

Contract Agreement

[The successful Bidder shall fill in this form in accordance with the instructions indicated]

THIS CONTRACT AGREEMENT is made

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

BETWEEN

- (1) [insert complete name of Contracting Authority], a [insert description of type of legal entity, for example, an Institution of the EAC, Organ of the EAC] and having its principal place of business at [insert address of Contracting Authority] (hereinafter called “the Contracting Authority”), and
- (2) [insert name of Contractor], a corporation incorporated under the laws of [insert: country of Contractor] and having its principal place of business at [insert: address of Contractor] (hereinafter called “the Contractor”).

WHEREAS the Contracting Authority invited bids for certain Goods and ancillary services, viz., [insert brief description of Goods and Services] and has accepted a Bid by the Contractor for the supply of those Goods and Services in the sum of [insert Contract Price in words and figures, expressed in the Contract currency (ies)] (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall constitute the Contract between the Contracting Authority and the Contractor, and each shall be read and construed as an integral part of the Contract:
 - (a) This Contract Agreement
 - (b) Section II – Special Conditions of Contract
 - (c) Section I – General Conditions of Contract
 - (d) Section III – Technical Requirements (including Schedule of Requirements and Technical Specifications)
 - (e) Section IV – The Contractor’s Bid and original Price Schedules
 - (f) Section V – The Contracting Authority’s Notification of Award
 - (g) [Add here any other document(s)]
3. This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.

4. In consideration of the payments to be made by the Contracting Authority to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Contracting Authority to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
5. The Contracting Authority hereby covenants to pay the Contractor in consideration of the provision of the Goods and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of *[insert the name of the Contract governing law country]* on the day, month and year indicated above.

For and on behalf of the Contracting Authority

Signed: *[insert signature]*
in the capacity of *[insert title or other appropriate designation]*
in the presence of *[insert identification of official witness]*

For and on behalf of the Contractor

Signed: *[insert signature of authorized representative(s) of the Contractor]*
in the capacity of *[insert title or other appropriate designation]*
in the presence of *[insert identification of official witness]*

Section I. General Conditions of Contract

1. Definitions

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

- (a) “Contract” means the Contract Agreement entered into between the Contracting Authority and the Contractor, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- (b) “Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto.
- (c) “Contract Price” means the price payable to the Contractor as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (d) “Day” means calendar day.
- (e) “Completion” means the fulfillment of the Related Services by the Contractor in accordance with the terms and conditions set forth in the Contract.
- (f) “GCC” means the General Conditions of Contract.
- (g) “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Contractor is required to supply to the Contracting Authority under the Contract.
- (h) “Contracting Authority’s Country” is the country specified in the Special Conditions of Contract (SCC).
- (i) “Contracting Authority” means the entity purchasing the Goods and Related Services, as specified in the SCC.
- (j) “Related Services” means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other such obligations of the Contractor under the Contract.
- (k) “SCC” means the Special Conditions of Contract.
- (l) “Subcontractor” means any natural person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Contractor.
- (m) “Contractor” means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Contracting Authority and is named as such in the Contract Agreement.
- (n) “The Project Site,” where applicable, means the place named in the SCC.

2. Contract Documents

- 2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

3. Fraud and Corruption

It is the policy of the Contracting Authority to require that Staff as well as bidders, suppliers, and contractors and their subcontractors under the Contracting Authority's financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts.¹ In pursuance of this policy, the Contracting Authority:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) “corrupt practice”² 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”³ 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”⁴ 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”⁵ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (v) “obstructive practice” is

¹ In this context, any action taken by a bidder, supplier, contractor, or a sub-contractor to influence the procurement process or contract execution for undue advantage is improper.

² “another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes the Contracting Authority staff and employees of other organizations taking or reviewing procurement decisions.

³ a “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

⁴ “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non-competitive levels.

⁵ a “party” refers to a participant in the procurement process or contract execution.

