Automatic control system maintenance.
   - Communication systems (network, telephone) provided by the Employer.
   - Jetty & Equipment.

c) The Contractor shall procure the spare parts and consumables and assist the Employer with the inventory management works, including but not limited to:
   - Furnishing spare parts list for the Plant, including spare parts for overhauls;
   - Furnishing spare parts procurement plan on a timely basis;
   - Standardize the procurement procedure;
   - Standardize spare parts inventory management procedure consists with MIS (Management Information System) provided by the Employer;
   - For inventory management works, the contractor shall do its best to prevent theft, fire hazard, warehouse flood.
   - The Contractor shall provide experienced staff for inventory management works.

d) The Contractor shall be responsible for the training of Employer’s personnel.
2.1.3. Operational & Maintenance Works

The Contractor shall be required to perform the contracted scope of work within the following guidelines:

- Execute Operation and Maintenance Work for 5 years.
- Provide routine, minor, medium, and major maintenance.
- Facility shall be staffed on a 24 x 7 basis.
- Contractor shall be responsible for furnishing entire spare parts, tools and consumables until end of the Contract period, including major overhaul.
- Meet the standard of HSE in accordance with regulations and legislation applicable in Bangladesh.
- Contractor shall be responsible for the training of Employer's personnel.

The Operation and Maintenance Period shall commence on the Signing Contract Date and continue until the expiry or termination of the Contract. The Contractor shall perform services in the following periods as described herein:

a) Mobilization Period

Contractor shall provide one (1) month notification to Employer prior start of the mobilization period. The Contractor shall perform the following O&M Services during the Mobilization Period including but not limited to:

i) Obtain with the assistance of the Employer any permits and licenses required by Contractor to perform the services hereunder, including any Governmental or administrative authorizations required for business registration, employment, immigration and work permits.

ii) Develop and submit to Employer a detailed work plan for O&M Mobilization Period and initial Contract Year. This shall include plan and procedures for witness of testing and commissioning and taking over from the EPC Contractor.

iii) Develop and submit to Employer detailed procedures for New Defects Reporting that may come up during Defects Liability Period.

iv) Develop manuals and procedures for operations, maintenance, administration, training, occupational health and safety, quality assurance, quality control, chemistry, and environmental management, including the preparation of all Facility Operating Procedures, for Employer's review and approval. The procedures shall include the following but not limited to:

- Yearly Dependable Capacity Test Procedure
- Procedure and Formats for Reporting to Employer and other statutory authorities
- Plan and Budgeting procedure, including fuel management, maintenance activity, etc.
- Payment and Invoicing procedure

v) Develop a maintenance program including areas such as preventive and predictive maintenance procedures, work identification and approval methods, historical tracking of equipment maintenance, spares inventory management, personnel training, and parts supply arrangement.

vi) Develop a maintenance plan that includes routine, predictive, and preventive maintenance schedules and procedures such as outage planning and
procedures for unscheduled outages and other matters.

vii) Purchase initial office supplies, as required by the equipment manufacturers and Facility activities.

viii) Purchase, install and configure computers for use by plant staff as needed to support position specific requirements, including personal computers, printers, copiers, fax machines, word processing, spreadsheet, scheduling, presentation, anti-virus, etc.

ix) Initiate all workforce management and reporting systems (human resources, payroll and accounting, etc.).

x) Implement routine back-up and off-site storage of all computer data in a secure location selected in accordance with the practices of a Reasonable and Prudent Operator. The off-site location will be selected according to recommendations of the software provider and Employer. Contractor shall provide non-exclusive perpetual rights to the software products. All data, drawings, files, etc. developed or collected as part of the operation of the facility shall remain the property of Employer and shall be turned over at the time of termination or upon other reasonable notice by Employer.

xi) Develop Health, Safety, Security and Environment procedures, prior to the performance of any Services, including without limitation, the training of ‘Authorized Persons’ to perform and/or supervise potentially hazardous work on electrical installations, in confined spaces, at heights, with chemicals, and when engaging in welding and cutting operations i.e. ‘hot work’.

xii) With the assistance of Employer, develop site security and emergency communication and evacuation procedures.

xiii) Prepare and submit to Employer for approval Annual Budget, Three-Year Budget and Annual Facility Operating Plan. The Annual Facility Operating Plan shall follow manufacturers’ recommendations and technical limits and shall specify optimum running conditions for the plant and barred operating conditions which could damage the equipment.

xiv) Obtain, prior to the performance of any Services, the insurance policies set forth in the Contract.

 xv) Specify, procure, and maintain hand tools, as well as any necessary special clothing, safety gear and Personnel Protection Equipment (PPE) as may be necessary to operate and maintain the Facility safely.

xvi) Assist Employer with the receipt, inspection, storage and management of spare parts including developing long term spare parts tracking policies and procedures for use at the Facility.

xvii) Develop and put in place policies for ensuring a high availability of all critical parts and other components required for planned maintenance.

xviii) Assist Employer with the receipt and build-up of the initial Fuel inventories.

xix) Designate and employ Plant Key Personnel with the experience and qualifications required to manage the Facility during the Mobilization and Operation Periods.

xx) Develop job descriptions, staff hiring schedules and recruitment procedures. Hire and train Personnel to an appropriate skills and experience level to safely operate, maintain and monitor the Facility including, without limitation, security, safety, fire prevention and emergency response training and to coordinate plant start-up and commissioning with the Employer and the Off-taker and Authorized Persons following commissioning.

xxi) Develop a site security program in coordination with Employer.
xxii) Develop and implement a plant specific operations and maintenance training and qualification/ requalification program.

xxiii) Protect and maintain warehouse, workshops and other areas and spaces provided by Employer at the Facilities as required under O&M Works to perform the Services.

xxiv) Develop an Environmental Management Program that will ensure that all environmental monitoring requirements are met in accordance with required and applicable laws.

b) General O&M Services

The Contractor shall perform the following Services during the Contract period including but not limited to:

i) Provide all O&M personnel, supervision, administration, equipment, tools, heavy equipment, consumables, spare parts, repairs, maintenance, replacements, installation, and all other work and activities required to ensure the proper function of the Facility(s).

ii) Provide all services necessary to operate and maintain the Facility in good operating condition with the objective of achieving the required availability during the term as defined in the Contract and in accordance Article 2.2.

iii) During the work performance period, the Contractor shall use its expertise to develop plans for optimizing the overall performance of the Plant, including but not limited to, optimization of operation works, make suggestions of system upgrade, optimization of the structure of the workforce, optimization of work-flow.

iv) Perform regular performance test to confirm Performance Guarantee as specified in Performance Guarantees (Exhibit A, Schedule 6) with the testing equipment/device which is provided by the Employer and shall keep the testing equipment/device in intact condition.

v) Respond in a timely manner (but in no event shall the time to respond exceed five (5) working days) to written requests by Employer for information about the Services.

vi) Assume care, custody, control, and responsibility for the security of the Facility(s) and the day-to-day operation and maintenance of the Facility on a twenty-four (24) hours a day, seven (7) days a week basis, and provide technical and administrative support as required for the Facility(s) operation and maintenance.

vii) Assist the Employer with the receipt and management of coal (including unloading and implement coal-mix consumption plan), limestone, treated water (if applicable) and fuel oil, including but not limited to, record-keeping, ordering, receiving, sampling and laboratory analysis. Laboratories and equipment for on-site gauge calibration which is provided by the Employer shall be accredited and/or meet the requirements of other applicable regulating standards or organizations.

viii) Assist Employer with the management of an Environmental Management Program that will ensure that all environmental monitoring requirements are met in accordance with the requirements detailed in the Environmental Guidelines and the applicable Laws of Bangladesh. The Environmental Management Program must be updated from time to time, as the need arises and as regulations change.

ix) Provide regular environmental monitoring report as required by the Employer.
x) Review Facility permits and applicable Laws to develop a comprehensive regulatory and permit compliance matrix for the Facility that establishes reporting and compliance requirements in connection with the Operation and Maintenance of the Facility.

xi) Develop, implement and maintain a maintenance, inspection and repair management program which (a) meets all applicable manufacturer warranty terms and conditions, preventive and predictive maintenance, inspection and repair requirements, recommendations and specifications, (b) meets Reasonable and Prudent Operator Practices, and (c) includes provisions for continuously improving such program.

xii) Develop, implement, and maintain emergency preparedness procedures that allow an immediate and appropriate response to events such as major equipment failures, fires, explosions, bomb threats, release of toxic chemicals, employee illnesses and other accidents.

xiii) Perform routine and scheduled inspections and monitoring of the site facilities and equipment (such as adjusting, cleaning equipment and maintaining levels of liquids).

xiv) Perform or cause to be performed all Scheduled Maintenance in accordance with the manufacturer’s recommendations.

xv) Perform routine and daily house cleaning and maintenance of the Facility, including workshop, and laboratory equipment used in conjunction with operation.

xvi) Maintain plant personnel records, payroll, benefits, training, etc.

xvii) Use best effort and judgment as an experienced Contractor to adopt and implement policies and practices designed to avoid and minimize the disruption caused by labor difficulties, including without limitation, work stoppages, boycotts, walkouts, slowdowns and strikes at the Facility(s).

xviii) Maintain the Facility specific operations and maintenance training and qualification program. Conduct routine training to enhance and maintain staff skills to meet O&M goals and improve safety.

xix) Coordinate scheduled and unscheduled maintenance outages and power deliveries with Employer and grid authority, subject to the policy directives of Employer.

xx) Supply Employer in a timely manner with all requirements regarding chemicals, lubricants, operating utilities other than fuel and water (if applicable), purchased electricity (if applicable), materials, and other items normally used and supplied for the type and size of the Facility, to the extent that Employer chooses to purchase any such items by itself.

xxi) Implement and maintain an accurate accounting and inventory system including cost ledgers, inventory records, accounts payable, etc. Document, review and approve operating and maintenance expenses.

xxii) Prepare and submit to Employer for approval annually an O&M plan that will include projections of availability, fuel consumption, spare parts, consumables, planned outages, labor and other costs. The O&M Plan shall follow manufacturer’s recommendations and technical limits.

xxiii) Prepare annual reports, annual budgets and operating plans for Employer review and approval in accordance with the Contract. Documents shall be prepared in English unless otherwise specified.

xxiv) Implement and maintain a document control system for documents critical to project operation, maintenance, inspection and repair, such document control
system. All documents are considered the property of the Employer and will be transferred to the Employer upon termination or expiration of the Contract.

xxv) The Contractor shall provide thirty (30) days written notice to Employer prior to the destruction of any such records and shall at Employer's request deliver such records to Employer.

xxvi) Prepare and maintain operating logs, records, and monthly (and/or other periodic frequency as requested by the Employer) reports regarding the operation and maintenance of the Facility detailing, among other things, expenses incurred compared to the annual budget, fuel use, power output, other operating data, Facility equipment and materials consumption, repairs performed, and status of Facility equipment and materials. Reports shall be maintained in accordance with Employer Administrative and Quality Control procedures and in accordance with the Contract.

xxvii) Ensure routine back-up and off-Site storage at a secure location selected in accordance with Prudent Utility Practices of all information stored on the hardware. The location will be selected according to recommendations of the software provider and Employer.

xxviii) Prepare technical evaluations of the Facility as may be reasonably requested by Employer.

xxix) Collaborate with Employer in maintaining inventory of Facility(s) equipment and materials and purchase replacements as such items are used.

xxx) Maintain and regularly update an equipment repair and preventive maintenance program that meets equipment manufacturers' specifications and recommendations.

xxxi) Provide technical engineering support for solving operation and maintenance problems.

xxxii) Provide routine cleaning and hygiene, and generally keep the function area clean and in good order (including Facility fire protection, lighting and safety equipment.

xxxiii) Provide routine building maintenance including but not limited to painting, plumbing, electrical, sanitation, drainage, sewage, etc.

xxxiv) Provide routine building maintenance at least once a year for touch-up painting of the building and equipment.

xxxv) At Employer's request, Contractor recommends Facility modifications, capital improvements, replacements, and, at Employer's approval, implements the same in accordance with plant procedures.

xxxvi) Provide routine maintenance of all Work Vehicles/Weight Lifting Device/Equipment which are provided by Employer.

xxxvii) Provide routine maintenance and management of the elevators within the function area.

xxxviii) Cooperate in the provision of information to authorized representatives of Employer, including Government entities, accountants, and attorneys.

xxxix) Comply with all applicable governmental requirements and Employer's Agreements in preparing emergency response plans, hazardous waste disposal plans, material handling plans, and spill containment plans and assist Employer in preparing all other plans and documents required by applicable governmental requirements and Employer's Agreements. The Contractor shall cooperate Employer implement of Collection of waste materials and hazardous substances from to designated Employer area and its shall be managed and owned by Employer.
xli) The Contractor shall be responsible for the fire hazard prevention and
firefighting in function area. The Contractor shall ensure all the fire prevention
devices within the function area in good condition.

xlii) Promptly and effectively respond to emergencies, including, but not limited to,
fires and encroachments (communications with the news media
concerning any such emergency being made only after approved by, or in
accordance with guidelines previously approved by the Employer).

xliii) Promptly and effectively respond to unscheduled outages.

xlviii) Coordinate, as necessary, with Employer and grid authority on the operation
and dispatch of the unit.

lix) Plan, manage, and execute all scheduled outages required by the Facility(s),
including major overhauls. Coordinate planning and execution of outages
with major equipment OEM's under applicable long term services
agreements.

l) Installation of all parts as and when needed for scheduled inspections or
unplanned outages or otherwise needed to keep the Facility(s) operating
properly.

li) Provide technical evaluation, monitoring, and surveillance of the Facility(s)
including but not limited to:

- Net dependable capacity tests.
- Plant performance tests.
- Equipment specific performance tests.
- Emissions tests.

lii) Perform work on all scheduled inspections/overhauls and unscheduled/forced
outages.

liii) Assist Employer handle all effluents, waste and refuse from the Facility in
accordance with all applicable Laws, Occupational Health, Safety, and
Security Plans and associated procedures. The Contractor shall dispose of
non-hazardous materials from the Facility in accordance with all applicable
laws and Employer's plans and policies.

liv) Upon termination or expiration of the Contract, perform a complete inventory
of spare parts and assist Employer with assessing the value of such inventory of spare parts.

lv) Two (2) years prior termination or expiration of the Contract, assist Employer in developing spare parts list including but not limited to recommended spare parts for the Facility.

lvii) Upon termination or expiration of the Contract, assist Employer with the turnover of all plant assets, documents, records, equipment, and other materials. Assist Employer, if required, in litigation, arbitration, dispute resolution and other proceedings with third parties involving the Facility.

lviii) The Contractor shall be responsible for the planning, management, and execution of all scheduled outages and unscheduled outages including:
   • Identifying, recruiting, and managing outage staff.
   • Identifying, procuring and transporting required parts and consumables.
   • Maintaining quality assurance oversight and records.
   • Identifying and coordinating required testing.
   • Coordinating power supply with the Employer and grid authority.
   • Documenting outage activities through outage reports, test reports, Management Information System (MIS) record entry, updating plant drawings and other records, etc.

lix) The Contractor shall use the Machining Workshop under the supervision of the Employer.

lx) The Contractor shall deploy its own security personnel for the security within the function area.

lxii) The Contractor shall establish a medical institution at the Site to meet medical needs. The medkit shall be set up at various locations of the Site and be checked and refilled periodically.

lxiii) The Contractor shall be responsible for the food and accommodation of the staff use the facilities provided by Employer, including but not limited to, procurement, garbage disposal work etc.

lxiv) Demobilization of O&M personnel at the end of Contract period.

lxv) Painting of the Plant at end of Contract period.

c) Planned Maintenance / Overhaul
The Contractor shall be required to provide the following work, including but not limited to the level of scope of work outlined in this section. The Contractor may achieve the work described below through the use of O&M personnel, approved on site contractors, off site specialists (via a lease or exchange agreement), or a combination of all three.

The Contractor shall perform maintenance including but not limited to checking, testing, cleaning, repair and replacement in accordance with OEM’s recommendation and within Reasonable and Prudent Operator Practices, including procuring and transporting of all required materials and spare parts, and mobilization and demobilization of specialist or
expert. The maintenance program shall cover all OEM’s recommendations, including one cycle major overhaul.

Perform routine preventive maintenance activities in accordance with OEM’s recommendation, but not limited to:

i)  Lubrication/cooling checks and top up  
ii) Cleaning or flushing  
iii) Preservation  
iv) Fluid changes and replacement  
v) Visual or bore scope inspections  
vi) Operational monitoring  
vii) Vibration analysis  
viii) Chemical analysis (fuel and water testing)  
ix) Trend analysis  
x) Calibration  
xi) Measurements  
xii) Adjustments  
xiii) Lube oil analysis  
xiv) Replacement of wear/sacrificial parts  
xv) Leak test  
xvi) Resistance testing

Perform corrective maintenance activities in accordance with Reasonable and Prudent Operator Practices to troubleshoot, inspect, repair and replace the equipment upon identification and detection of certain conditions, including but not limited to:

i)  Physical fault conditions such as:  
   •  Blocked/stopped flow  
   •  Fractures/break/breaches  
   •  Cracks  
   •  Distortion/displacement  
   •  Corrosion/discholoration  
ii) Out of specification conditions such as:  
   •  High/low flow, pressure, temperature, or chemistry  
   •  Off voltage  
   •  Out of limits/adjustments  
   •  Erratic output  
   •  Intermittent/spurious operation  
   •  Failure to control/hold  
   •  High/low output  
   •  Improper timing  
iii) Demand fault conditions such as failure to:  
   •  Start/run/operate  
   •  Stop
• Open
• Close
• Move/release/respond

iv) Abnormal characteristics such as:
• Overheating
• Noise
• Vibration
• Chatter
• False response

v) Leakage conditions such as:
• Leakage to surrounding environment
• Leakage past seats/stems/packing/seals

The preventive and corrective maintenance activities shall be inventoried and performed on a system-by-system basis in MIS/CIS system and shall apply to the following equipment types:

i) Circuit breakers
ii) Batteries
iii) Electric heaters
iv) Motors (AC/DC)
v) Valves/dampers (air/motor/hydraulic driven)
vi) Control Relays (AC/DC)
vii) Transformers
viii) Analyzers / sensors / metering / recorders / switches / transmitters / controllers
ix) Pumps/ fans / blowers / compressors
x) Heat exchangers / radiators
xi) Filters / strainers
xii) Air dryers
xiii) Tanks / vessels
xiv) Ponds
xv) Pipe / pipe fittings / pipe supports
xvi) Vibration isolators / couplings / expansion joints
xvii) Steam turbine
xviii) Generators / exciters

Spare Parts are those which may be required at any time during O&M Works shall be provided for all equipment and machinery and shall be readily available at all times. Spare Parts shall be delivered and made available as anticipated by the Schedule. Spare Parts shall be replaced as they are used. Spare Parts shall be stored in the Contractor’s warehouse. The Contractor will responsible for the maintenance and inventory of the spare parts.

The following terminologies are used to guide the Contractor in performing their services.
Generally, maintenance intervals can be influenced by operating conditions, type of fuel, and level of past maintenance performed on the equipment.