- (aa) deliberately destroying, falsifying, altering or concealing material evidence to the investigation or making false statements to investigators in order to materially impede the Contracting Authority or a governmental or independent investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (bb) acts intended to materially impede the exercise of the Contracting Authority or governmental or inspection and audit rights.
- (b) It will take the following measures against the bidder recommended for award who has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
 - (i) will reject the bid for award;
 - (ii) will declare the bidder/the contractor, including its affiliates, ineligible, either indefinitely or for a stated period of time, to become the Contracting Authority contractor;
 - (iii) will cancel or terminate any ongoing contract with the bidder /the contractor;
 - (iv) will request a the relevant national authorities to conduct a joint investigation with Contracting Authority to inspect or carry out audits of the bidder /the contractor' accounting records and financial statements in connection with the contract in question for which it was found guilty of engaging in corrupt, fraudulent, collusive, coercive, or obstructive practices;
 - (v) will forfeit the bid or performance securities of the bidder /the contractor;
 - (vi) will suspend any payments due to the bidder/ contractor, under the contract in question or any other contract the bidder/contractor might have with the organization, until the extent of damage caused by the its engagement in corrupt, fraudulent, collusive, coercive or obstructive

practices in competing for the Contracting Authority contract are determined and recovered, and

- (vii) will sue the bidder /contractor to recover the damages caused by its engagement in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question, if they are not fully recovered by the securities and the payments otherwise due to the bidder/contractor.

4. Interpretation

4.1 If the context so requires it, singular means plural and vice versa.

4.2 Incoterms

- (a) Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.
- (b) The terms EXW, CIP, FCA, CFR and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified in the SCC and published by the International Chamber of Commerce in Paris, France.

4.3 Entire Agreement

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

4.4 Amendment

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

4.5 Non-waiver

- (a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized

representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

4.6 Severability

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

5. Language

5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Contractor and the Contracting Authority, shall be written in the language specified in the **SCC**. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.

5.2 The Contractor shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Contractor.

6. Joint Venture, Consortium or Association

6.1 If the Contractor is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Contracting Authority for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Contracting Authority.

7. Eligibility

7.1 **Is so specified in the SCC**, the Contractor and its Subcontractors shall have the nationality of an eligible country. A Contractor or Subcontractor shall be deemed to have the nationality of a country if it is constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country. This restriction doesn't apply to the contractors and subcontractors personnel.

7.2 **Is so specified in the SCC**, all Goods and Related Services to be supplied under the Contract shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

7.3 The Contractor has the obligation to promptly notify the Contracting Authority about any change in their or their subcontractor legal or commercial status that might affect the eligibility conditions that prevail at the time of prequalification.

8. Notices

8.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **SCC**. The term “in writing” means communicated in written form with proof of receipt.

8.2 A notice shall be effective when delivered or on the notice’s effective date, whichever is later.

9. Governing Law

9.1 The Contract shall be governed by and interpreted in accordance with the laws of the Contracting Authority’s Country, unless otherwise specified in the **SCC**.

10. Settlement of Disputes

10.1 The Contracting Authority and the Contractor shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

10.2 If, afterdays the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Contracting Authority or the Contractor may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure **specified in the SCC**.

10.3 Notwithstanding any reference to arbitration herein,

(a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and

(b) the Contracting Authority shall pay the Contractor any monies due the Contractor.

11. Scope of Supply

11.1 The Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements.

12. Delivery and Documents	12.1 Subject to GCC Sub-Clause 32.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of shipping and other documents to be furnished by the Contractor are specified in the SCC .
13. Contractor's Responsibilities	13.1 The Contractor shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 11, and the Delivery and Completion Schedule, as per GCC Clause 12.
14. Contract Price	14.1 Prices charged by the Contractor for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Contractor in its bid, with the exception of any price adjustments authorized in the SCC .
15. Terms of Payment	<p>15.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the SCC.</p> <p>15.2 The Contractor's request for payment shall be made to the Contracting Authority in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 12 and upon fulfillment of all other obligations stipulated in the Contract.</p> <p>15.3 Payments shall be made promptly by the Contracting Authority, but in no case later than thirty (30) days after submission of an invoice or request for payment by the Contractor, and after the Contracting Authority has accepted it.</p> <p>15.4 The currencies in which payments shall be made to the Contractor under this Contract shall be those in which the bid price is expressed.</p> <p>15.5 In the event that the Contracting Authority fails to pay the Contractor any payment by its due date or within the period set forth in the SCC, the Contracting Authority shall pay to the Contractor interest on the amount of such delayed payment at the rate shown in the SCC, for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.</p>
16. Taxes and Duties	16.1 For goods manufactured outside the Contracting Authority's Country, the Contractor shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Contracting Authority's Country.

16.2 For goods Manufactured within the Contracting Authority's country, the Contractor shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Contracting Authority.