**Routine Maintenance**
This is the type of maintenance that should be performed by site maintenance or operation staff at low operating hour frequency on periodicity recommended by the OEM. Typically, these maintenance tasks have periodicities of daily, weekly, monthly or quarterly and can be performed while the equipment is operating. This maintenance includes various inspections, preservations, cleaning and adjustments.

For perform the Routine Maintenance work, the contractor shall establish a defect management system, for the purpose of archiving and analyzing of all equipment’ health condition, and to make reasonable spare part procurement plans.

**Minor Maintenance (C-Class)**
This is the type of maintenance that typically is performed in light of the operation and condition of the machine, approximately every 4,000 hours, or on annual basis, whichever comes first. This maintenance requires the unit to be shut down and cold. Depending on the capabilities and training of the site maintenance staff, this maintenance may be performed by site personnel. This maintenance includes various inspections with special tools, cleaning, adjustments and replacement of minor components.

**Medium Maintenance (B-Class)**
This is the type of maintenance that typically is performed approximately every 10,000 hours up to 30,000 hours or about every 2-3 years. This maintenance work requires planned outage time in order to complete the component exchange.

**Major Maintenance (A-Class)**
This is the type of maintenance that typically is performed approximately every 40,000 hours or higher, or approximately in interval of every 5 years. The key feature of this maintenance is a complete tear down and inspection of the unit and rebuilding with new or refurbished parts as required. Typically, removal of the main parts to be taken to OEM or overhaul depot might be required.

d) **Training Program**
The Contractor shall provide a training program for the purpose of training the Employer’s personnel in the operation and maintenance of equipment and systems furnished under the Contract. The Contractor shall provide the following, but not limited to,

i) Site security
   ii) Safety
      • General safety training
      • General electrical safety
      • Arc flash training
      • Lock Out/Tag Out
      • Confined space entry
      • Respiratory training, etc.
The purpose of the training program shall be to provide training for the Employer's personnel, which will allow them to operate and maintain the Facility in a safe and efficient manner. Specific training shall be provided in testing, startup, operation, maintenance, and shutdown of all equipment installed at the plant.

The training shall be conducted under the direction and supervision of the Contractor's training coordinator. During this period, the Contractor shall be wholly responsible for operation and maintenance of the Plant. The training coordinator shall be a competent person with teaching and power plant experience.

All training and training materials shall be supplied in the English language.

The program shall provide classroom training, on-the-job training for the Employer's operations and maintenance personnel. The Employer will supply key operator personnel and maintenance personnel who are experienced with operation and maintenance of power plants.

The Contractor's training coordinator shall be responsible for the overall management, direction, development, and implementation of the training program. The training

- Facility evacuation

  iii) Emergency Response
      - General staff training
      - First aid / first responder
      - Fire brigade
      - Environmental and hazardous waste response

  iv) Facility Administration
      - Administrative and business practices and procedures.
      - Software training:
        - MIS/CIS.
      - Performance monitoring.
      - Accounting and payroll.
      - Inventory.
      - Other software.
      - Purchasing and inventory management

  v) Operations
      - Facility operations procedures
      - Contractor's specific training
      - Equipment/systems specific training

  vi) Facility Operations
      - Position specific training
      - Practical factors, tests, qualification boards
      - Proficiency requirements

  vii) Maintenance
      - General
      - Equipment specific
      - MIS/SIS
      - Welding certifications (for Contactor's personnel only)
coordinator shall finalize the scope of training and arrange, schedule, and monitor all training activities.

The training coordinator shall manage the training staff and be responsible for developing the overall training plan, establishing class procedures, developing the training schedule, and participating in the training as an instructor. The training coordinator shall prepare training aids as required and shall further ensure that major equipment supplier instructors understand and comply with the established training plan and lesson format.

The major courses of training shall consist of the following:

i) **Facility Fundamentals**

Facility fundamentals shall be discussed to cover basic information that is required to understand the design and operation of the various plant equipment and systems.

ii) **Facility Specifics**

This presents the theory of design, construction, operation and maintenance of plant equipment and systems.

iii) **Software Tools Training**

This training covers software tools that are required for O&M activities such as MIS & CIS including inventory control system, etc.

The study material used for training the station operating personnel shall be contained in an Operator Training Manual. This manual shall cover in detail the arrangement, function, and operation of all systems and major equipment in the plant.

Each section shall be broken down into lectures or training modules. A number of questions shall be attached at the end of each lecture as an aid in studying lecture content.

In addition to the Operator Training Manual, vendor manuals, system descriptions, operating procedures, pertinent drawings, various computer lists, logic diagrams, and library books shall be available for use by the trainees as these reference sources are completed.

Additional training for operation and maintenance personnel shall be accomplished in the form of "hands-on" indoctrination during the startup, shutdown and maintenance of the equipment and systems, unless otherwise agreed by the Employer. As part of this phase of the training, the operating and maintenance personnel shall be expected to observe Contractor’s personnel as they perform startup, shutdown and maintenance tasks, and where possible, to work with and provide assistance to the Contractor during operation and maintenance of the facility. In this way, operation and maintenance shall become an extension of their in-class training and prepare them for the actual work.

All copies of documents used in operation and maintenance training shall be provided in hard copy and electronic file and shall become the property of the Employer for future training use.

2.2 **Standards for Performance of the Services:**

Contractor shall perform the Services required under this Agreement, including those set forth in Appendix A, in a prudent, reasonable, and efficient manner and in accordance with:

i) Reasonable and Prudent Utility Practices

ii) Original Equipment Manufacturers' recommendations,

iii) The operating limits of electrical and mechanical equipment and other requirements and capabilities specified in the nameplates thereon or in operation and maintenance documentation relating thereto, or in supplier and manufacturer warranty requirements and recommendations relating thereto and the O&M Performance Target.

iv) the applicable Annual Facility Operating Plan and Annual Budget,

i) all applicable Laws,
ii) the Project Agreements

iii) the requirements of National Load Dispatch Center, and

iv) all insurance policies specified in Section 7 of this Contract. Contractor shall use all reasonable efforts to optimize the useful life of the Facility and to minimize Reimbursable Costs and Facility outages or other unavailability.

2.3 Contractor’s Personnel Standards:
Contractor shall provide as reasonably necessary all labor and professional, supervisory and managerial personnel as are required to perform the Services. Such personnel shall be qualified to perform the duties to which they are assigned and shall meet any requirements for Project personnel under the Project Agreements. All individuals employed by Contractor to perform the Services shall be employees of Contractor and their working hours, rates of compensation and all other matters relating to their employment shall be determined solely by Contractor (subject to Employer's approval rights with respect to the Annual Budget). With respect to labor matters, hiring personnel, and employment policies, Contractor shall comply with all applicable Laws. Contractor also shall act in a reasonable manner that is consistent with the intent and purpose of this Agreement and with Contractor’s acknowledgment (hereby given) that Contractor has no authority to enter into any contracts with respect to labor matters that purport to bind or otherwise obligate Employer.

2.4 Compliance:
Contractor shall comply with all Laws applicable to the operation, maintenance and management of the Facility and the performance of the Services. Contractor shall apply for and obtain, and Employer shall assist Contractor in applying for and obtaining, all necessary permits, licenses and approvals (and renewals of the same) required to allow Contractor to do business or perform the Services in the jurisdictions where the Services are to be performed. Contractor shall provide reasonably necessary assistance to Employer, to secure permits, licenses, and approvals (and renewals of the same) that Employer is required to obtain from or file with any governmental agency regarding the Facility. Contractor also shall file such reports, notices, and other communications as may be required by any governmental agency regarding the Facility.

2.5 Operating Records and Reports:
Contractor shall maintain, at a location acceptable to Employer, the Facility operating logs, records, and reports that document the operation and maintenance of the Facility, all in form and substance sufficient to meet Employer's reporting requirements under the Project Agreements. Contractor shall maintain current revisions of drawings, specifications, lists, clarifications and other materials related to operation and maintenance of the Facility provided to Contractor by Employer and vendors. Contractor shall provide Employer reasonably necessary assistance in connection with Employer's compliance with reporting requirements under the Project Agreements, applicable Laws or any other agreement to which Employer is a party relating to the Facility. Such assistance shall include providing reports, records, logs and other information that Employer may reasonably request as to the Facility or its operation.

2.6 No Liens or Encumbrances:
Contractor shall maintain the Facility free and clear of all liens and encumbrances resulting from any action of Contractor or work done at the request of Contractor, except for such liens or encumbrances that result directly from nonpayment by Employer of amounts due and owing to Contractor under this Agreement.
2.7 No Action:
Except where such action is expressly permitted by this Contract, Contractor shall not take any action that would cause a default under any Project Agreement.

2.8 Emergency Action:
If an emergency endangering the safety or protection of persons, the Facility, or property located near the Facility occurs, Contractor shall promptly notify Employer and take all necessary action to attempt to prevent or mitigate any such threatened damage, injury or loss. Contractor shall make reasonable efforts to minimize any cost associated with remedial action in case of such an emergency.

2.9 Action in Extraordinary Circumstances:
In the event that:

i) the Facility or major Facility equipment suffers an unplanned outage (or Contractor reasonably believes that such an occurrence is imminent), and

ii) Contractor has made reasonable, but unsuccessful, efforts to notify and communicate with Employer regarding such occurrence or imminent occurrence in accordance with the terms of this Agreement,

Then Contractor shall:

i) take all necessary action to prevent or to mitigate such unplanned outage,

ii) make reasonable efforts to minimize any cost associated with such remedial action,

iii) continue to attempt to notify and communicate with Employer regarding the occurrence and the remedial action, and

iv) shall not expend for such purposes more than an aggregate of ten percent (10%) of the Annual Budget in any Contract Year.

ARTICLE 3: EMPLOYER’s RESPONSIBILITIES

3.1 Information:
Employer shall provide Contractor with all vendor manuals, spare parts lists, Facility data books and drawings which are provided to Employer pursuant to any Project Agreement or by any contractor responsible for construction, installation, repair or maintenance of the Facility or a part thereof. Subject to the standards of performance set forth in Article 2.2, Contractor shall be entitled to rely upon such information in performance of the Services. Employer shall also provide Contractor with copies of all Project Agreements and any amendments thereto and any other documents that define the Facility's operating requirements.

3.2 Overhaul of Major Equipment and Capital Improvements:
The cost of all major equipment teardowns and overhauls and all capital improvements shall be the responsibility of Employer. Contractor shall promptly notify Employer in writing of any such teardowns and overhauls of major equipment or capital improvements that Contractor believes are necessary or advisable together with a proposed schedule for completing such repairs or improvements. To the extent reasonably possible, the costs of all major equipment teardowns and overhauls and all capital improvements shall be incorporated into the applicable Annual Budget. If such costs have been incorporated into the applicable approved Annual Budget, or if Employer has otherwise consented in writing to reimburse Contractor for such costs, Contractor shall schedule, coordinate, contract and
oversee the performance of such activities. Contractor also shall be responsible for monitoring and enforcing contract compliance by the contractor performing such work, including taking such steps, short of litigation, to enforce any warranties granted to Employer by such contractor.

3.3 Annual Budget and Facility Operating Plan:
In accordance with Article 5, Employer shall be responsible for approval of the Annual Budget, the Annual Facility Operating Plan and the Three-Year Budget.

ARTICLE 4: COMPENSATION AND PAYMENT

4.1 Payments:
As compensation to Contractor for performance of the Services hereunder, Employer shall pay Contractor the Annual Operating Fee (or a pro rata portion thereof in the case of a Contract Year of less than 12 months). In addition, Employer shall (at Employer’s Option) either:
   i) reimburse Contractor, in the manner and at the times specified in this Article 4 and Appendix B, as modified from time to time, for all Reimbursable Costs or
   ii) pay such Reimbursable Costs directly to the applicable third parties.

4.2 Annual Operating Fee:
For the first Contract Year and each subsequent Contract Year, Employer shall pay to Contractor the sum of __[Monthly amount]___ per month of the Contract Year, for an annual fee of __[Annual amount]__ (the “Annual Operating Fee”). Beginning on the first day of the second Contract Year and on the first day of each Contract Year thereafter, the Annual Operating Fee (and the corresponding monthly operating fee) shall be adjusted to reflect changes in the [Escalation factor and calculation method] .

4.3 Reimbursable Costs:
Employer shall reimburse Contractor for all costs incurred by Contractor in performing the Services, including the costs set forth in Appendix B (collectively, the "Reimbursable Costs"). Employer’s obligation under this provision is subject to:
   i) Employer's express approval of the costs as part of an Annual Budget or separately in writing, or
   ii) Contractor incurring costs in accordance with Article 2.8 (Emergency), 2.9 (Extraordinary Circumstances).
Expenditures made by Contractor in excess of the Annual Budget that are required to comply with any Law applicable to the Services or to the Facility, shall be approved and reimbursed by Employer. Subject to Employer’s right to modify the provisions of this Article 4.3 from time to time upon the reasonable request of the Lenders, Employer shall pay Reimbursable Costs as follows:
   i) Employer will advance to Contractor on a mutually agreed basis, funds required for Contractor to make payments as they become due in accordance with the Annual Budget. Not less than fifteen (15) days before the first day of each calendar month during the term of this Agreement, Contractor shall submit to Employer an estimate of funds required for such month, which estimate shall be in accordance with the Annual Budget. Employer shall pay to Contractor the amount of such estimate prior to the time such funds are required by Contractor. Such advances shall be deposited in a
separate account in Contractor's name, as agent for Employer, in a bank or banks approved by Employer, subject to withdrawal by Contractor solely for the purpose of making required payments. Within fifteen (15) days of the end of each month, Contractor shall submit to Employer a statement of receipts and disbursements, in detail satisfactory to Employer, together with supporting documentation.

ii) Contractor shall not incur Reimbursable Costs unless they are incurred in accordance with the applicable Annual Budget, or are permitted by Article 2.8 (Emergency), 2.9 (Extraordinary Circumstances). If Contractor becomes aware that Reimbursable Costs exceed or will exceed the amount provided in the applicable Annual Budget by 5% or more, Contractor shall use all reasonable efforts to notify Employer within ten (10) days and shall not, without Employer's approval to amend the applicable Annual Budget or Employer's authorization for Contractor to make such expenditure, perform any further Services that will cause or increase a budget overrun, except as provided in 2.8 (Emergency), 2.9 (Extraordinary Circumstances). If Employer refuses to authorize expenditures in excess of the Annual Budget, Contractor shall be relieved of those duties or obligations of this Agreement that cannot be performed without the expenditures Employer refuses to approve.

iii) In all cases, Contractor shall use reasonable commercial efforts to mitigate any adverse effect from Employer's refusal to authorize expenditures in excess of the Annual Budget. Employer's reimbursement of any cost related to the Services shall not be construed as Employer's approval or acceptance of the Services.

4.4 Adjustments and Conditions:
Notwithstanding the payment of any amount pursuant to the foregoing provisions, Employer shall remain entitled to conduct a subsequent audit and review of all Reimbursable Costs incurred and paid by Employer and of any supporting documentation for a period of 2 years after the applicable Contract Year. If such audit and review shows that any amount previously paid by Employer to Contractor did not constitute a Reimbursable Cost, Employer may:

i) recover such amount from Contractor, plus interest at the Reference Rate, calculated from the date the audit commenced, or

ii) deduct such amount from any payment that thereafter may become due to Contractor.

4.5 Billing and Payment:
Within 15 days following the end of each month, Contractor shall submit the receipts and disbursements showing Reimbursable Costs for such month in accordance with Article 4.2(a). Within 15 days after receipt of any such invoice, Employer shall:

i) Pay Contractor the sum specified in such invoice, less:
   - any amounts previously deposited with Contractor relating to such invoice, and
   - any portion of such invoice amount that Employer disputes in good faith or is permitted to offset under this Agreement; and

ii) With respect to any disputed portion of such invoice, provide Contractor with a written statement explaining, in reasonable detail, the basis for such dispute. The parties shall attempt to resolve any such disputed portion in accordance with GC Clause 20.

4.6 Interest:
Any amount owed to either party under this Agreement by the other party which remains unpaid more than 30 days after the date such amount is due and payable shall begin to
accrue interest at the Reference Rate commencing on the thirty-first day after such due date.

ARTICLE 5: PROCEDURES, PLANS AND REPORTING

5.1 Procedures Manual:
The parties have approved a procedures manual that includes procedures for:
i) reporting and correspondence pursuant to this Agreement,
ii) procurement and contracting, and
iii) accounting, bookkeeping and record-keeping ("Procedures Manual").

The Procedural Manual shall govern the covered activities of Contractor for the term of this Agreement, subject to such revision and amendment as agreed in writing by Employer and Contractor.

5.2 Annual Facility Operating Budget and Plan:
i) Proposal: At least 90 days before the beginning of each Contract Year, Contractor shall prepare and submit to Employer a proposed annual budget for the Contract Year, established on a monthly basis. The proposed annual budget shall include separate operating and capital budgets. The proposed annual budget shall also set forth, in detail acceptable to Employer,
   • anticipated operations, repairs and capital improvements,
   • maintenance and overhaul schedules,
   • planned procurement (including equipment, spare parts, and consumable inventories),
   • labor activities (including staffing, labor rates, and holidays),
   • administrative activities, and
   • other work proposed to be undertaken by Contractor, together with an itemized estimate of all Reimbursable Costs to be incurred.

Each proposed annual budget shall be accompanied by a proposed annual operating plan setting forth the assumptions and implementation plans underlying the proposed annual budget. Any actions to be performed by Contractor under the proposed annual operating plan shall be consistent with Contractor’s obligations set forth in this Agreement.

ii) Adoption: Employer shall review Contractor’s proposed annual budget and annual operating plan within 30 days following receipt of the proposals. Employer may, by written request, propose changes, additions, deletions and modifications to the proposals. If requested by Contractor, Employer shall provide Contractor any cost information in Employer’s possession from previous Contract Years applicable to items in the proposed annual budget. Employer and Contractor will then meet and use their reasonable commercial efforts to agree upon a final budget and plan (the "Annual Budget" and "Annual Facility Operating Plan", respectively), which shall be approved in writing by both parties. Except to the extent that the terms of Articles 2.8 and 2.9 permit Contractor to take actions which are outside the final Annual Budget without the consent of Employer, the final Annual Budget and Annual Facility Operating Plan shall remain in effect throughout the applicable Contract Year, subject to revisions and amendments proposed by either party and consented to in writing by the other party.

iii) Changes: Contractor shall notify Employer as soon as reasonably possible of any
significant deviations or discrepancies from the projections contained in the Annual Budget or Annual Facility Operating Plan.

iv) Failure to Adopt: If, by the first day of any Contract Year after the first Contract Year, the parties are unable to reach agreement concerning any item or portion of the Annual Budget for such Contract Year, then the amount(s) of such item or portion of the Annual Budget for such Contract Year shall be equal to 105% of the amount for the corresponding item or portion of the Annual Budget for the preceding Contract Year.

v) Three-Year Budget. At least 60 days before the first day of each Contract Year, Contractor shall prepare and submit to Employer a proposed budget for the next three (3) Contract Years or the remaining term of the Agreement, whichever period is shorter. The proposed three-year budget shall be established on an annual basis and shall include separate operating and capital budgets. The proposed three-year budget shall also set forth, in detail acceptable to Employer,

- anticipated operations, repairs and capital improvements,
- maintenance and overhaul schedules,
- planned procurement (including equipment, spare parts, and consumable inventories),
- labor activities (including staffing, labor rates, and holidays),
- administrative activities, and
- other work proposed to be undertaken by Contractor, together with an itemized estimate of all Reimbursable Costs to be incurred, accompanied by the underlying assumptions and implementation plans of the proposed five-year budget.

Employer shall review Contractor’s proposed three-year budget within 30 days following receipt of the proposal. Employer may, by written request, propose changes, additions, deletions and modifications to the proposals. Employer and Contractor will then meet and use their reasonable commercial efforts to agree upon a final three-year budget (the “Three-Year Budget”), which shall be approved in writing by both Parties. If a final Three-Year Budget is not approved in its entirety by both parties, the proposed three-year budget submitted by Contractor, together with Employer’s final suggested changes, additions, deletions and modifications shall serve as the Three-Year Budget. The Three-Year Budget shall be used only for planning and comparison purposes and shall not constrain Contractor in its actions or expenditures, provided, however, that Contractor shall be required to conform in its operations to the Annual Budget and Annual Facility Operating Plan as provided in this Contract.

5.3 Operating Data and Records:
Contractor shall monitor and record all operating data and information that:

i) Employer must report to any person or entity under any Project Agreement,

ii) Employer must report to any government agency or other person or entity under applicable Laws and

iii) Employer reasonably requests.

Contractor shall report required or requested operating data and information to Employer as specified by Employer to support monthly invoicing under the Project Agreements, and within 15 Business Days following a request by Employer. Operating data to be reported include information from operating logs, meter and gauge readings and maintenance records.
5.4 Accounts and Reports:
Contractor shall cooperate with Employer in complying with reporting requirements set forth in the Project Agreements and shall, during the term of this Contract, furnish or cause to be furnished to Employer the following reports concerning the Facility operations and the Services:

i) Monthly Reports: Within ten (10) Business Days following the last day of each calendar month, Contractor shall submit:
   - a progress report, in detail acceptable to Employer, covering all activities during such month with respect to operations and maintenance (including information regarding the amount of electric energy generated, hours of operation, heat rate, availability, outages, accidents and emergencies), capital improvements, labor relations, other significant matters, and Services. The monthly report shall include a comparison of such items to the corresponding values for the preceding month and for the corresponding portion of the previous Contract Year, a listing of any significant operating problems along with immediately planned remedial actions, and a brief summary of major activities planned for the next reporting period, and
   - a statement setting forth all Reimbursable Costs paid or incurred in such month, which statement shall itemize, in detail acceptable to Employer, the computation of such Reimbursable Costs and shall state whether or not the Facility operations have conformed to the applicable Annual Facility Operating Plan and Annual Budget during such reporting period and if not, the extent and reasons for any deviation and the planned remedial action.

ii) Annual Reports: As soon as available, and in any event within 60 days after the end of each Contract Year, Contractor shall submit an annual report describing, in detail substantially similar to that contained in the monthly reports referred to in Article 5.4(a), the Facility activities and operating data for such Contract Year. The annual report shall present a comparison of such Facility activities and operating data with the goals set forth in the Annual Facility Operating Plan and Annual Budget for such Contract Year, and with those achieved during the preceding Contract Year (if applicable) and an explanation of any substantial deviations. Within 30 days after submission of each annual report, Contractor shall meet with Employer to review and discuss the report and any other aspects of Facility operations that Employer may wish to discuss.

iii) Litigation, Permit Lapses: Upon obtaining knowledge thereof, Contractor shall promptly notify Employer in writing of:
   - any event of default under any of the Project Agreements;
   - any litigation, claims, disputes or actions, threatened or filed, concerning the Facility or the Services;
   - any refusal or threatened refusal to grant, renew or extend (or any action pending or threatened that might affect the granting, renewal or extension of any license, permit, warranty, approval, authorization or consent relating to the Facility or the Services; and
   - any dispute with any governmental authority relating to the Facility or the Services.

iv) Other Information: Contractor shall promptly submit to Employer any material information concerning new or significant aspects of the Facility’s activities and, upon Employer's request, shall promptly submit any other information concerning the Facility or the Services.
5.5 Additional Communications:
Contractor shall communicate certain additional events specified in Appendix C to Employer and third parties in accordance with the communication protocols set forth in Appendix C to this Agreement.

ARTICLE 6: LIMITATIONS ON AUTHORITY

6.1 General Limitations:
Notwithstanding any provision in this Contract to the contrary, unless previously approved by Employer in writing or through Employer’s approval of the Annual Budget, Contractor and any employee, representative, contractor or other agent of Contractor are prohibited from taking the specified actions with respect to the matters indicated below:

i) Disposition of Assets: Sell, lease, pledge, mortgage, convey, or make any license, exchange or other transfer or disposition of any property or assets of Employer, including any property or assets purchased by Contractor where the purchase cost is a Reimbursable Cost;

ii) Contract: Make, enter into, execute, amend, modify or supplement any contract or agreement
   • on behalf of, in the name of, or purporting to bind Employer or
   • that prohibits or otherwise restricts Contractor ‘s right to assign such contract or agreement to Employer at any time;

iii) Expenditures: Make or consent or agree to make any expenditure for equipment, materials, assets or other items which would be a Reimbursable Cost, except in conformity with the Annual Budget; provided, however, that solely in connection with actions taken by Contractor pursuant to Articles 2.8 (Emergency), 2.9 (Extraordinary Circumstances), Contractor may, without prior approval from Employer, make limited expenditures outside the Annual Budget in accordance with those provisions;

iv) Other Actions: Take or agree to take any other action that materially varies from the applicable Annual Facility Operating Plan, Annual Budget or the requirements of any Project Agreement;

v) Lawsuits and Settlements: Settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by, Employer or Contractor, the cost of which, in the case of Contractor, would be a Reimbursable Cost hereunder, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to do the same;

vi) Liens. Create, incur or assume any lien upon the Facility;

vii) Transactions on Behalf of Others. Engage in any other transaction on behalf of Employer or any other person or entity not expressly authorized by this Contract or that violates applicable Laws, this Agreement or any Project Agreement; or

viii) Agreements: Enter into any agreement to do any of the foregoing.

6.2 Execution of Documents:
Any agreement, contract, notice or other document that is expressly permitted hereunder (or under written approval of Employer) to be executed by Contractor shall be executed by the authorized representative of Contractor or, subject to prior written notice to Employer, by such other representative of Contractor who is authorized and empowered by Contractor to
ARTICLE 7: TECHNICAL LIMITS AND CONTRACTED CHARACTERISTICS

7.1 Start-Up Times
The notice from NDLC to the Employer to synchronise the generator to the Grid System will vary according to the length of time the Facility has been under shutdown. Table 1 below shows the length of notice required against various classifications of starts. In the event such notice cannot be given to the Employer by BPDB within the time periods indicated in Table 1, Employer shall use reasonable efforts to accommodate BPDB’s Dispatch request. Contractor shall be bound by these times and shall report to Employer if these times cannot be met at any time along with justifications for the same.

<table>
<thead>
<tr>
<th>Classification of Start</th>
<th>Notice Required to Synchronize Generator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hot Start</td>
<td>3 Hours</td>
</tr>
<tr>
<td>Warm Start</td>
<td>4 Hours</td>
</tr>
<tr>
<td>Cold Start</td>
<td>12 Hours</td>
</tr>
</tbody>
</table>

i) For the purposes of this Schedule, Start Up of the Facility is classified as follows:
   • “Hot Start” is defined as a start following a continuous shutdown of steam turbine for a period of 8 hours or less.
   • “Warm Start” is defined as a start following a continuous shutdown of steam turbine for a period between 8 and 48 hours.
   • “Cold Start” is defined as a start following a continuous shutdown of steam turbine for a period more than 48 hours.

ii) For the purpose of this Schedule, a Start-Up shall be deemed to have occurred upon synchronisation of the turbine generator to the Grid System.

7.2 Facility Loading
The Facility load ramping rate for each generating unit of the Facility is the steady rate at which the load can be raised which will be 1% of the net capacity of each generating unit of the Facility per minute.

The Unit wise minimum continuous loading of Facility shall be 60% of the Unit wise Dependable Capacity. The Facility shall be capable of automatic operation and control from the Dependable Capacity of the Facility to 60% of Dependable Capacity.

7.3 Frequency, Power Factor and Voltage Limits
i) At rated voltage and frequency, the Facility will operate at 100% load with a power factor in the range 0.85 lagging to 0.95 leading at the generator terminals, which range shall not be exceeded.

ii) The Facility will operate within the line voltage range used in practice by BPDB and in no case shall the Facility be required to operate more than +5% or less than -10% on the 400kV high voltage system.

iii) The Facility shall operate within the frequency range 48.5 Hertz to 51.5 Hertz which
range shall not be exceeded. The Facility shall be capable of continuous operation for the periods defined in Table 3,

<table>
<thead>
<tr>
<th>Frequency Range (Hz)</th>
<th>Minimum Sustainable Operation</th>
</tr>
</thead>
<tbody>
<tr>
<td>48.50 to 51.50</td>
<td>Continuous</td>
</tr>
<tr>
<td>47.50 to 48.50</td>
<td>10 minutes</td>
</tr>
<tr>
<td>Less than 47.50</td>
<td>Trip Condition</td>
</tr>
<tr>
<td>Greater than 51.50</td>
<td>Trip Condition</td>
</tr>
</tbody>
</table>

7.4 General
The Contractor through the Employer shall advise BPDB of any temporary operating constraints and limits, which may from time to time apply to the Facility.

APPENDIX A: SCOPE OF SERVICES

Contractor shall perform each of the services listed in this Appendix A in accordance with the standards required under Article 2.2.

1) Programs
In addition to those responsibilities described in the Agreement, Contractor shall be responsible for the establishment and implementation of the following programs, standards and procedures, which require Employer approval and which are included in the "Services" to be provided by Contractor.

a) The program for establishing specific operating goals for each functional Project area, for managing resources to minimize personnel turnover, and for qualifying personnel, to operate and maintain the Project (including the basis for qualification of personnel).

b) The program for communicating and cooperating with Employer and governmental agencies.

c) The Project management standards for conduct of operations, Project safely, conduct of maintenance, housekeeping, material condition, and records management.

d) The program for preparing supporting documentation, meter readings and information necessary to accurately prepare, justify and support monthly invoices in accordance with the terms and conditions of the Project Agreements.

e) Developing the procedures used to operate the Project as well as monitoring, evaluating, and proposing revisions to such procedures.

f) The Project operations and monitoring program which provides the requirements for:

i) Monitoring of Project Performance

ii) Monthly Project Performance Calculations and Report

iii) Monthly Fuel Consumption Calculations and Report

iv) Project Permitting and Environmental Reporting

v) Shift Routines / Operating Practices
vi) Control of Equipment  
vii) Project Chemistry Control and Water Treatment  
viii) Training Programs  
ix) Operator Qualifications  
x) Operating Procedures  
xii) Status of Major Equipment  
g) The maintenance program which provides the requirements for:  
i) Maintenance Planning  
ii) Maintenance Procedures  
iii) Preventive Maintenance  
iv) Predictive Maintenance  
v) Maintenance Training  
h) The materials management program which provides the requirements for:  
i) Procuring Materials and Tools  
ii) Inventory Levels and Control  
iii) Renewal of Inventories  
i) The diagnostic testing program for maintaining the Project and Project equipment, including both system and component level testing.  
j) The housekeeping / cleanliness program which provides the requirements for:  
i) Hazardous Material Control  
ii) General Project Cleanliness  
iii) Equipment Condition Inspections  
v) Hazardous Waste Program  
k) The problem assessment program which provides the procedure for determining the cause(s) of operational or equipment failures and preventing future failures through recommended improvements, including justification for such recommendations (i.e., basis of recommendation and economic analysis).  
l) The records management program for maintaining the traceability and documentation of Project performance.  
m) The Project safety program which provides the requirements for establishing:  
i) Safety Monitoring  
ii) Accident Prevention Program  
iii) Accident Reporting  
n) Monthly and yearly reporting systems of Project performance to Employer.  
o) The security program for maintaining the security of the Project and surrounding area.  

2) Specific Requirements  
Contractor’s scope of Services is based on the Project design as described in certain of the Project Agreements, the Project Operating Manuals, vendor manuals and design drawings. Contractor will prepare Annual Project Operating Plans, which, in part, will define the operations procedural requirements for the Project to meet the requirements of the Project Agreements. Contractor, as part of the Services, is responsible for:  
a) Providing such trained personnel as is reasonably necessary to operate and maintain the Project and provide the Services set forth in this Agreement.  
b) Operating and maintaining the Project in accordance with the approved Annual Project
Operating Plan.
c) Submitting an Annual Project Operating Plan. Not later than ninety (90) days prior to the first day of each Contract Year, Contractor will submit an Annual Project Operating Plan to Employer. In addition to the requirements set forth in Section 6.2 (Annual Operating Budget and Plan), the Annual Project Operating Plan will detail maintenance, outage, and overhaul schedules, Project staffing, known capital and expense budget items, operating plans, and will provide the underlying assumptions used in developing the proposed budgets and anticipated availability for the period. Employer will review and approve the Annual Project Operating Plan. Such approval will become the basis for reimbursement under the Annual Budget.
d) Planning and managing on-site operations and maintenance activities, including:
   i) Assuring that operational goals and operating plans are consistent with the Annual Project Operating Plan.
   ii) Assuring that the Project is operated in accordance with this Agreement and in a safe, reliable, efficient, and prudent manner.
   iii) Assuring that operations and maintenance personnel are trained and qualified for their assigned responsibilities and tasks, and that such qualification is maintained.
   iv) Assuring that the Project meets contract, regulatory, and environmental requirements set forth in the Project Agreements or otherwise identified by Employer or Contractor.
   v) Managing and controlling costs consistent with budget requirements.
   vi) Planning, scheduling and managing work and maintenance activities.
   vii) Defining and documenting operational technical requirements.
   viii) Defining and delineating responsibilities between Contractor and Employer and identifying reporting requirements.
   ix) Establishing labor relations and personnel programs that will meet state and federal requirements and encourage employee retention.
   x) Maintaining a current inventory of materials and procuring all services, spare parts, operational materials, consumables, office equipment, tools and shop equipment, or any other items or materials required to operate or maintain the Project. Contractor will identify required items, cost, quantity and need date. The cost of any item or service shall be reimbursed by Employer in accordance with this Agreement.
   xi) Controlling outages, both planned and unplanned, by using detailed and integrated plans and schedules, and resource management.
   xii) Maintaining Project performance levels by using routine system and component performance testing.
   xiii) Maintaining a file of preplanned outage-related work to allow for efficient use of any forced outage downtime.
   xiv) Establishing open purchase order or contract agreements with Project equipment vendors, industrial suppliers, jobbers, and maintenance contractors in accordance with Project Agreements to ensure timely response to Project maintenance needs.
   xv) Promptly notifying Employer in writing of any teardowns and overhauls of major equipment or capital improvements that Contractor believes are necessary or advisable together with a proposed schedule for completing such repairs or improvements.
e) Performing certain tasks, duties, responsibilities and obligations assigned to Employer
under the Interconnection Agreements, including, but not limited to, the following:

i) Performing routine surveillance of all equipment routinely used to communicate with the NLDC.

ii) Notifying the NLDC of any routine maintenance activities which will require clearance from the NLDC.

iii) Providing the NLDC and Employer's Customers with all required information regarding the Project's availability.

iv) Responding to dispatch orders from the NLDC and Employer's Customers.

v) Monitoring and adjusting the reactive output of the generators to maintain transmission voltage levels within the capability of the Project's generators.

vi) Responding to and correcting generator dynamic instability in accordance with instructions from the NLDC.

f) Execution or oversight of routine preventive maintenance ("PM") activities in accordance with Prudent Utility Practice, including, without limitation:

i) Lubrication Checks

ii) Cleaning / Flushing

iii) Preservation

iv) Fluid Changes and Replacement

v) Visual Inspections

vi) Operational Monitoring

vii) Vibration Analysis

viii) Chemical Analysis (water testing)

ix) Trend Analysis

x) Calibration

xi) Measurements

xii) Adjustments

xiii) Hydrostatic Tests

xiv) Lube Oil Analysis (sampling only)

xv) Replacement of Wear / Sacrificial Parts

xvi) Resistance Testing

g) Execution or oversight of routine corrective maintenance ("CM") activities in accordance with Prudent Utility Practices to troubleshoot, inspect, and repair the equipment upon identification and detection of certain conditions, including without limitation:

i) Physical fault conditions such as:
   • Blocked / stopped flow
   • Fractures / break / breaches
   • Cracks
   • Distortion / displacement
   • Corrosion / discoloration

ii) Out of specification conditions such as:
   • High / low flow, pressure, temperature, or chemistry
   • Off voltage
   • Out of limits / adjustments
• Erratic output
• Intermittent / spurious operation
• Failure to control / hold
• High / low output
• Improper timing

iii) Demand fault conditions such as failure to:
• Start / run / operate
• Stop
• Open
• Close
• Move / release / respond

iv) Abnormal characteristics such as:
• Overheating
• Noise
• Vibration
• Chatter
• False response

v) Leakage conditions such as:
• Leakage to surrounding environment
• Leakage past seats / stems / packing / seals
• CM activities not requiring equipment shutdown shall be performed as soon
• as possible and in order of priority. CM activities requiring equipment
• shutdown shall be performed when equipment is removed from service.

h) The PM and CM activities will be inventoried and performed on a system-by-system
basis and shall apply to the following equipment types:

i) Circuit Breakers (all types)
ii) Batteries (all types)
iii) Electric Heaters
iv) Heat Tracing
v) Blowers
vi) AC Motors (synchronous / induction)
vii) DC Motors (synchronous / induction)
viii) Valves (all types)
ix) Valve Operators (air / motor / hydraulic)
x) Control Relays (AC / DC)
xii) Transformers
xii) Controllers
xiii) Recorders
xiv) Transmitters
xv) Switches (all types)
xvi) Dampers
xvii) Fans / Compressors
xviii) Heat Exchangers  

xix) Radiators  

xx) Pumps  

xxi) Filters / Strainers  

xxii) Air Dryers  

xxiii) Tanks / Vessels  

xxiv) Pipe / Pipe Fittings / Pipe Supports  

xxv) Combustion Turbines  

xxvi) Generators  

i) I. Performing such other tasks and services which Employer may reasonably request from time to time in connection with operation of the Project.

APPENDIX B: REIMBURSABLE COSTS

1) Reimbursable Cost items shall be paid to Contractor in accordance with the requirements of Articles 4 and 6. Reimbursable Costs include:

a) Labor costs, including allowances for payroll, taxes, bonuses and benefits  

b) Spare and replacement parts  

c) All material, tools and equipment necessary to operate and maintain the Project  

d) Chemicals  

e) Lubricants (including proper disposal costs)  

f) Specialized instrumentation and calibration equipment  

g) Rigging and handling equipment  

h) Consumables and general supplies  

i) Cleaning Supplies  

j) Shop equipment installed in Project  

k) Authorized leased equipment  

l) Specialized test and calibration equipment  

m) Major equipment overhauls  

n) Building repairs and maintenance (not caused by contractors under the Project Agreements)  

o) Insurance costs  

p) Taxes (excluding income) required to be paid by Contractor  

q) Costs related to training of plant personnel  

r) Consultants' fees and expenses, if incorporated in the Annual Budget or otherwise approved in advance by Employer.  

s) Contract Services, if incorporated in the Annual Budget or otherwise approved in advance by Employer.  