16.3 If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the Contracting Authority's Country, the Contracting Authority shall use its best efforts to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.

17. Performance Security

17.1 If required as specified in the SCC, the Contractor shall, within days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the SCC.

17.2 The proceeds of the Performance Security shall be payable to the Contracting Authority as compensation for any loss resulting from the Contractor's failure to complete its obligations under the Contract.

17.3 As specified in the SCC, the Performance Security, if required, shall be denominated in the currency of the Contract and shall be in the format stipulated by the Contracting Authority in the SCC, or in another format acceptable to the Contracting Authority.

17.4 The Performance Security shall be discharged by the Contracting Authority and returned to the Contractor not later than twenty-eight (28) days following the date of Completion of the Contractor's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

18. Copyright

18.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Contracting Authority by the Contractor herein shall remain vested in the Contractor, or, if they are furnished to the Contracting Authority directly or through the Contractor by any third party, including Contractors of materials, the copyright in such materials shall remain vested in such third party

19. Confidential Information

19.1 The Contracting Authority and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following

completion or termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor such documents, data, and other information it receives from the Contracting Authority to the extent required for the Subcontractor to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Contractor under GCC Clause 19.

19.2 The Contracting Authority shall not use such documents, data, and other information received from the Contractor for any purposes unrelated to the contract. Similarly, the Contractor shall not use such documents, data, and other information received from the Contracting Authority for any purpose other than the performance of the Contract.

19.3 The obligation of a party under GCC Sub-Clauses 19.1 and 19.2 above, however, shall not apply to information that:

- (a) the Contracting Authority or Contractor need to share with the Contracting Authority or other institutions participating in the financing of the Contract;
- (b) now or hereafter enters the public domain through no fault of that party;
- (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
- (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

19.4 The above provisions of GCC Clause 19 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

19.5 The provisions of GCC Clause 19 shall survive completion or termination, for whatever reason, of the Contract.

20. Subcontracting

20.1 The Contractor shall notify the Contracting Authority in writing of all subcontracts awarded under the Contract if not already specified in the bid. Such notification, in the original bid or later shall not relieve the Contractor from any of its obligations, duties, responsibilities, or liability under the Contract.

20.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

21. Specifications and Standards

21.1 Technical Specifications and Drawings

- (a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section VI, Schedule of

Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.

- (b) The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Contracting Authority, by giving a notice of such disclaimer to the Contracting Authority.
- (c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Contracting Authority and shall be treated in accordance with GCC Clause 32.

22. Packing and Documents

- 22.1 The Contractor shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 22.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the **SCC**, and in any other instructions ordered by the Contracting Authority.

23. Insurance

- 23.1 Unless otherwise specified in the **SCC**, the Goods supplied under the Contract shall be fully insured—in a freely convertible currency from an eligible country—against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the **SCC**.

24. Transportation

- 24.1 Unless otherwise specified in the **SCC**, responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.

25. Inspections and Tests

- 25.1 The Contractor shall at its own expense and at no cost to the Contracting Authority carry out all such tests and/or inspections of the Goods and Related Services as are specified in the **SCC**.
- 25.2 The inspections and tests may be conducted on the premises of the Contractor or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in the Contracting Authority's Country as specified in the **SCC**. Subject to GCC Sub-Clause 25.3, if conducted on the premises of the Contractor or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Contracting Authority.
- 25.3 The Contracting Authority or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 25.2, provided that the Contracting Authority bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 25.4 Whenever the Contractor is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Contracting Authority. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Contracting Authority or its designated representative to attend the test and/or inspection.
- 25.5 The Contracting Authority may require the Contractor to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 25.6 The Contractor shall provide the Contracting Authority with a report of the results of any such test and/or inspection.
- 25.7 The Contracting Authority may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Contractor shall either rectify or replace such rejected Goods or parts thereof or make

alterations necessary to meet the specifications at no cost to the Contracting Authority, and shall repeat the test and/or inspection, at no cost to the Contracting Authority, upon giving a notice pursuant to GCC Sub-Clause 25.4.

- 25.8 The Contractor agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Contracting Authority or its representative, nor the issue of any report pursuant to GCC Sub-Clause 25.6, shall release the Contractor from any warranties or other obligations under the Contract.

26. Liquidated Damages

- 26.1 Except as provided under GCC Clause 31, if the Contractor fails to deliver any or all of the Goods by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Contracting Authority may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the **SCC** of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those **SCC**. Once the maximum is reached, the Contracting Authority may terminate the Contract pursuant to GCC Clause 34.