2) The following will be Reimbursable Costs when specifically related to Project support:

a) Office supplies  

b) Office equipment and furniture  

c) Telephone and other communication service charges  

d) Freight and express mail charges  

e) Janitorial, cleaning, and groundskeeping services
All Services by Contractor that support Facility activities and all Reimbursable Costs shall be approved by Employer, through the Annual Budget or otherwise, prior to implementation by Contractor.

Schedule C: Know-How Transfer and Training

C.1 Know-How and Systems to be Transferred
Contractor shall carry out training and transfer technology to Operators and Maintenance Personnel of the Employer so that they will be able to carry out the routine Operation and Maintenance independently by the end of this Operation and Maintenance Contract.

C.2 Software, Systems and Manuals to be Left at the End of the Contract
Any and all software, systems and manuals purchased / developed by the Contractor for carrying out the monitoring, operation and maintenance of the Facility and for which payment has been made by the Employer shall be handed over to the Employer along with software keys, passwords, hardware dongles, user manuals, etc. as applicable.

C.3 Training Program Required
Contractor shall design, schedule, organize and carryout necessary onshore and offshore trainings for Employer's Operation and Maintenance Personnel to achieve the objectives stated in C.1 above.

Schedule D: Performance Targets

Availability Factor
The Availability Factor is a measure of the Facility's ability to produce output during a given period. The Contractor shall keep records of the AF of each Facility on an on-going basis and shall promptly and accurately declare the current ability of each Facility to produce and deliver power.

For purpose of calculating the AF Performance Liquidated Damages, the AF shall be based on the AF for the previous contract year based on the following formula:

$$AF = \left( \frac{DC \times \text{hours in the year} - \sum (MOcap \times MOH) + \sum (FOcap \times FOH) + \sum (SOcap \times SOH)}{DC \times \text{hours in the year}} \right)$$

Where:
- AF = Availability Factor for the Year “n”
- DC = Dependable Capacity of the Facility
- MOcap = capacity reduction during each Maintenance Outage in the Year “n”
- MOH = Maintenance Outage hours for each Maintenance Outage
(MOcap) in the Year “n”  
FOcap = capacity reduction during each Forced Outage in the Year “n”  
FOH = Forced Outage hours for each Forced Outage (FOcap) in the Year “n”  
SOcap = capacity reduction during each Scheduled Outages in the Year “n”  
SOH = Scheduled Outages hours for each Scheduled Outage (SOcap) in the Year “n”  
∑(MOcap x MOH) = Maintenance Outage Energy for the Year “n”  
∑(FOcap x FOH) = Forced Outage Energy for the Year “n”  
∑(SOcap x SOH) = Scheduled Outage Energy for the Year “n”

Heat Rate Guarantee
Heat Rate Guarantee is net heat rate of each unit that is measured during O&M performance test. For purposes of calculating the Performance Liquidated Damages the guaranteed value of heat rate in the Heat Rate Guarantee shall constitute 100% load.

The Achieved Net Heat Rate also needs to be recorded as it is a measure of the efficiency at which energy is produced and delivered by each unit. The Contractor shall keep on-going records of the actual heat rate of each Unit on a continuous basis and, at the end of each contract year, shall calculate the average annual heat rate achieved for the units.

Net Dependable Capacity
Net Dependable Capacity is net amount of capacity at any given time, expressed in kW, as determined by the most recent Dependable Capacity Test.

Gross Unit Power Output Guarantee
It is the gross power output of the individual steam turbine generator unit that is measured during O&M performance test. For purposes of calculating the Performance Liquidated Damages the guaranteed value of the gross output in the Gross Plant Power Output Guarantee shall constitute 100% load.

The Achieved Net Plant Power Output also needs to be recorded as it is a measure of the sum of net power output in each Plant. The Contractor shall keep on-going records of the actual net output of each Plant on a continuous basis.

Unscheduled Trips
During the operation period, tripping/unscheduled shutdown of Plant due to the Contractor’s fault shall be allowed for maximum 4times/year. After each tripping/unscheduled shutdown, Plant/unit outage time of maximum 6 hours will be allowed.

Performance Liquidated Damages
The Contractor shall pay the Employer liquidated damages for failure to achieve the Performance Guarantees as specified in Schedule G2.
Limestone Consumption

The Contractor’s liability to pay Liquidate Damage in any Contract Period shall not exceed USD Twenty Million (USD20,000,000.00).

Schedule E: Contractor's Personnel

List of Key Personnel:

1) Project Manager (1 person):
   a) Minimum of fifteen (15) years' experience in Power Plant Industry
   b) Minimum of five (5) years' experience in Operation and Maintenance of Coal Fired Power Plants
   c) Must be currently working in similar capacity
   d) Fluent in English

2) Deputy Project Manager (Production) (1 person):
   a) Minimum of fifteen (15) years' experience in Power Plant Industry
   b) Minimum of five (5) years' experience in Operation and Maintenance of Coal Fired Power Plants
   c) Must be currently working in similar capacity
   d) Fluent in English

3) Deputy Project Manager (Management) (1 person):
   a) Minimum of fifteen (15) years' experience in Power Plant Industry
   b) Minimum of five (5) years' experience in Operation and Maintenance of Coal Fired Power Plants
   c) Must be currently working in similar capacity
   d) Fluent in English

4) Lead Engineering Manager (1 person):
   a) Minimum of fifteen (15) years' experience in Power Plant Industry
   b) Minimum of five (5) years' experience in Operation and Maintenance of Coal Fired Power Plants
   c) Must be currently working in similar capacity
   d) Fluent in English

5) Commercial Manager (1 person):
   a) Minimum of ten (10) years’ experience as Commercial Manager / Assistant for Power Plants / Large Industrial Projects
   b) Minimum of three (3) years’ experience as Commercial Manager for projects outside the home country
c) Must be familiar with International Banking Terms and Procedures  
d) Must be currently working in similar capacity  
e) Must have working knowledge of English

6) HSE Manager (1 person):  
a) Minimum of ten (10) years' experience as HSE Manager / Assistant for Power Plants / Large Industrial Projects  
b) Minimum of three (3) years’ experience as HSE Manager for Coal Fired Power Plants  
c) Must have experience in Environmental Monitoring and preparation of monthly / yearly reports to relevant authorities  
d) Must be currently working in similar capacity  
e) Must have working knowledge of English

7) Section Manager for Production and Technology Department (1 person):  
a) Minimum of fifteen (15) years' experience in Power Plant Industry  
b) Minimum of five (5) years' experience in Operation and Maintenance of Coal Fired Power Plants  
c) Must be currently working in similar capacity  
d) Must have working knowledge of English

8) Section Manager for Generation Department (1 person):  
a) Minimum of fifteen (15) years' experience in Power Plant Industry  
b) Minimum of five (5) years' experience in Operation and Maintenance of Coal Fired Power Plants  
c) Must be currently working in similar capacity  
d) Must have working knowledge of English

9) Chief Shift Operator (4 personnel):  
a) Minimum of fifteen (15) years' experience in Power Plant Industry  
b) Minimum of five (5) years' experience in Operation and Maintenance of Coal Fired Power Plants  
c) Must be currently working in similar capacity  
d) Must have working knowledge of English

10) Section Manager for Equipment and Maintenance Department (1 person):  
a) Minimum of fifteen (15) years' experience in Power Plant Industry  
b) Minimum of five (5) years' experience in Operation and Maintenance of Coal Fired Power Plants  
c) Must be familiar with maintenance of boiler with front and rear wall offset combustion  
d) Must be currently working in similar capacity  
e) Must have working knowledge of English

11) Section Manager for Material and Procurement Department (1 person):
a) Minimum of fifteen (15) years’ experience in Power Plant Industry  
b) Minimum of five (5) years’ experience in Operation and Maintenance of Coal Fired Power Plants  
c) Must have experience in material management and procurement  
d) Must be currently working in similar capacity  
e) Must have working knowledge of English  

Pursuant to GC 8.2 (c), Substitution Fee for replacement of Key Personnel shall be US$10,000

**Schedule F: Specified Capital Works and Finance**

As described in Schedule B.
## Schedule G: Contractor’s Remuneration

[See Section VII, General Conditions, Sub-Clause 12.1.]

### G.1 Contractor’s Base Remuneration

<table>
<thead>
<tr>
<th>Description</th>
<th>Period</th>
<th>Foreign Currency Amount</th>
<th>BDT Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Remuneration including salary, bonuses, holiday, per diem and related expenses of Key Staff</td>
<td>Per Year</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office Facilities in Bangladesh including all costs for office equipment, stationary, communication, consumables, office support staff, retainer fee payment to Independent Expert (GC20.1.3 (a)), etc.</td>
<td>Per Year</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Excluding Taxes in Bangladesh (A)</td>
<td>Per Year</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Monthly Payments = (A) / 12</td>
<td>Per Month</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Excluding Taxes in Bangladesh for full Contract Term</td>
<td>Per Five Years</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## G.2 Contractor’s Incentive Payments / Liquidated Damages

<table>
<thead>
<tr>
<th>Performance Parameter</th>
<th>Minimum / Maximum Value to be Met</th>
<th>Incentive Payment</th>
<th>Liquidated Damage Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dependable Capacity</td>
<td>622MW (Per Year) (Minimum)</td>
<td>N/A</td>
<td>USD10,000 below the declared value</td>
</tr>
<tr>
<td>Net Output Energy</td>
<td>As per the requirement of BPDB (Per Year)</td>
<td>N/A</td>
<td>USD2,000 for 1 million kWh less than the required Net Output Energy</td>
</tr>
<tr>
<td>Target Availability (TAn) as calculated in accordance with Schedule D, Availability Factor</td>
<td>85% (Per Year) (Minimum)</td>
<td>30% x net profit of Employer/kWh</td>
<td>USD30,000 for each 0.1% reduction</td>
</tr>
<tr>
<td>Net Plant Heat Rate (NPHR)</td>
<td>8,746.35kJ/kWh (Per Year) (Maximum)</td>
<td>USD100 for each 1kJ/kWh decrease of Net Plant Heat Rate</td>
<td>USD100 for each 1kJ/kWh increase of Net Plant Heat Rate</td>
</tr>
<tr>
<td>Consumption of secondary fuel oil</td>
<td>0.005 Litre/kWh</td>
<td>USD100 for each ton reduce compare with the Yearly design Value</td>
<td>Will be equal to the cost of Fuel Oil plus five percent (5%)</td>
</tr>
<tr>
<td>Unscheduled Shutdowns (UNO)</td>
<td>4 Times per Year (Maximum)</td>
<td>USD10,000 if zero Unscheduled Shutdowns</td>
<td>a) USD10,000 for each extra Unscheduled Shutdown Plus b) Lost Generated Energy x 0.05 US Cents</td>
</tr>
<tr>
<td>Number of Hours Shutdown after each Unscheduled Shutdown</td>
<td>6 Hours (Maximum)</td>
<td>N/A</td>
<td>USD5,000 for each extra hour</td>
</tr>
<tr>
<td>Performance Parameter</td>
<td>Minimum / Maximum Value to be Met</td>
<td>Incentive Payment</td>
<td>Liquidated Damage Payment</td>
</tr>
<tr>
<td>-----------------------------------------------------------</td>
<td>-----------------------------------</td>
<td>-------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>Consumption of Limestone</td>
<td>3 ton/h</td>
<td>USD100 for each 1% below the design value per year</td>
<td>USD100 for each 1% above the design value per year</td>
</tr>
<tr>
<td>The Contractor suffered serious personal injury and above</td>
<td>N/A</td>
<td></td>
<td>USD30,000.00 for each incident</td>
</tr>
<tr>
<td>Major Equipment Accidents (Direct Economic Loss of USD 20,000.00 or unit shutdown for more than 24 hours) Occurring in Contractor’s operating and maintenance Responsibility</td>
<td>N/A</td>
<td></td>
<td>USD20,000.00 penalty for each accident</td>
</tr>
<tr>
<td>General Equipment Accidents (Direct Economic Loss of USD100,000.00 or unit shutdown for more than 12 hours) Occurring in Contractor’s operating and maintenance Responsibility</td>
<td>N/A</td>
<td></td>
<td>USD10,000.00 for each accident</td>
</tr>
<tr>
<td>Electrostatic Precipitator Operation Rate</td>
<td>≥95%</td>
<td>N/A</td>
<td>USD100.00 for each 1% lower than the indicator with USD1,000.00 cap</td>
</tr>
<tr>
<td>Dust Emission Compliance Rate</td>
<td>100%</td>
<td></td>
<td>USD100.00 for each 1% lower than the indicator with USD1,000.00 cap</td>
</tr>
<tr>
<td>Compliance Rate of Industrial Wastewater Treatment</td>
<td>100%</td>
<td></td>
<td>USD100.00 for each 1% lower than the indicator with USD1,000.00 cap</td>
</tr>
<tr>
<td>Sewage Treatment Facilities Intact Rate</td>
<td>100%</td>
<td></td>
<td>USD100.00 for each 1% lower than the indicator with USD1,000.00 cap</td>
</tr>
<tr>
<td>Performance Parameter</td>
<td>Minimum / Maximum Value to be Met</td>
<td>Incentive Payment</td>
<td>Liquidated Damage Payment</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>----------------------------------</td>
<td>-------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>Plant Noise Level Compliance Rate</td>
<td>100%</td>
<td></td>
<td>USD100.00 for each 1% lower than the indicator with USD1,000.00 cap</td>
</tr>
<tr>
<td>FGD Operation Rate</td>
<td>96%</td>
<td></td>
<td>USD100.00 for each 1% lower than the indicator with USD1,000.00 cap</td>
</tr>
<tr>
<td>SO2 Emission Standard Rate</td>
<td>96%</td>
<td></td>
<td>USD100.00 for each 1% lower than the indicator with USD1,000.00 cap</td>
</tr>
<tr>
<td>Leakage of Ash Handling Operation</td>
<td>0</td>
<td></td>
<td>USD100.00 for each ash leakage event</td>
</tr>
</tbody>
</table>

**G.3 Contractor’s Capital Works Remuneration**

The Contractor will not receive any remuneration for discharging its responsibilities under GC 9.2.

**G.4 Deleted**

**G.5 Contractor’s Other Remuneration**

Not Applicable
G.6 Payment Terms

Foreign Currency Payments shall be made through Letter of Credit or by Wire Transfer at the option of the Employer.
Local Currency Payments shall be made through Direct Debit.

G.7 Advance Payments

Amount of Advance Payment shall be equal to ten percent (10%) of the Annual Operating Fee.
The Advance Payment shall be deducted in equal installments from the Monthly Payments of Annual Operating Fee over a period of twelve (12) months.

G.8 Rate for Delayed Payments

In the event that the Employer fails to make any payment on its respective due date, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate of LIBOR per month for period of delay until payment has been made in full.

G.9 Adjustment of Remuneration

[Note: In order to adjust the remuneration for foreign and/or local inflation, a price adjustment provision should be included here if the contract has duration of more than 18 months or if the foreign or local inflation is expected to exceed 5% per annum. The adjustment should be made every 12 months after the date of the contract for remuneration in foreign currency and – except if there is very high inflation in the Employer’s country, in which case more frequent adjustments should be provided for – at the same intervals for remuneration in local currency. Remuneration in foreign currency should be adjusted by using the relevant index for salaries in the country of the respective foreign currency and remuneration in local currency by using the corresponding index for the Employer’s country. A sample provision is provided below for guidance:

Payments for remuneration made in accordance with Section VII, General Conditions, Clause 12.1 in [foreign and/or] [local] currency shall be adjusted as follows:

(a) Remuneration paid in foreign currency pursuant to the rates set forth in Section G.1 of Schedule G shall be adjusted every 12 months (and, the first time, with effect for the remuneration earned in the 13th calendar month after the date of the Contract) by
G.9 Adjustment of Remuneration

Applying the following formula:

\[ R_f = R_{fo} \times \frac{I_f}{I_{fo}} \]

Where \( R_f \) is the adjusted remuneration, \( R_{fo} \) is the remuneration payable on the basis of the rates set forth in Section G.1 of Schedule G for remuneration payable in foreign currency, \( I_f \) is the value of the United States Consumer Price Index (US CPI) as published in the Publication of the International Monetary Fund entitled “International Financial Statistics” for the first month of the year and \( I_{fo} \) is the value of the United States Consumer Price Index as published in the publication of the International Monetary Fund entitled “International Financial Statistics” for quarter in the date of the Contract.

(b) Remuneration paid in local currency pursuant to the rates set forth in Section G.1 of Schedule G shall be adjusted every 12 months (and, for the first time, with effect for the remuneration earned in the 13th calendar month after the date of the Contract) by applying the following formula:

\[ R_l = R_{lo} \times \frac{I_l}{I_{lo}} \]

Where \( R_l \) is the adjusted remuneration, \( R_{lo} \) is the remuneration payable on the basis of the rates set forth in Section G.1 of Schedule G for remuneration payable in local currency, \( I_l \) is the official index for salaries in the Employer’s country for the first month for which the adjustment is to have effect and, \( I_{lo} \) is the official index for salaries in the Employer’s country for the month of the date of the Contract.

G.10 Payment of Incentive Bonus/Liquidated Damages

By the fifteenth (15th) day of the first month of each contract year, the Contractor and the Employer shall prepare and resolve Liquidated Damages and bonus calculation as specified in Schedule G2, and an adjustment will be made to take account of any difference between the actual amount that is due for such period and the sum of the actual amount billed by the Contractor against Employer, and the difference (if any) shall either become payable by Employer to the Contractor within thirty days of such determination (in the case of any underpayment) or deducted from any payments due to the Contractor from the Employer in the first Monthly Invoice in the Contract Year immediately following such period (in respect of any overpayment). In the last Contract year, if the following payment cannot cover the Liquidated Damage amount, the Employer have the right to draw upon the Performance Security.

Liquidated Damages shall not exceed 10% of O & M cost (USD$) per contract year.
Schedule H: Deleted

Schedule I: Deleted

Schedule J: Financial Management of the Employer

The Parties responsible for the financial management shall advise the Employer’s Representative to give notice to the Contractor within 14 days after the Party became aware, or should have become aware, of Employer’s inability to pay its obligations as they fall due.

Schedule K: Reporting Requirements

Reporting shall be as per Article 2.5, 5.3 and 5.4 of Schedule B, Section 6.

Schedule L: Deleted

Schedule M: Insurance Required

<table>
<thead>
<tr>
<th>Risk</th>
<th>Insuring Party</th>
<th>Amount per Occurrence</th>
<th>Detailed Description of Risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Liability Insurance</td>
<td>Contractor</td>
<td>USD2,000,000 per occurrence in annual aggregate</td>
<td>Liability insurance on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage.</td>
</tr>
<tr>
<td>Automobile Liability Insurance</td>
<td>Contractor</td>
<td>Automobile liability insurance in accordance with Bangladesh Laws;</td>
<td>Automobile liability insurance against claims for personal injury (including bodily injury</td>
</tr>
<tr>
<td>Workers’ Compensation Insurance</td>
<td>Contractor</td>
<td>Workers’ Compensation insurance in accordance with Bangladesh Laws; where Bangladesh Laws do not require any specific regulations or amounts, the Contractor shall arrange this insurance as it is customarily done according to good industrial practices.</td>
<td>Workers’ compensation insurance as required by applicable laws, including employer’s liability insurance for all employees of Operator.</td>
</tr>
</tbody>
</table>

**Schedule N: Extension and Subsequent Bidding**

Pursuant to GC 19.6.1, upon the expiration of the Contract Duration pursuant to GC 2.3, at the option of the Employer, this Contract may be extended for an additional period of no more than the initial Duration of the Contract. At the option of the Employer, the Scope of Services may be amended or retained.

Pursuant to GC 19.6.2, the Contractor shall not be precluded from bidding for similar Contract which is offered by the Employer after the termination or expiration of this contract.
PART 3 – Conditions of Contract and Contract Forms
Section VII. General Conditions (GC)
Section VII. General Conditions (GC)

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General Conditions

1. Definition and Interpretation

1.1. Definitions

In the Contract the following words and expressions shall have the meanings stated below, unless otherwise required by the context.

1.1.1. The Contract

(a) “Contract” means the General Conditions, the Particular Conditions which include Part A and Part B, the Letter of Acceptance, the Letter of Bid, the Schedules and any Addenda.

(b) “Contract Data” means the pages completed by the Employer entitled Contract Data which constitute Part A of the Particular Conditions.

(c) “Letter of Acceptance” means the letter of formal acceptance, signed by the Employer, of the Letter of Bid, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression “Letter of Acceptance” means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement.

(d) “Letter of Bid” means the document entitled Letter of Bid, which was completed by the Contractor and includes the signed offer to the Employer for the Services.

(e) “Schedules” means the documents entitled Schedule of Services Requirements, included in Section VI of the bidding document used to award the Contract.

(f) “Bid” means the Letter of Bid.

1.1.2. Parties and Persons

(a) “Contractor” means the person(s) named as contractor in the Letter of Bid and the legal successors in title to this person(s).

(b) “Contractor’s Personnel” means the Contractor’s Representative and all personnel whom the Contractor utilizes on the Facilities, who may include the staff, labor and other employees of the Contractor and of each Subcontractor (including Key Subcontractors); and any other personnel assisting the Contractor in the execution of the Services.

(c) “Contractor’s Representative” means the person named by the Contractor in the Contract or appointed from time to time.
by the Contractor under Sub-Clause 21.7 [Contractor’s Representative], who acts on behalf of the Contractor.

(d) “Employer” means the person named as employer in the Contract Data and the legal successors in title to this person.

(e) “Employer’s Representative” means the person named by the Employer in accordance with Sub-Clause 3.3 (a) to represent and act for the Employer at all times during the performance of the Contract.

(f) “Employer’s Personnel” means all staff employed by the Employer.

(g) “Government” means the Government of the People’s Republic of Bangladesh.

(h) “Independent Expert” means the person appointed in accordance with Sub-Clause 20.1.2 [Independent Expert].

(i) “Key Staff” means those individuals listed as Key Staff in the Bid, or any person appointed, with the agreement of the Employer, as a Key Staff, for a part of the Services; and the legal successors in title to each of these persons.

(j) “Key Subcontractor” means those Subcontractors listed as Key Subcontractors in the Bid, or any person appointed, with the agreement of the Employer, as a Key Subcontractor, for a part of the Services; and the legal successors in title to each of these persons.

(k) “Party” means the Employer or the Contractor, as the context requires and “Parties” means both.

(l) “Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Services; and the legal successors in title to each of these persons.

(m) “Third Party” means a person or an entity other than a Party, the Government, or the Employer.

1.1.3. Dates, Tests, Periods and Completion

(a) “Base Date” means the date 28 days prior to the latest date for submission of the Bid.

(b) “Commencement Date” means the date defined under Sub-Clause 2.2 [Commencement].

(c) “Day” means a calendar day and “year” means 365 days.

(d) “Effective Date” has the meaning given in Sub-Clause 2.1 [Conditions of Effectiveness].
1.1.4. Money and Payments

(a) “Contractor’s Account” means paid for by the Contractor, as defined in Sub-Clause 12.5.1.

(b) “Contractor’s Base Remuneration” means the Remuneration specified in Schedule G to be the Contractor’s Base Remuneration, or is no such amount is specified, the amount of the Contractor’s Remuneration which is not dependent on meeting Performance Targets.

(c) “Contractor’s Remuneration” means the price defined in Clause 12.1 [Contractor’s Remuneration] and includes adjustments in accordance with the Contract.

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

(e) “Foreign Currency” means a currency in which part (or all) of the Contractor’s Remuneration is payable, but not the Local Currency.

(f) “Liquidated Damages on Termination for the Employer’s Convenience” means the amount specified in the Contract Data pursuant to Sub-Clause 21.10(f)(i) to be payable in the event of Termination by the Employer for Convenience pursuant to Sub-Clauses 21.5 and 21.8.

(g) “Local Currency” means the currency of the Country.

1.1.5. Services and Goods

(a) “Contractor’s Equipment” means all apparatus, machinery, vehicles and other things required for the execution and completion of the Services and the remedying of any defects. But excludes Employer’s Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Facilities.

(b) “Goods” means Contractor’s Equipment, Materials, Plant, or any of them as appropriate.

(c) “Services” has the meaning given in Clause 4.1 [Services to be Performed and Other Obligations].

1.1.6. Corrupt or Fraudulent Practices

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

(b) “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.

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

(d) “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.

(e) “Obstructive Practice” is (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an Employer’s investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or form pursuing the investigation, or (ii) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under Sub-Clause 3.10 [Inspections and Audits by the Employer].

1.1.7. Other Definitions

(a) “Arbitration” means the process described as arbitration in Sub-Clause 20.1.4 [Arbitration].

(b) “Capital Works” means construction work or the procurement and installation of capital equipment intended to extend, rehabilitate or replace the Facilities.

(c) “Condition Precedent” means one of the Conditions of Effectiveness listed in Sub-Clause 2.1 [Conditions of Effectiveness].

(d) “Contractor’s Documents” means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.

(e) “Country” means the country in which the Facilities (or most of it) is located, where the Services are to be executed i.e. People’s Republic of Bangladesh.

(f) “Cure Period” means, in respect of a Default Notice given to the Contractor under Sub-Clause 21.1 [Notification and Cure Plans], the period specified in the Default Notice (or if no such period is specified 10 Business Days from the date of the Default Notice) as varied or extended under Sub-Clause 21.2 [Remedying the Default within the Applicable Cure
Period].

(g) “Default” means a failure by a Party to perform its obligations under the Contract.

(h) “Delegation of Management Authority” means the delegation to the Contractor of authority to manage the Facilities which is granted under Clause 11 [Delegation of Management Authority to the Contractor].

(i) “Pre-Conditions” means something the Employer or a third party shall do or provide, on which performance of the Service is contingent and which is listed as a dependency in Schedule B, Article 7.

(j) “Employer’s Equipment” means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Services, as stated in the Specification; but does not include Plant which has not been taken over by the Employer.

(k) “Facilities” means all assets of the Employer which are to be managed by the Contractor and any other places as may be specified in the Contract as forming part of the Facilities.

(l) “Force Majeure” is defined in Sub-Clause 17.1 [Definition of Force Majeure].

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

(n) “Objectives” has the meaning given under Sub-Clause 1.6.2 [Objectives].

(o) “Performance Security” means the security (or securities, if any) under Sub-Clause 16.3 [Performance Security].

(p) “Proposed Substitute Key Staff Member or Key Subcontractor” have the meaning given in Sub-Clause 8.2 [Substitution of Contractor’s Key Staff Member or Key Subcontractor].

(q) “Recitals” has the meaning given under Sub-Clause 1.6.1 [Recitals].

(r) “Specified Capital Works” means Capital Works which are the responsibility of the Contractor under Sub-Clause 9.2 [Responsibilities for Specified Capital Works].

(s) “Substitution Fee” is the amount to be paid by the Employer for substituting another person in place of a Key Staff Member or Key Subcontractor, in accordance with Sub-Clause 8.2 [Substitution of Contractor’s Key Staff Member or
Key Subcontractor].

t) “Unforeseeable” means not reasonably foreseeable and against which adequate preventive precautions could not reasonably be taken by an experienced contractor by the date for submission of the Bid.

(u) “Value Management Proposal” has the meaning given under Sub-Clause 19.2 [Value Management].

(v) “Variation” means any change to the Services, which is instructed or approved as a variation under Clause 19.1 [Employer Variations].

(w) “Variation Proposal” has the meaning given under Sub-Clauses 19.1.1 [Decision on Employer’s Variation Request].

(x) “Variation Request” has the meaning given under Sub-Clause 19.1 [Employer Variations].

1.2. Interpretation

In the Contract, except where the context requires otherwise:

(a) words indicating one gender include all genders;

(b) words indicating the singular also include the plural and words indicating the plural also include the singular;

(c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;

(d) “written” or “in writing” means hand-written, type-written, printed or electronically made and resulting in a permanent record;

(e) the word “Proposal” is synonymous with “proposal” and “Bidder” with “bidder” and “Proposal documents” with “proposal documents”.

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

1.3. Communications

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

(a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Contract Data; and

(b) delivered, sent or transmitted to the address for the recipient’s communications as stated in the Contract Data.
However:

(i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and

(ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Independent Expert, a copy shall be sent to the Employer's Representative or the other Party, as the case may be.

1.4. Law and Language

The Contract shall be governed by the law of the country or other jurisdiction stated in the Contract Data.

The ruling language of the Contract shall be that stated in the Contract Data.

The language for communications shall be that stated in the Contract Data. If no language is stated there, the language for communications shall be the ruling language of the Contract.

1.5. Priority of Documents

The documents forming the Contract (as attached hereto) are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

(a) the Contract Agreement (if any),
(b) the addenda Nos. (if any)
(c) the Letter of Acceptance,
(d) the Particular Conditions,
(e) these General Conditions,
(f) the Schedules of Services Requirements
(g) the Letter of Bid

If an ambiguity or discrepancy is found in the documents, the Independent Expert appointed in accordance with Sub-Clause 20.1.2 [Independent Expert] will rule as to the interpretation. This ruling will be binding, unless one of the Parties refers it to Arbitration with 30 days of the ruling being given.
1.6. Recitals and Objectives

1.6.1. Recitals
The Recitals are the background facts about the Parties, the provision of utility services in the Country and other facts and intentions set out in Schedule A (A.1). The Recitals are not legally binding but may be used as context to assist in interpretation of the contract.

1.6.2. Objectives
The Objectives the Employer wishes to achieve by entering the Contract are set out in Schedule A (A.2).

2. Commencement and Duration

2.1. Conditions of Effectiveness
This Contract shall become effective from the date, or Effective Date, on which all the following Conditions of Effectiveness are fulfilled, except for Sub-Clause 2.1 [Conditions of Effectiveness], Sub-Clause 19.5 [Extension and Subsequent Bidding] and Clauses 1 [Definitions and Interpretations] and 3 [General Provisions], which become effective on the date of signature of the Letter of Acceptance.

(a) If the Contractor is an unincorporated joint venture, notification to the Employer by the member of a joint venture of their leader, as required by Sub-Clause 3.9 [Joint and Several Liability]

(b) Notification of the Contractor’s Representative to the Employer by the Contractor as required by Sub-Clause 3.2 [Contractor’s Representative].

(c) Notification of the Employer’s Representative to the Contractor by the Employer as required by Sub-Clause 3.3 [Employer’s Representative].

(d) Appointment of the Independent Expert in accordance with Sub-Clause 20.1.2 [Independent Expert].

(e) Delivery of the Performance Security to the Employer by the Grantor in accordance with Sub-Clause 16.3 [Performance Security].

(f) Other conditions listed in the Contract Data.

2.2. Commencement

(a) Within (7) days of the satisfaction of the conditions specified in Sub-Clause 2.1 [Conditions of Effectiveness], the Employer shall issue the Certificate of Commencement to the Contractor. The date of issue of the Certificate of Commencement shall be the “Commencement Date”.

(b) The Contractor shall commence the provision of the Services
no later than 3 days after receipt of the Certificate of Commencement and the Employer shall return the Bid Security to the Contractor on such Date.

(c) The Contractor and the Employer shall use their best effort and endeavors to procure the satisfaction of the Conditions of Effectiveness specified in Sub-Clause 2.1 [Conditions of Effectiveness] as soon as practicable and in any event no later than sixty (60) days after the date hereof.

(d) If the conditions specified in Sub-Clause 2.1 [Conditions of Effectiveness] are not fulfilled or waived by mutual agreement of the Parties within ninety (90) days of the date hereof, each Party shall have the right to terminate this Contract immediately and neither Party hereto shall be liable to the other for any damages or losses in respect thereof, except that if the Contractor has intentionally failed to fulfill any of these conditions, the Contractor shall forfeit the Bid Security.

2.3. Duration

Unless terminated earlier in accordance with Clause 21 [Default and Termination], this Contract shall remain in effect until the period stated in the Contract Data has passed after the Commencement Date.


3.1. Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:

(a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party and

(b) may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.

3.2. Contractor’s Representative

The Contractor shall appoint a Contractor’s Representative and shall give him all authority necessary to act on the Contractor’s behalf under the Contract. If the Contractor is an unincorporated Joint Venture, the Contractor’s Representative shall have the authority to bind all members of the Joint Venture.

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

The Contractor’s Representative shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language]. If these other persons are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Employer’s Representative.

3.3. **Employer’s Representative**

(a) The Employer shall name its representative before the Effective Date.

(b) The Employer may change its representative from time to time and shall give notice of the change without delay. The Employer shall not change its representative at a time and in such a manner as to impede the progress of the Services.

(c) The Employer’s Representative shall represent and act for the Employer at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract by the Employer shall be given by the Employer’s Representative otherwise provided.

3.4. **Communications by the Contractor**

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

3.5. **Subcontractors**

The Contractor shall not subcontract the whole of the Services.

The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor. Unless otherwise stated in the Contract Data:

(a) the Contractor shall not be required to obtain consent to suppliers solely of Materials, or to a subcontract for which the Subcontractor is named in the Contract;

(b) the prior consent of the Employer’s Representative shall be obtained to other proposed Subcontractors;

(c) the Contractor shall give the Employer’s Representative not less than 28 days’ notice of the intended date of the commencement of each Subcontractor’s work and of the commencement of such work on the Facilities; and

(d) each subcontract shall include provisions which would entitle
the Employer to require the subcontract to be assigned to the Employer under Sub-Clause 3.7 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under Sub-Clause 21.5 [Termination by Employer for Convenience].

The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 15.3 [Confidentiality Obligations of the Contractor] apply equally to each Subcontractor.

Where practicable, the Contractor shall give fair and reasonable opportunity for contractors from the Country to be appointed as Subcontractors.

3.6.  Key Subcontractors

The Contractor shall use the services of any Key Subcontractor specified in its Bid, unless the Employer is reasonably satisfied that the:

(a) The Key Subcontractor is not available; or

(b) The performance of the Services will not suffer if the Subcontractor is not used.

The Contractor may provide another person (the “Proposed Substitute Key Subcontractor”) in substitution for a Key Subcontractor (as identified in Schedule E) only on fulfillment of the following conditions:

(a) Proving to the reasonable satisfaction of the Employer that the Key Subcontractor is not available;

(b) Proving to the reasonable satisfaction of the Employer that the Proposed Substitute Key Subcontractor is as suitable for the services as the Key Subcontractor that is not available.

3.7.  Assignment of Benefit of Subcontract

If a Subcontractor’s obligations extend beyond the expiry date of the Contract and the Employer, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Employer, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall have no liability to the Employer for the work carried out by the Subcontractor after the assignment takes effect.

3.8.  Compliance with Laws

The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in the Contract Data:

(a) the Employer shall have obtained (or shall obtain) the planning, zoning, resource abstraction, environmental discharge permission for the normal operation of the
Facilities and the Employer shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and

(b) the Contractor shall give all notices, pay all taxes, duties and fees and obtain all permits, licenses and approvals, as required by the Laws in relation to the execution and completion of the Services in so far as these relate to the Services themselves and not to the operation of the Facilities and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so.

3.9. Joint and Several Liability

If the Contractor constitutes (under applicable Laws) a Joint Venture of two or more persons:

(a) these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;

(b) these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and

(c) the Contractor shall not alter its composition or legal status without the prior consent of the Employer.

3.10. Deleted

4. Obligations of the Contractor

4.1. Services to be Performed and Other Obligations

The Contractor shall perform the Services set out in Schedule B – Services and the other obligations described in Clauses 4, 5, 6, 7, 8 and 9.

4.2. Pre-Conditions

The performance by the Contractor of its obligations under the Contract shall be contingent on the availability of the Pre-Conditions listed in Schedule B.

4.3. Non-Availability of the Pre-Conditions

Unless Schedule B provides a different mechanism for determining the implications of non-availability of the Services, in the event that any of the Pre-Conditions pursuant to Sub-Clause 4.2 [Pe-Conditions] are not available to the extent that, in the opinion of the Independent Expert, the non-availability of such Pre-Conditions:

(a) makes it unreasonable to expect the Contractor to perform some or all of the Services, the Contractor shall be relieved of its responsibilities to perform those services, or
(b) affects the achievement of any of the Performance Targets, such Performance Targets shall be reduced for the duration for which the Pre-Conditions are not available to the extent that the Independent Expert determines at its sole discretion.

4.4. **Cost of Performing the Services**

The performance of the Services shall be at the cost of the Contractor, unless otherwise specified in Schedule B.

5. **Conflict of Interest**

5.1. **General**

The Contractor shall hold the Employer’s interests paramount, without any consideration for future work and strictly avoid conflict with other assignments or their own corporate interests.

5.2. **Contractor not to benefit from commissions, discounts, etc.**

(a) The payment of the Contractor pursuant to Sub-Claus 12.1 [Contractor’s Remuneration] shall constitute the Contractor’s only payment in connection with this Contract and, subject to Sub-Claus 5.3 [Contractor and Affiliates not to Engage in Certain Activities] hereof, the Contractor shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder and the Contractor shall use its best efforts to ensure that any Sub-Contractors, as well as the Personnel and agents of either of them, similarly shall not receive any such additional payment.

(b) Furthermore, if the Contractor, as part of its obligations under the Contract, has the responsibility of advising the Employer on the procurement of goods, works or services, the Contractor shall comply with the Bank’s applicable procurement guidelines and shall at all times exercise such responsibility in the best interest of the Employer. Any discounts or commissions obtained by the Contractor in the exercise of such procurement responsibility shall be for the account of the Employer.

5.3. **Contractor and Affiliates Not to Engage in Certain Activities**

The Contractor agrees that, during the term of this Contract and after its termination, the Contractor and any entity affiliated with the Contractor, as well as any Subcontractor and any entity affiliated with such Subcontractors, shall be disqualified from subsequently providing goods, works or services (other than consulting services) for a project resulting from or directly related to the Contractor’s Services.
for the preparation or implementation of such project.

5.4. Prohibition of Conflicting Activities

The Contractor shall not engage and shall cause its Personnel as well as their Sub-Contractors and their Personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

6. Know-How Transfer and Training

6.1. Requirement to Transfer Know-How and Systems

The Contractor shall:

(a) Transfer such know-how, management systems, manuals, utility management software and similar knowledge, tools and capacity for managing a utility as are specified in Schedule C.

(b) Leave with the Employer such, at the Termination or expiration of the Contract, management systems, manuals, utility management software and similar tools as are specified in Schedule C.

6.2. Requirement to Provide Training

The Contractor shall provide such training and development of Employer's Personnel as is specified in Schedule C.

6.3. Cost of Know-How Transfer and Training

The performance of the obligations under this Clause 6 shall be at the cost of the Contractor, unless otherwise specified in Schedule C.

7. Performance Targets

7.1. General

The Performance Targets will be the targets for key indicators set out in Schedule D.

In performing the Services and exercising its Delegated Management Authority, the Contractor shall use its best endeavors to achieve or exceed the Performance Targets.

Achieving the Performance Targets is not to result in any additional remuneration to the Contractor, except to the extent specified in Schedule G (G.2).

Failure to achieve the Performance Targets is not to result in any penalty, or create ground for termination of the Contract, except to the extent specified in Schedule C or Schedule G.

8. Staff to be Provided by the Contractor

8.1. Provision of Contractor's Personnel

The Contractor shall provide the Contractor's Personnel set out in Schedule E, to fill the positions listed in Schedule E, for the periods or
days specified in Contractor’s Personnel.

All costs of providing the Staff specified in Schedule E are to be for the Contractor’s Account, unless otherwise specified in Schedule E.

8.2. Substitution of Contractor’s Key Staff Member or Key Subcontractor

The Contractor may provide another person (the “Proposed Substitute Key Staff Member” or “Proposed Substitute Key Subcontractor”) in substitution for a Key Staff or a Key Subcontractor (as identified in Schedule E) only on fulfillment of the following conditions:

(a) Proving to the reasonable satisfaction of the Employer that the Key Staff Member or Key Subcontractor is not available because of ill-heath, death, or because he is no longer employed or subcontracted by the Contractor

(b) Proving to the reasonable satisfaction of the Employer that the Proposed Substitute Key Staff Member or Key Subcontractor is as suitable for the job as the Key Staff Member or Key Subcontractor who is not available. To satisfy itself as to the suitability of the Proposed Substitute Key Staff Member or Proposed Substitute Key Subcontractor, the Employer may, among other things:

(i) check the references of the Proposed Substitute Key Staff Member or Proposed Key Subcontractor and/or

(ii) require the Proposed Substitute Key Staff Member or Proposed Substitute Key Subcontractor to attend an interview with the Employer in the Country. Any costs incurred in the Proposed Substitute Key staff Member or Proposed Substitute Key Subcontractor attending the interview will be for the Contractor’s Account.

(c) Payment by the Contractor of a Substitution Fee of the amount specified in Schedule E.

8.3. Labor Laws

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

The Contractor shall require the Contractor’s Personnel to obey all applicable Laws, including those concerning safety at work. The Contractor shall also require its Subcontractors to do the same with their respective personnel.
8.4. **Health and Safety**

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor’s Personnel.

8.5. **Contractor’s Personnel Qualifications**

The Contractor’s Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Employer’s Representative may require the Contractor to remove (or cause to be removed) from the Facilities or the performance of the Services, any Contractor’s Personnel, including the Contractor’s Representative if applicable, who:

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

If requested by the Employer, the Contractor shall then substitute the person removed with another person. This substitution must be in accordance with Sub-Clause 8.2.

8.6. **Foreign Personnel**

The Contractor may bring in to the Country any foreign personnel who are necessary for the execution of the Services except for the categories of staff specified in the Contract Data that, in accordance with applicable Country Laws, must be hired locally if and to the extent that a sufficient number of appropriately qualified staff is locally available. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Employer will, if requested by the Contractor, use his best endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national, or government permission required for bringing in the Contractor’s personnel.

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

9. **Procurement and Management of Capital Works and Finance**

9.1. **Responsibility to Manage Employer’s Capital Works and Finance**

Unless otherwise specified in Schedule F, the Contractor will not be directly responsible for Capital Works or sourcing finance but will be
responsible for managing the Employer’s Personnel responsible for these functions, to the extent that this is within the definition of Services to be performed and the Delegation of Management Authority.

9.2. Responsibilities for Specified Capital Works
The Contractor will be responsible for procuring, managing and supervising Capital Works to the extent set out in Schedule F.

The cost of Specified Capital Works will be to the Employer’s Account, unless otherwise specified in Schedule F.

The Contractor will not receive any remuneration for discharging its responsibilities under this Sub-Clause 9.2, unless otherwise specified in Schedule G.

9.3. Responsibilities for Specified Finance
The Employer will be responsible for sourcing, negotiating or otherwise procuring finance for the Employer as specified in Schedule F.

The Contractor shall provide all necessary information and details as required by the Lender and shall participate in the negotiations on request of the Employer.

9.4. Procurement Rules

9.4.1. Procurement for Facility Operations
In discharging its responsibilities to procure, or manage the procurement of, materials, supplies and services for the operations of the Facility, the Contractor will follow good commercial practice designed to ensure fairness, transparency and value for money.

9.4.2. Procurement for Provision of the Services
The Contractor is free to procure anything required for the provisions of Services as it wishes provided that:

(a) This Contract was awarded competitively to the satisfaction of the Employer and

(b) The thing being procured is for the Contractor’s Account.

9.4.3. Procurement for Employer’s Capital Works and Specified Capital Works
In discharging its responsibilities to procure, or manage the procurement of anything required for Employer’s Capital Works and Specified Capital Works, the Contractor will follow good commercial
10. Contractor’s Reporting

10.1. Contractor’s Reporting Requirements

Unless otherwise stated in Schedule K, monthly progress reports shall be prepared by the Contractor and submitted to the Employer’s Representative in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates. The Contractor shall comply with all other reporting requirements specified in Schedule K.

11. Delegation of Management Authority to the Contractor

11.1. Delegation of Management Authority

Regardless of the relationship and interdependency between the Employer’s Board and the Employer, as may be defined by the Employer’s charter or other internal documents, for the purpose of this Contract, the Employer is the Party to the Contract and is deemed to act on behalf and with the authorization of the Employer’s Board. In this capacity, the Employer confers on the Contractor the Delegated Management Authority over the areas and to the extent specified in Schedule I. This delegation is irrevocable during the term of the Contract.

11.2. Contractor to be Advisor on Other Management Matters

All management authority not explicitly delegated to the Contractor is retained by the Employer.

If in the Contractor’s opinion it would be beneficial to the performance of the Services and achievement of the Objectives for such management authority to be exercised in a particular way, the Contractor shall advise the Employer of this and provide reasons in writing. The Employer will give the Contractor written notice of its decision within the period specified in the Contract Data. If the Employer decides not to follow the Contractor's advice, it will give written reasons for its decision when it informs the Contractor.

The Contractor shall comply with the decisions of the Employer in management matters which are not the subject of Delegated Management Authority, to the extent that this is consistent with this Contract and in particular with Schedule B, Schedule F and Schedule H.

11.3. Further Delegation During the Term of the Contract

The Employer may delegate further powers to the Contractor during the term of the Contract. Such further delegations are to be in writing.
The delegations may be revocable or irrevocable, as specified in the delegation. Such delegations will be effective unless the Contractor refuses to accept the delegation. To be effective, such refusal must be given in writing within 30 days of receiving the notice of delegation.

11.4. Purpose of Exercise of Delegated Management Authority

The Contractor shall exercise any Delegated Management Authority to perform the Services and meet the Performance Targets, in accordance with good utility management practices.

11.5. Suspension of Delegated Management Authority

The delegation of powers shall be suspended during periods of Suspension of the Service, in accordance with Sub-Clause 18.2 [Employer's Entitlement to Suspend the Services and Delegated Management Authority].

11.6. Employer’s Personnel

The Employer’s Personnel will continue to be employed by the Employer. They will not become employees of the Contractor by virtue of this Contract.

The Contractor's Personnel will not be employees of the Employer by virtue of this Contract.

The Contractor's power to manage the Employer's Personnel will be as set out in the delegation of management authority to the Contractor under this Clause.

11.7. Deleted

12. Contractor's Remuneration and Costs

12.1. Contractor's Remuneration

12.1.1. Amount and Conditions of Payment

The amount and conditions of payment of the Contractor's Remuneration shall be as specified in Schedule G.

12.1.2. Responsibility for Payment

Payment of the Remuneration shall be the responsibility of the Employer, unless otherwise specified in Schedule G.

12.1.3. Payment to be Made Without Penalty or Deduction

The Remuneration shall be paid in full without penalty or deduction unless otherwise provided in Schedule G, or this Contract.

12.1.4. Dates for Payment

The dates for payment of the Contractor's Remuneration shall be as
specified in Schedule G.

12.1.5. Currencies for Payment
The Contractor Remuneration shall be paid in the currency or currencies named in Schedule G.

12.1.6. Adjustment of Remuneration for Inflation
The Contractor Remuneration shall be adjusted as stated in Schedule G.

12.2. Advance Payment
The Advance Payment or payment to the Contractor in advance of work done, if any, shall be as specified in Schedule G.

Any advance payment shall be paid as an interest-free loan for mobilization, when the Contractor submits a guarantee in accordance with this Sub-Clause. The total Advance Payment, the number and timing of installments (if more than one) and the applicable currencies and proportions, shall be as stated in Schedule G.

The guarantee shall be in amounts and currencies equal to the Advance Payment. This guarantee shall be issued by an entity and from within a country (or other jurisdiction) approved by the Employer and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor. If the terms of the guarantee specify its expiry date and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.

Unless stated otherwise in Schedule G, the advance payment shall be repaid through equal percentage deductions from the Contractor’s Base Remuneration.

If the advance payment has not been repaid prior to the Termination of the Contract, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.

12.3. Delayed Payment
If the Contractor does not receive payment in accordance with Sub-Clause 12.1 [Contractor’s Remuneration], the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment.
Unless otherwise stated in Schedule G, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the central bank in the country of the currency of payment and shall be paid in such currency.

The Contractor shall be entitled to this payment without formal notice or certification and without prejudice to any other right or remedy.

12.4. **Sufficiency of the Contractor Remuneration**

The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contractor Remuneration, taking into account all available data and fully understanding the Services to be provided and the conditions in which the Services are to be performed.

12.5. **Contractors Costs and Account**

12.5.1. **Contractor’s Account**

An item which is expressed to be “for the Contractor’s Account” shall be paid for by the Contractor from its own funds and not from the funds of the Employer. The Contractor will be responsible for meeting the cost of items for the Contractor’s Account whether or not the Contractor’s Remuneration is sufficient to cover the cost, or whether or not the cost was anticipated and whether or not the Contractor has the funds available.

12.6. **Employer’s Financial Issues**

12.6.1. **Employer’s Account**

An item which is expressed to be “for the Employer’s Account” shall be paid for by the Employer.

All costs which are not specified by this Contract to be for the Contractor’s Account, or the responsibility of another person, shall be for the Employer’s Account.

12.6.2. **Procedure if the Employer’s Incomings are Not Sufficient to Cover its Outgoings**

The Employer shall cause the Parties responsible for its financial management to manage it prudently and in accordance with good commercial practice and attempt to pay the obligations of the Employer as they fall due.

In the event that the Employer is unable to pay its obligations as they fall due, the Employer shall cause the Parties responsible for its financial management to follow the rules and processes set out in Schedule J.
13. Obligations and Rights of the Employer

13.1. Access to Land
The Employer hereby grants free of charge to the Contractor, as from the Commencement Date, access to all land within the Service Area in respect of which access is required for the performance of the Services by the Contractor.

13.2. Right to use Facilities
The Employer hereby grants free of charge to the Contractor, as from the Commencement Date, the right to access and use the Facilities.

If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right, the Contractor shall be entitled on request to an adjustment in the Operator Remuneration sufficient to put it in the same position it would have been in had the Employer honoured its obligations under this Sub-Clause.

13.3. Payments by the Employer
The Employer shall make payments to the Contractor in accordance with the terms of this Contract.

13.4. Support by the Employer
The Employer shall use its best efforts to ensure that the Government shall provide the Contractor such assistance as may be required (e.g., issuance of permits, licenses, approvals, authorizations, etc.) during the term of this Contract.

The Employer shall use its best efforts to ensure adequate finance pursuant to the Project as defined herein to fund any capital investment program and shall keep the Contractor informed of the progress of such applications and negotiations.

13.5. Supervision by the Employer
(a) The Employer shall supervise the Contractor in the performance of its obligations under this Contract.

(b) The Employer shall review and approve or comment upon all reports submitted by the Contractor pursuant Clause 14 [Employer’s Reporting].

(c) The Employer shall be given reasonable access during normal working hours to premises, works and sites of the Contractor for the purposes of inspection and certification. For the avoidance of doubt the term “Employer” as used herein shall include duly authorized officers, employees, representatives of the Employer and the Financial and Technical Auditors.
13.6. **Permits, Licenses or Approvals**

The Employer shall (where he is in a position to do so) provide reasonable assistance to the Contractor at the request of the Contractor:

(a) by obtaining copies of the Laws of the Country which are relevant to the Contract but are not readily available and

(b) for the Contractor’s applications for any permits, licenses or approvals required by the Laws of the Country:

(i) which the Contractor is required to obtain

(ii) for the delivery of Goods, including clearance through customs and

(iii) for the export of Contractor’s Equipment when it is removed from the Facilities.

13.7. **Employer’s Personnel Cooperation**

The Employer shall be responsible for ensuring that the Employer’s Personnel and other contractors on the Facilities co-operate with the Contractor’s efforts in performance of the Services.

13.8. **Employer’s Financial Arrangements**

The Employer shall submit, within 28 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Contractor Remuneration (as estimated at that time) in accordance with Clause 12 [Contractor’s Remuneration]. Before the Employer makes any material change to his financial arrangements, the Employer shall give notice to the Contractor with detailed particulars.

In addition, if the Bank has notified to the Borrower that the Bank has suspended disbursements under its loan, which finances in whole or in part the execution of the Services, the Employer shall give notice of such suspension to the Contractor with detailed particulars, including the date of such notification, with a copy to the Independent Expert, within 7 days of the Borrower having received the suspension notification from the Bank. If alternative funds will be available in appropriate currencies to the Employer to continue making payments to the Contractor beyond a date 60 days after the date of Bank notification of the suspension, the Employer shall provide reasonable evidence in such notice of the extent to which such funds will be available.

14. **Employer’s Reporting**

14.1. **Employer’s Reporting Requirements**

The Employer shall comply with the reporting requirements specified
in Schedule K.

15. Intellectual and Industrial Property Rights

15.1. Intellectual Property and Copyright

As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in any technical or Employer's Representative inventions or innovations made by or on behalf of the Contractor in providing the Services and in the Contractor's, Parent's and Shareholders' proprietary software, as applicable, that the Contractor modified for use in connection with the Services (the "Contractor's Innovations and Software").

The Contractor, by signing the Contract, gives the Employer a non-terminable, transferable, non-exclusive, royalty-free license to copy, use and communicate the Contractor's Innovations and Software and any other software used or purchased by the Contractor in the performance of the Services (the "Other Software"), including making and using modifications of them. This license shall,

(a) apply throughout the actual or intended working life, whichever is longer, of the relevant parts of the Facilities;

(b) entitle any person in proper possession of the relevant part of the Facilities to copy, use and communicate the Contractor's Innovations and Software and the Other Software for the purposes of managing, operating and maintaining the Facilities;

(c) in the case of Contractor's Innovations and Software and the Other Software which are in the form of computer programs and other software, permit their use on any computer at the Facilities and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor; and

(d) entitle the Employer to make the Contractor's Innovations and Software and the Other Software available for inspection by a prospective bidder who may be involved in the process to select a Subsequent Contractor.

As between the Parties, the Employer owns and will continue to own all data with respect to the Facilities and Customers.

15.2. Intellectual Property Infringements

15.2.1. Meaning of Infringement and Claim

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Services; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.
15.2.2. Notice of Claims

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under Sub-Clause 15.2 [Intellectual Property Infringement].

15.2.3. Contractor to Indemnify Employer

The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to the performance of the Services or the Contractor’s management of the Facility.

15.2.4. Employer to Indemnify Contractor

The Employer shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

(a) an unavoidable result of the Contractor’s compliance with the Contract, or

(b) a result of any Services being used by the Employer:

(i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or

(ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

15.2.5. Right to Manage Settlement and Litigation

If a Party is entitled to be indemnified under this Sub-Clause 15.2 [Intellectual Property Infringement], the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

15.3. Confidentiality Obligations of the Contractor

15.3.1. Confidentiality

The Contractor shall keep confidential and shall not, without the written consent of the Employer, divulge to any Third Party any documents, data or other information arising directly or indirectly from the performance of Services under the Contract, whether such
information has been furnished prior to, during or following termination of the Contract.

However, the Contractor may furnish to its Subcontractors such documents, data and other information to the extent required for the Subcontractors to perform their work under the Contract, in which event the Contractor shall obtain from such Subcontractors an undertaking of confidentiality similar to that imposed on the Contractor under this Sub-Clause 15.3 [Confidentiality Obligations of the Contractor].

15.3.2. Use of Information

The Contractor shall not use such documents, data and other information received from the Employer for any purpose other than as are required for the performance of the Contract. The Contractor shall not publish, permit to be published, or disclose any particulars of the Contract, Assets or Facilities in any trade or technical paper or advertising materials without the prior written consent of the Employer.

15.3.3. Exceptions for Publicly Available Information

The obligations of the Contractor under Sub-Clause 15.3 [Confidentiality Obligations of the Contractor] shall not apply to that information which,

(a) now or hereafter enters the public domain through no fault of the Contractor;

(b) can be proven to have been possessed by the Contractor at the time of disclosure and which was not previously obtained, directly or indirectly, from the Employer; or

(c) otherwise lawfully becomes available to the Contractor from a Third Party that has no obligation of confidentiality.

15.4. Deleted

16. Liability, Risk Allocation, Securities, Bonds and Insurance

16.1. Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Services, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, whether in contract, tort or otherwise, other than as specifically provided in Sub-Clause 21.9 [Payment on Termination by the Employer for Cause]; Sub-Clause 16.2 [Indemnities]; Sub-Clause 16.6.1 [Consequences of Employer’s Risks] and Sub-Clause 15.1 [Intellectual Property and Copyright].

The total liability of the Contractor to the Employer, under or in connection with the Contract, whether in contract, tort or otherwise,
shall not exceed the sum stated in the Contract Data, or (if such multiplier or other sum is not so stated), the Contractor Base Remuneration.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default, gross negligence, or reckless misconduct by the defaulting Party.

16.2. Indemnities

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

(a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the execution and completion of the Services, unless attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents and

(b) damage to or loss of any property, real or personal, to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor's performance or non-performance of the Services and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents.

16.3. Performance Security

Unless an amount is not stated in the Contract Data, the Contractor shall obtain (at his cost) a Performance Security for proper performance, in the form, amount and currencies stated in the Contract Data.

The Contractor shall deliver the Performance Security to the Employer within 28 days after receiving the Letter of Acceptance and shall send a copy to the Independent Expert. The Performance Security shall be issued by an entity and from within a country (or other jurisdiction) approved by the Employer and shall be in the form
annexed to the Particular Conditions or in another form approved by the Employer. If the institution issuing the Performance Security is located outside the country of the Employer, it shall have a corresponding financial institution located in the country of the Employer to make it enforceable.

The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Services and been released from liability under this Contract. If the terms of the Performance Security specify its expiry date and the Contractor has not become entitled to receive the Performance Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Services have been completed and any defects have been remedied.

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

The Employer shall not make a claim under the Performance Security unless the Independent Expert first certifies that there are “prima facie” grounds for making a claim.

The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Employer was not entitled to make the claim.

The Employer shall return the Performance Security to the Contractor within 21 days after receiving a copy of the Performance Certificate.

16.4. General Requirements for Insurances

In this Clause, “insuring Party” means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Employer. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

Wherever the Employer is the insuring Party, each insurance shall be effected with insurers and in terms consistent with the details annexed in Schedule M.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these
additional joint insured except that the Employer shall act for Employer’s Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant insuring Party shall, within the respective periods stated in the Contract Data (calculated from the Commencement Date), submit to the other Party:

(a) evidence that the insurances described in this Clause have been effected and

(b) copies of the policies for the insurances as required by Schedule M.

When each premium is paid, the insuring Party shall submit evidence of payment to the other Party.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Services and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party and the Contractor Remuneration shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Employer, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Employer in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract and the other Party neither
approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

16.5. **Insurance Required**

Each Party shall effect and maintain insurance as specified in Schedule M.

16.6. **Employer’s Risks**

The risks referred to in Sub-Clause 16.7 [Consequences of Employer’s Risks] below, insofar as they directly affect the execution of the Services in the Country, are:

(a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,

(b) rebellion, terrorism, sabotage by persons other than the Contractor’s Personnel and other employees of the Contractor and Subcontractors, revolution, insurrection, military or usurped power, or civil war, within the Country,

(c) riot, commotion or disorder within the Country by persons other than the Contractor’s Personnel and other employees of the Contractor and Subcontractors,

(d) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor’s use of such munitions, explosives, radiation or radio-activity,

(e) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds,

(f) use or occupation by the Employer of any part of the Permanent Services, except as may be specified in the Contract,

(g) any operation of the forces of nature which is Unforeseeable..

16.7. **Consequences of Employer’s Risks**

Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to,

(a) destruction of or damage to the Facilities or any part thereof;

(b) destruction of or damage to property of the Employer or any Third Party; or

(c) injury or loss of life,

if such destruction, damage, injury or loss of life is caused by any Employer’s Risks and the Employer shall indemnify and hold the
Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising on consequence of or in connection with the same.

If the Facilities or any property of the Contractor used or intended to be used for the purposes of the Services sustains destruction or damage by reason of any Employer’s Risks, the Employer shall pay for,

(a) replacing or making good any property or investments of the Contractor so destroyed or damaged; and
(b) replacing or making good any such destruction or damage to the Facilities or any part thereof,

so far as may be required by the Employer and as may be necessary for completion of the Services.

If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Facilities, the Employer shall either request a change in accordance with Sub-Clause 19.1 [Employer Variations] excluding the performance of the Services in respect of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to Sub-Clause 17.7 [Release from Performance].

Notwithstanding anything contained in the Contract, the Employer shall pay the Contractor for any increased Costs that are in any way attributable to, consequent on, resulting from, or in any way connected with any Employer’s Risks, if the Contractor notifies the Employer in writing of any such increased cost as soon as practicable.

If, during the term of the Contract, any Employer’s Risks occur that financially or otherwise materially affect the execution of the contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors’ personnel engaged in the work on the Services. If the execution of the Services becomes impossible or is substantially prevented for a single period of more than 60 days or an aggregate period of more than 120 days on account of any Employer’s Risks, the Parties will attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Contract by giving a notice to the other.

In the event of termination pursuant to this Sub-clause, the rights and obligations of the Employer and the Contractor shall be as specified in Sub-Clause 17.7 [Release from Performance].

17. Force Majeure

17.1. Definition of Force Majeure

In this Clause, “Force Majeure” means an exceptional event or
circumstance:

(a) which is beyond a Party’s control,

(b) which such Party could not reasonably have provided against before entering into the Contract,

(c) which, having arisen, such Party could not reasonably have avoided or overcome and

(d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,

ii) rebellion, terrorism, sabotage by persons other than the Contractor’s Personnel and other employees of the Contractor and Subcontractors, revolution, insurrection, military or usurped power, or civil war,

iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor’s Personnel and other employees of the Contractor and Subcontractors, or the Employer’s Personnel

iv) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor’s use of such munitions, explosives, radiation or radio-activity and

v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

17.2. Notice of Force Majeure

If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.
17.3. Duty to Minimize Delay

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

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

17.4. Consequences of Force Majeure

If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 17.2 [Notice of Force Majeure] and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled to:

(a) an extension of time for any such delay, if completion of the services is or will be delayed and

(b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 17.2 [Definition of Force Majeure] and, in the case of sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost.

17.5. Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Services to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor’s non-performance or entitle him to relief under this Clause.

17.6. Optional Termination, Payment and Release

If the execution of substantially all the Services in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 17.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given and the Contractor shall proceed in accordance with Sub-Clause 21.12 [Actions on Termination].

17.7. Release from Performance

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfill its or their contractual
obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

(a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract and

(b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 21.11 [Payment on Termination for Prolonged Force Majeure] if the Contract had been terminated under Sub-Clause 17.6 [Optional Termination, Payment and Release].

18. Suspension of Services

18.1. Suspension by Contractor

18.1.1. Suspension for Non-Payment

If the Employer:

(a) fails to pay the Contractors any sum due under the Contract within the period specified in the Contract;

(b) fails to approve any invoice or supporting documents without just cause under the Contract;

(c) commits a substantial breach of the Contract, including preventing the exercise of the Contractor’s Delegated Management Authority

(d) fails to provide possession of or access to the Facilities

the Contractor may, after giving not less than 14 days’ notice to the Employer, suspend work (or reduce the rate of work) unless and until the failure or breach which gave rise to the suspension has been rectified.

18.1.2. Deleted

18.1.3. No Prejudice to Other Remedies

The Contractor’s action shall not prejudice his entitlements to financing charges under Sub-Clause 12.3 [Delayed Payment] and to termination under Sub-Clause 21.7 [Termination by the Contractor for Cause].

18.1.4. Compensation for Costs from Suspension

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall be entitled to:

(a) an extension of time for any such delay and
18.2. **Employer’s Entitlement to Suspend the Services and Delegated Management Authority**

The Employer may suspend the Services and Delegation of Management Authority, if this is necessary in the public interest, by notice to the Contractor. Such notice shall specify the effective date of the suspension, the reasons for the suspension and the date on which the suspension will end.

If the Employer suspends the Services in accordance with this Sub-Clause 18.2, the Contractor shall then cease to perform its obligations under the Contract. However, the Contractor shall still be entitled to the Contractor Remuneration under the Contract.

If the suspension continues for more than 90 days, the Contractor may, by notice to the Employer, treat the suspension as Termination for Employer Convenience.

19. **Contract Variation, Extension and Rebidding**

19.1. **Employer Variations**

At any time during the Term of the Contract the Employer’s Representative may request a Variation by giving to the Contractor a Variation Request. A Variation Request shall specify:

(a) A brief description of the Change to the Services

(b) the effect on any other provisions of the Contract

(c) a reasonable period within which the Contractor is required to respond.

19.2. **Decision on Employer’s Variation Request**

On receiving a Variation Request the Contractor shall respond in writing as soon as practicable and in any event within the period stipulated in accordance with Sub-Clause 19.1 [Employer Variations], either by giving reasons why he cannot comply (if this is the case) or by submitting a Variation Proposal containing:

(a) a description of the proposed work to be performed and a program for its execution,

(b) an estimate of the adjustment in Operator Remuneration which would be necessary to put the Contractor in the same financial position as if the Variation were not implemented

The Employer shall then:

(a) Accept the Variation Proposal, which shall then modify the Contract so far as is specified in the Variation Proposal; or

(b) Notify the Contractor that is has decided not to proceed with
Variation or
(c) Notify the Contractor that it does not agree with the proposed adjustment in Operator Remuneration or other terms of the Contract and refer the issue for determination through the Dispute Resolution procedure under Sub-Clause 20.1 [Dispute Resolution].

19.3. **Value Management**

The Contractor may, at any time, submit to the Employer’s Representative a written Value Management Proposal which (in the Contractor’s opinion) will, if adopted:

(a) reduce the cost of providing the services; or
(b) further the Objectives of the Contract; or
(c) otherwise be of benefit to the Employer.

The Value Management Proposal shall be prepared at the cost of the Contractor and shall include:

(a) description of the proposed Change to the Services
(b) a description of the proposed work to be performed and a program for its execution,
(c) any proposed adjustment in Operator Remuneration
(d) the effect on any other provisions of the Contract.

If the Value Management Proposal would allow the same Services to be performed at lower cost, then the proposed adjustment in the Operator Remuneration shall be such as to share the benefits of the savings equally between the Contractor and the Employer.

If the effect of the Value Management Proposal would be to increase both the scope of the Services and the cost of the Services, then the proposed adjustment in the Operator Remuneration shall be such as to put the Contractor in the same financial position as it would be if the Value Management Proposal were not implemented.

19.4. **Decision on Value Management Proposal**

On receiving a Value Management Proposal the Employer shall either:

(a) Accept the Value Management Proposal, which shall then modify the Contract so far as is specified in the Value Management Proposal; or
(b) Decline to accept the Value Management Proposal.

19.5. **Adjustments for Changes in Law**

“Change in Law” means a change in the Laws of the Country
(including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.

If the Contractor incurs additional Cost as a result of a Change in Law, the Operator Remuneration shall be adjusted so as put the Contractor in the same financial position as it would be if the Change in Law had not occurred.

If the Parties cannot agree on the required adjustment to the Operator Remuneration, either Party may refer the issue for determination through the procedure under Sub-Clause 20.1 [Dispute Resolution].

19.6. Extension and Subsequent Bidding

19.6.1. Extension of the Contract

Unless otherwise provided for in Schedule N, the Contract may be extended for an additional period of no more than the initial term of the Contract. Such an extension may be requested by the Employer, following the process set out in 19.1 [Employer Variation], or by the Contractor following the process set out in 19.2 [Value Management], must be agreed by the Parties and may not be determined under the Dispute Resolution process.

However, the Parties may agree to refer the request for an extension to the Independent Expert. If the parties refer the request for an extension to the Independent Expert they shall agree, prior to the referral, whether the Independent Expert's recommendation will be advisory only, or binding.

If requested to make a recommendation under this section, the Independent Expert shall be guided by:

(a) The Objectives of the Contract
(b) Such additional objectives as the Employer may inform him of which appear to him to be reasonable
(c) The need for the Contractor to make a fair profit on its efforts, which he may assess by reference to the profits actually achieved or expected to be achieved under the Contract
(d) The desirability of rewarding the Contractor for success in achieving the Employer’s objectives.

19.6.2. Subsequent Bidding for a Similar Contract

Unless otherwise provided in Schedule N, the contractor shall not be precluded from bidding for any similar contract which is offered by the Employer after the termination or expiration of this contract. In
case of such a subsequent bidding, the Contractor will be requested by the Employer to provide in due time a detailed report satisfactory to the Employer about the Services under this Contract, such Report to be made available by the Employer to all other potential bidders.

20. Dispute Resolution

20.1. Dispute Resolution

20.1.1. Amicable Settlement

(a) If any dispute arises out of or in connection with this Contract, either Party may give notice to the other Party of the same, whereupon the Parties shall meet promptly and in a good faith attempt to reach an amicable settlement.

(b) In the event that the Parties do not resolve a dispute in accordance with this Sub-Clause within twenty (20) days of notice of the dispute being given, then either Party may refer the dispute to the Independent Expert for determination pursuant to the procedure set forth in Sub-Clause 20.1.2 [Independent Expert].

20.1.2. Independent Expert

(a) By the date of Contract signing, the Contractor shall indicate to the Employer in writing its acceptance of one of the potential Independent Experts proposed in the Contract Data by the Employer or otherwise present to the Employer for its acceptance, a counter-proposal with the names of one or more individuals. The Employer shall respond in writing to the Contractor by the date stated in the Contract Data and in case of a negative response, with a copy to the appointing entity or official named in the Contract Data, who shall then appoint the Independent Expert after due consultation with both Parties. If the Contractor fails to indicate its acceptance of one of the Employer-proposed individuals or present a counter-proposal, or if the Employer fails to respond to the Contractor’s counterproposal by the due dates indicated above for each event, or if the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the Independent Expert declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, then the appointing entity or official named in the Contract Data shall, upon request of either or both of the Parties and after due consultation with both Parties, appoint the Independent Expert. The appointment(s) made by the appointing entity or official shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.
(b) The Independent Expert shall be a professional experienced in the type of services covered under the Contract and with the interpretation of contractual documents and shall be fluent in the language for communications defined in the Contract. The Independent Expert shall be (and the terms of this appointment shall so provide that he or she is) independent of the Parties and shall act impartially. The Independent Expert’s appointment may be terminated only by mutual agreement between the Parties. The Expert’s terms of appointment shall expire as the Parties may mutually agree.

(c) In making its determination, the Independent Expert shall:

(i) have regard to the Services required to be performed hereunder and the terms and conditions of this Contract; and

(ii) ensure that the position of the Parties is restored to the position they would have been in if the event triggering the dispute under this Section had not occurred and all the Parties had complied with the Contract.

(d) The Party who initially issued the notice of intention to refer the dispute to the Independent Expert shall within ten (10) days of such notice submit to the Independent Expert and to the other Party the following documents:

(i) A description of the dispute;

(ii) A statement of that Party’s position; and

(iii) Copies of relevant documentary evidence in support.

(e) Within ten (10) days of receipt of the above documents, the other Party shall submit:

(i) A description of the dispute;

(ii) A statement of that Party’s position; and

(iii) Copies of relevant documentary evidence in support.

(f) The Independent Expert may call for such further documentary evidence and/or interview such persons as it deems necessary in order to reach their decision.

(g) The expert shall give notice to the Parties of its decision within twenty (20) days of receipt of the documents provided under Section d) or e) as the case may be.

(h) Unless this Contract has already been terminated or abandoned, the Parties shall in every case continue to proceed with the performance of their rights and obligations under this Contract with all due diligence whilst the
Independent Expert is reviewing the dispute

(i) The decision of the Independent Expert shall be binding unless and until one Party, within ten (10) days of the date of such decision, issues a notice of intention to refer the matter to arbitration in accordance with Sub-Clause 20.1.4 [Arbitration].

(j) Each Party shall bear its own costs of preparing the materials for and making presentations to the Expert.

20.1.3. Payment of the Independent Expert

The costs of engaging the Independent Expert shall be borne equally by the Parties. The Independent Expert shall be paid as follows, in the currency named in the Contract Data or as otherwise indicated in the appointment notice issued in accordance with Sub-Clause 20.1.2 [Independent Expert]:

(a) a retainer fee per calendar month, which shall be considered as payment in full for:

(i) being available on 28 days’ notice for all site visits and hearings;

(ii) becoming and remaining conversant with all Facility developments and maintaining relevant files;

(iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and

(iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Sub-Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the appointment becomes effective; until the last day of the calendar month in which the Contract expires, unless the Independent Expert resigns or his appointment is otherwise terminated by the Parties.

(b) a daily fee which shall be considered as payment in full for:

(i) each day or part of a day up to a maximum of two days’ travel time in each direction for the journey between the Independent Expert’s home and the site, or another location of a meeting that the Independent Expert is required to attend;

(ii) each working day on Site visits, hearings or preparing decisions; and

(iii) each day spent reading submissions in preparation for a hearing.

(c) all reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other
direct travel expenses) incurred in connection with the
Independent Expert’s duties, as well as the cost of telephone
calls, courier charges, faxes and telexes: a receipt shall be
required for each item in excess of five percent of the daily fee
referred to in sub-paragraph (b) of this Sub-Clause;

(d) any taxes properly levied in the Country on payments made to
the Independent Expert (unless a national or permanent resident
of the Country) under this Sub-Clause.

20.1.4. Arbitration

Unless indicated otherwise in the Contract Data, all disputes arising
out of or in connection with this Contract, not settled by amicable
settlement or by the Independent Expert, in respect of which the
Independent Expert’s determination has not become final and
binding, shall be finally settled by arbitration. Unless otherwise
agreed by both Parties:

(a) For contracts with foreign contractors:

(i) international arbitration with proceedings administered by the
international arbitration institution appointed in the Contract
Data, in accordance with the rules of arbitration of the
appointed institution;

(ii) the place of arbitration shall be the city where the
headquarters of the appointed arbitration institution is located
or such other place selected in accordance with the
applicable arbitration rules; and

(iii) the arbitration shall be conducted in the language for
communications defined in Sub-Clause 1.4; and

(b) For contracts with domestic contractors, arbitration with
proceedings conducted in accordance with the laws of the
Employer’s country.

The arbitrators shall have full power to open up, review and revise
any determination of the Independent Expert, relevant to the dispute.
Nothing shall disqualify representatives of the Parties from being
called as a witness and giving evidence before the arbitrators on any
matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the
arbitrators to the evidence or arguments previously put before the
Independent Expert to obtain its determination, or to the reasons for
dissatisfaction given in its notice of dissatisfaction. Any decision of
the Independent Expert shall be admissible in evidence in the
arbitration.

Arbitration may be commenced prior to or after completion of the
Services. The obligations of the Parties and the Independent Expert
shall not be altered by reason of any arbitration being conducted during the progress of the Services.

20.1.5. Survival

The dispute resolution provisions contained in Sub-Clause 20.1.4 [Arbitration] shall survive termination of this Contract.

21. Default and Termination

21.1. Notification and Cure Plans

If a Default occurs, the Party not in Default may, in addition to any other remedies it has, give the Defaulting Party a notice in writing ("Default Notice") specifying:

(a) that a Default has occurred;
(b) the events or circumstances constituting the Default; and
(c) if the Default is capable of being cured or remedied, a reasonable Cure Period in which to cure or remedy the Default.

The Party not in Default may specify in the Default Notice:

(a) that it requires the Defaulting Party to provide to the Party not in Default a written plan ("Cure Plan") which specifies the reason the Default occurred, how the Defaulting Party intends to remedy the Default, the time that the Defaulting Party will require to remedy the Default and includes additional information on such matters as the Party not in Default requires; and

(b) a reasonable time by which the Defaulting Party must provide the Cure Plan to the Party not in Default.

The Party not in Default may, by notice to the Defaulting Party, vary the Cure Period having regard to information provided to it in relation to a Cure Plan..

21.2. Remediying the Default within the Applicable Cure Period

Upon receipt of a Default Notice, if the Default is capable of being cured or remedied, the Defaulting Party must cure or remedy the Default within the Cure Period.

In addition to its obligations under Sub-Clause 21.1 [Notification and Cure Plans], if the Party not in Default has required the Defaulting Party to provide a Cure Plan, the Defaulting Party must:

(a) provide a Cure Plan within the time requested by the Defaulting Party;
(b) comply with the Cure Plan; and
(c) report to the Party not in Default on progress in relation to the
Cure Plan at the times and in the manner specified by the Party not in Default.

The Defaulting Party may, by notice to the Defaulting Party, request an extension to a Cure Period. The Defaulting Party may only request such an extension once in relation to a particular Default. The notice must specify:

(a) the reason why the Defaulting Party is not able to cure or remedy the Default within the existing Cure Period,

(b) the additional time that the Defaulting Party requires to cure or remedy the Default and

(c) any other information that is relevant to the Party not in Default’s assessment of the request.

The Defaulting Party may not give such a notice unless it has diligently sought to cure or remedy the relevant Default. The Party not in Default must not unreasonably withhold its consent to a request for such an extension of a Cure Period unless the Party not in Default believes, on reasonable grounds, that the extension of the Cure Period would have a material adverse effect on the provision of the Services or the use by the Party not in Default of the Facilities.

21.3. Failure to Cure

If the Party not in Default has given a Default Notice to the Defaulting Party and:

(a) where the Default is capable of being cured or remedied, the Defaulting Party does not provide a Cure Plan acceptable to the Party not in Default within the time required in the Default Notice (if applicable);

(b) where the Default is capable of being cured or remedied, the Defaulting Party does not diligently pursue the Cure Plan (if applicable) or otherwise comply with its obligations under Sub-Clause 21.2 [Remedying the Default within the Applicable Cure Period];

(c) where the Default is capable of being cured or remedied, the Default is not cured or remedied within the Cure Period and, if applicable, in accordance with the Cure Plan; or

(d) the Default is not capable of being cured or remedied.

The Party not in Default may (without prejudice to any of its other rights with respect to the Default), exercise all or any of the following remedies:

(a) sue the Defaulting Party for compensation for the Default and exercise all available legal and equitable remedies including without limitation suing for specific performance, injunctive
relief or such other orders as the Party not in Default considers appropriate;

(b) terminate this Agreement.

21.4. Ways the Contract may be Terminated

The Contract may be terminated by:

(a) The Employer for Convenience, in accordance with Sub-Clause 21.5 [Termination by the Employer for Convenience],

(b) The Employer for Cause, in accordance with Sub-Clause 21.6 [Termination by the Employer for Cause], or

(c) The Contractor for Cause, in accordance with Sub-Clause 21.7 [Termination by the Contractor for Cause].

21.5. Termination by the Employer for Convenience

The Employer shall be entitled to terminate the Contract, at any time for the Employer’s convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security.

The Employer shall not terminate the Contract under this Sub-Clause in order to arrange for the Services to be executed by another contractor or to avoid a termination of the Contract by the Contractor under Sub-Clause 21.7 [Termination by the Contractor for Cause].

After this termination, the Contractor shall proceed in accordance with Sub-Clause 21.12 [Actions on Termination] and shall be paid in accordance with Sub-Clause 21.8 [Payment on Termination by the Employer for Convenience].

21.6. Termination by the Employer for Cause

The Employer shall be entitled to terminate the Contract for cause, if the Contractor:

(a) in accordance with Sub-Clause 21.3 [Failure to Cure], is the Defaulting Party referred to in that Sub-Clause,

(b) fails to comply with Sub-Clause 16.3 [Performance Security],

(c) abandons the Services or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,

(d) without reasonable excuse fails to proceed with the Services,

(e) subcontracts the whole of the Services or assigns the Contract without the required agreement,

(f) becomes bankrupt or insolvent, goes into liquidation, has a
receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or

(g) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value,

as an inducement or reward:

(i) for doing or forbearing to do any action in relation to the Contract, or

(ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract,

(iii) or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination, or.

(h) Engages, as determined by the Employer, in any Corrupt Practice, Coercive Practice, Collusive Practice, Fraudulent Practice or Obstructive Practice.

In any of these events or circumstances, the Employer may, upon giving 14 days’ notice to the Contractor, terminate the Contract and expel the Contractor from the Facilities. However, in the case of sub-paragraph (e) or (f), the Employer may by notice terminate the Contract immediately.

The Employer’s election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.

21.7. Termination by the Contractor for Cause

The Contractor shall be entitled to terminate the Contract if:

(a) in accordance with Sub-Clause 21.3 [Failure to Cure], if the Contractor is the Defaulting Party referred to in that Sub-Clause,

(b) the Employer fails to pay any part of the Contractor's Remuneration within 56 days of it falling due

(c) the Employer substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the ability of the Contractor to perform the Contract,

(d) the Employer fails to comply with Sub-Clause 3.1
(e) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him within 7 days of the due date, the Contractor may, without prejudice to the Contractor’s entitlement to financing charges under Sub-Clause 12.3 [Delayed Payment] take one of the following actions, namely (i) suspend work or reduce the rate of work, or (ii) terminate his employment under the Contract by giving notice to the Employer, with a copy to the Independent Expert, such termination to take effect 14 days after the giving of the notice.

In any of these events or circumstances, the Contractor may, upon giving 14 days’ notice to the Employer, terminate the Contract. However, in the case of sub-paragraph (g), the Contractor may by notice terminate the Contract immediately.

The Contractor’s election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

21.8. Payment on Termination by the Employer for Convenience

Upon termination of this Contract pursuant to Sub-Clause 21.5 [Termination by the Employer for Convenience] the Employer shall make the following payments to the Contractor:

(a) any portion of the Remuneration payable to the Contractor for Services satisfactorily performed or Performance Target achieved prior to the Termination of the Contract;

(b) the Costs reasonably incurred by the Contractor in the removal of the Contractor’s Equipment, Materials and Supplies from the Facilities and in the repatriation of the Contractor’s Personnel and its Subcontractors’ personnel;

(c) any amounts required to be paid by the Contractor to its Subcontractors in connection with the termination of any Subcontracts, including any reasonable cancellation charges;

(d) the reasonable Costs incurred by the Contractor in protecting and handing over the Facilities pursuant to Sub-Clause 21.12
[Actions on Termination]; and
(e) the reasonable Costs of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with Third Parties in connection with the Contract and that are not otherwise covered by this Sub-Clause 21.8 [Payment on Termination by the Employer for Convenience].

The only payments to be made to the Contractor on termination by the Employer pursuant to Sub-Clause 21.5 [Termination by the Employer for Convenience] are those set out in this Sub-Clause 21.8. The Contractor shall not make any other claim for lost or foregone profits, revenues, consequential damages or any other costs, damages, expenses or losses of any kind as a result of or in connection with the termination of this Contract.

21.9. Payment on Termination by the Employer for Cause

Upon termination of this Contract pursuant to Sub-Clause 21.6 [Termination by the Employer for Cause], the Employer shall make the following payments to the Contractor:

(a) any portion of the Remuneration payable to the Contractor for Services satisfactorily performed or Performance Target achieved prior to the Termination of the Contract and

(b) the reasonable Costs incurred by the Contractor in protecting and handing over the Facilities pursuant to Sub-Clause 21.12 [Actions on Termination].

The only payments to be made to the Contractor on termination by the Employer pursuant to Sub-Clause 21.6 [Termination by the Employer for Cause] are those set out in this Sub-Clause 21.9. The Contractor shall not make another claim for lost or foregone profits, revenues, consequential damages or any other costs, damages, expenses or losses of any kind as a result of or in connection with the termination of this Contract.

21.10. Payment on Termination by the Contractor for Cause

Upon termination of this Contract pursuant to Sub-Clause 21.7 [Termination by the Contractor for Cause] the Employer shall make the following payments to the Contractor:

(a) any portion of the Remuneration payable to the Contractor for Services satisfactorily performed or Performance Target achieved prior to the Termination of the Contract;

(b) the Costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment, Materials and Supplies from the Facilities and in the repatriation of the
Contractor’s Personnel and its Subcontractors’ personnel;

(c) any amounts required to be paid by the Contractor to its Subcontractors in connection with the termination of any Subcontracts, including any reasonable cancellation charges;

(d) the reasonable Costs incurred by the Contractor in protecting and handing over the Facilities pursuant to Sub-Clause 21.12 [Actions on Termination];

(e) the reasonable Costs of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with Third Parties in connection with the Contract and that are not otherwise covered by this Sub-Clause 21.8 [Payment on Termination by the Employer for Convenience]; and

(f) a payment in compensation for lost profits under the contract, which shall be either:

   (i) the amount for Liquidated Damages on Termination for Employer Convenience specified in the Contract Data, or if no such amount is specified,

   (ii) the amount of profit the Contractor would be expected to lose as a result of early termination of the contract. The Contractor shall submit an estimate of this amount. The Employer shall either pay this amount or submit it to dispute resolution under Sub-Clause 20.1 [Dispute Resolution].

The only payments to be made to the Contractor on termination by the Employer pursuant to Sub-Clause 21.7 [Termination by the Contractor for Cause] are those set out in this Sub-Clause 21.10. The Contractor shall not make another claim for lost or foregone profits, revenues, consequential damages or any other costs, damages, expenses or losses of any kind as a result of or in connection with the termination of this Contract.

21.11. Payment on Termination for Prolonged Force Majeure

Upon termination of this Contract pursuant to Sub-Clause 17.6 [Optional Termination, Payment and Release] the Employer shall make the following payments to the Contractor:

(a) any portion of the Remuneration payable to the Contractor for Services satisfactorily performed or Performance Target achieved prior to the Termination of the Contract

(b) the Costs reasonably incurred by the Contractor in the removal of the Contractor’s Equipment, Materials and Supplies from the Facilities and in the repatriation of the Contractor’s Personnel and its Subcontractors’ personnel;
(c) any amounts required to be paid by the Contractor to its Subcontractors in connection with the termination of any Subcontracts, including any reasonable cancellation charges;

(d) the reasonable Costs incurred by the Contractor in protecting and handing over the Facilities pursuant to Sub-Clause 21.12 [Actions on Termination].

(e) the reasonable Costs of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with Third Parties in connection with the Contract and that are not otherwise covered by this Sub-Clause 21.11 [Payment on Termination for Prolonged Force Majeure].

21.12. Actions on Termination

In all cases of Termination the Contractor shall promptly:

(a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting the Facilities, or handing the over for safe and uninterrupted operation by the Employer or another party, including co-operating with the Employer in such manner as the Employer reasonably requires to ensure that the Services provided by the Contractor can be provided by another service provider or by the Employer itself.

(b) leave the Facilities

(c) deliver to the Employer all records related to the Contract and Services

(d) deliver all documents, know-how, information technology software and other intellectual property required for the provision of the Services and management of the Facility which were required to be left with the Employer at the Termination of the Contract under Clauses 6 [Know-How Transfer and Training] and 15 [Intellectual and Industrial Property Rights].
Section VIII. Particular Conditions (PC)

The following Particular Conditions shall supplement the GC. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.
# Part A - Contract Data

<table>
<thead>
<tr>
<th>Conditions</th>
<th>Sub-Clause</th>
<th>Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer’s Name and Address</td>
<td>1.1.2(f) &amp; 1.3 (b)</td>
<td>Bangladesh China Power Company (Pvt.) Limited, 8, Panthapath, Kawran Bazar, Level 3, UTC Building, Dhaka – 1215, Bangladesh</td>
</tr>
<tr>
<td>Electronic Transmission Systems</td>
<td>1.3(a)</td>
<td>Email addressed to: helal@<a href="mailto:1963@gmail.com">1963@gmail.com</a></td>
</tr>
<tr>
<td>Governing Law</td>
<td>1.4</td>
<td>The People’s Republic of Bangladesh</td>
</tr>
<tr>
<td>Ruling Language</td>
<td>1.4</td>
<td>English</td>
</tr>
<tr>
<td>Language for Communications</td>
<td>1.4</td>
<td>English</td>
</tr>
<tr>
<td>Additional Conditions of Effectiveness</td>
<td>2.1(f)</td>
<td>NIL</td>
</tr>
<tr>
<td>Period of Contract</td>
<td>2.3</td>
<td>Sixty (60) months</td>
</tr>
<tr>
<td>Contractor’s Responsibility for the Acts or Defaults of its Subcontractors</td>
<td>3.5</td>
<td>NIL</td>
</tr>
<tr>
<td>Compliance with Laws</td>
<td>3.8</td>
<td>NIL</td>
</tr>
<tr>
<td>Categories of Staff that must be hired locally if and to the extent that a sufficient number of appropriately qualified staff is locally available</td>
<td>8.6</td>
<td>Target to start replacement some of the working level positions of O &amp; M personnel (engineers to technician) from end of third year and substantial replacement by end of Contract Period.</td>
</tr>
<tr>
<td>Period within which the Employer should make a decision on Contractor’s Management Advice</td>
<td>11.2</td>
<td>Ninety (90) days</td>
</tr>
<tr>
<td>Maximum Total Liability of the Contractor to the Employer</td>
<td>16.1</td>
<td>USD Two Hundred Million (USD200,000,000.00)</td>
</tr>
<tr>
<td>Performance Security</td>
<td>16.3</td>
<td>The performance security will be in the form of a performance bond in the amount(s) of USD Twenty Million (USD20,000,000).</td>
</tr>
<tr>
<td>Conditions</td>
<td>Sub-Clause</td>
<td>Data</td>
</tr>
<tr>
<td>------------</td>
<td>------------</td>
<td>------</td>
</tr>
<tr>
<td>Periods for required submissions by the relevant insuring Party to the other Party</td>
<td>16.4</td>
<td>Period (calculated from the Commencement Date) for submission of: (a) evidence that the insurances described in Clause 16 have been effected: Ninety (90) Days and (b) copies of the policies for the insurances as required by Schedule M: One Hundred and Eighty (180) Days</td>
</tr>
<tr>
<td>List of Employer-Proposed Potential Independent Experts</td>
<td>20.1.2</td>
<td>Will be negotiated during Pre-Contract Discussion</td>
</tr>
<tr>
<td>Date by which the Employer shall respond to Contractor’s Counterproposals (if any)</td>
<td>20.1.2</td>
<td>Thirty (30) Days</td>
</tr>
<tr>
<td>Appointing entity or official in case of disagreement between the Parties</td>
<td>20.1.2</td>
<td>Chairman, Bangladesh China Power Company (Pvt.) Limited</td>
</tr>
<tr>
<td>Currency for Payment of the Independent Expert</td>
<td>20.1.3</td>
<td>Will be negotiated during Pre-Contract Discussion</td>
</tr>
<tr>
<td>Arbitration</td>
<td>20.1.4</td>
<td>By International Arbitration</td>
</tr>
<tr>
<td>International Arbitration Institution</td>
<td>20.1.4(a)(i)</td>
<td>International arbitration shall be in accordance with the rules Singapore International Arbitration Centre (SIAC) Arbitration shall be administered by SIAC. The place of arbitration shall be the place of the institution administering the arbitration.</td>
</tr>
<tr>
<td>Amount of Liquidated Damages on Termination for Employer Convenience</td>
<td>21.10(f)(i)</td>
<td>Equal to Monthly Payments</td>
</tr>
</tbody>
</table>

**Part B - Specific Provisions**

NIL
Section IX. Annex to the Particular Conditions - Contract Forms

Table of Forms

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Notification of Award

Letter of Acceptance

[letterhead paper of the Employer]

[date]

To: [name and address of the Contractor]

This is to notify you that your Bid dated [date] for execution of the [name of the Contract and identification number, as given in the Contract Data] for the Contractor Remuneration of the equivalent of [amount in numbers and words] [name of currency], as corrected and modified in accordance with the Instructions to Bidders, is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms included in Section IX, Annex to the Particular Conditions - Contract Forms, of the Bidding Document

Authorized Signature: 

Name and Title of Signatory: 

Name of Agency: 

Attachment: Contract Agreement
Contract Agreement

THIS AGREEMENT made the ________ day of ______________________, ____,
between ___________________________ of ____________________________ (hereinafter “the Employer”), of the one part and ___________________________ of ______________________________ (hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Services known as ____________________________ should be executed by the Contractor and has accepted a Bid by the Contractor for the execution and completion of these Services and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

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

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
   - the addenda Nos. ________(if any)
   - the Letter of Acceptance
   - the Particular Conditions
   - the General Conditions;
   - the Schedules of Services Requirements,
   - the Letter of Bid

3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute the Services therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Services, the Contractor Remuneration or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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

Signed by ____________________________________________ (for the Employer)

Signed by ____________________________________________ (for the Contractor)

Signed by ____________________________________________ (Contractor's Parent Company)

[This last signature line to be added when the Successful Bidder is required to incorporate in the Employer's Country, pursuant to ITB 40.3 and a Parent Company Guarantee is not required in the corresponding PDS]

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Performance Security

Performance Bond

By this Bond________________________ as Principal (hereinafter called “the Contractor”) and________________________ [as Surety (hereinafter called “the Surety”), are held and firmly bound unto________________________] as Obligee (hereinafter called “the Employer”) in the amount of ____________________, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contractor Remuneration is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a written Agreement with the Employer dated the ______ day of ________________, 20___, for ____________________ in accordance with the documents, plans, specifications and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

1. complete the Contract in accordance with its terms and conditions; or

2. obtain a Bid or bids from qualified Bidders for submission to the Employer for completing the Contract in accordance with its terms and conditions and upon determination by the Employer and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contractor Remuneration; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contractor Remuneration,” as used in this paragraph, shall mean the total amount payable by Employer to Contractor under the Contract, less the amount properly paid by Employer to Contractor; or

3. pay the Employer the amount required by Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.
Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Handback Certificate.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors and assigns of the Employer.

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this __________ day of ________________ 20 _____________________________.

SIGNED ON ________________ on behalf of ________________________________

By __________________________ in the capacity of __________________________

In the presence of _______________________________________________________

SIGNED ON ________________ on behalf of ________________________________

By __________________________ in the capacity of __________________________

In the presence of _______________________________________________________

Payra Thermal Power Plant (2 x 660MW)    Section 9    Page 179 of 181
Advance Payment Security

Demand Guarantee

________________________________________ [Bank’s Name and Address of Issuing Branch or Office]

Beneficiary: ______________________ [Name and Address of Employer]

Date: ________________________________

ADVANCE PAYMENT GUARANTEE No.: __________________________

We have been informed that ___________________ [name of Contractor] (hereinafter called “the Contractor”) has entered into Contract No. ___________________ [reference number of the contract] dated ______________ with you, for the execution of __________________________ [name of contract and brief description of Services] (hereinafter called “the Contract”).

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum ______________ [amount in figures] ( ) [amount in words] is to be made against an advance payment guarantee.

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

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, on the ___ day of ______, 20__. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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

2 Insert the expected expiration date of the Contract. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be...
This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

____________________
[signature(s)]

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

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