27. Warranty

- 27.1 The Contractor warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 27.2 Subject to GCC Sub-Clause 21.1(b), the Contractor further warrants that the Goods shall be free from defects arising from any act or omission of the Contractor or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 27.3 Unless otherwise specified in the **SCC**, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **SCC**, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.
- 27.4 The Contracting Authority shall give notice to the Contractor stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof.

The Contracting Authority shall afford all reasonable opportunity for the Contractor to inspect such defects.

- 27.5 Upon receipt of such notice, the Contractor shall, within the period specified in the **SCC**, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Contracting Authority.
- 27.6 If having been notified, the Contractor fails to remedy the defect within the period specified in the **SCC**, the Contracting Authority may proceed to take within a reasonable period such remedial action as may be necessary, at the Contractor's risk and expense and without prejudice to any other rights which the Contracting Authority may have against the Contractor under the Contract.

28. Patent Indemnity

- 28.1 The Contractor shall, subject to the Contracting Authority's compliance with GCC Sub-Clause 28.2, indemnify and hold harmless the Contracting Authority and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Contracting Authority may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:
- (a) the installation of the Goods by the Contractor or the use of the Goods in the country where the Site is located; and
 - (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Contractor, pursuant to the Contract.

- 28.2 If any proceedings are brought or any claim is made against the Contracting Authority arising out of the matters referred to in GCC Sub-Clause 28.1, the Contracting Authority shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Contracting Authority's name

conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

- 28.3 If the Contractor fails to notify the Contracting Authority within days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Contracting Authority shall be free to conduct the same on its own behalf.
- 28.4 The Contracting Authority shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.
- 28.5 The Contracting Authority shall indemnify and hold harmless the Contractor and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Contracting Authority.

29. Limitation of Liability

- 29.1 Except in cases of criminal negligence or willful misconduct,
- (a) the Contractor shall not be liable to the Contracting Authority, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Contracting Authority and
 - (b) the aggregate liability of the Contractor to the Contracting Authority, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Contracting Authority with respect to patent infringement

30. Change in Laws and Regulations

- 30.1 Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Bid submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Contracting Authority's country where the Site is located (which shall be deemed to include any change in interpretation

or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 14.

31. Force Majeure

31.1 The Contractor shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

31.2 For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Contractor that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Contractor. Such events may include, but not be limited to, acts of the Contracting Authority in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

31.3 If a Force Majeure situation arises, the Contractor shall promptly notify the Contracting Authority in writing of such condition and the cause thereof. Unless otherwise directed by the Contracting Authority in writing, the Contractor shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

32. Change Orders and Contract Amendments

32.1 The Contracting Authority may at any time order the Contractor through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Contracting Authority;
- (b) the method of shipment or packing;
- (c) the place of delivery; and
- (d) the Related Services to be provided by the Contractor.

- 32.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Contractor's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Contractor for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Contractor's receipt of the Contracting Authority's change order.
- 32.3 Prices to be charged by the Contractor for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Contractor for similar services.
- 32.4 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

33. Extensions of Time

- 33.1 If at any time during performance of the Contract, the Contractor or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 12, the Contractor shall promptly notify the Contracting Authority in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Contractor's notice, the Contracting Authority shall evaluate the situation and may at its discretion extend the Contractor's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 33.2 Except in case of Force Majeure, as provided under GCC Clause 31, a delay by the Contractor in the performance of its Delivery and Completion obligations shall render the Contractor liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 33.1.

34. Termination

- 34.1 Termination for Default
- (a) The Contracting Authority, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Contractor, may terminate the Contract in whole or in part:
- (i) if the Contractor fails to deliver any or all of the Goods within the period specified in the Contract, or

within any extension thereof granted by the Contracting Authority pursuant to GCC Clause 33;

- (ii) if the Contractor fails to perform any other obligation under the Contract; or
 - (iii) if the Contractor, in the judgment of the Contracting Authority has engaged in fraud and corruption, as defined in GCC Clause 3, in competing for or in executing the Contract.
 - (iv) if the Contractor, doesn't meet the eligibility criteria that prevailed at the time of prequalification.
- (b) In the event the Contracting Authority terminates the Contract in whole or in part, pursuant to GCC Clause 34.1(a), the Contracting Authority may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Contractor shall be liable to the Contracting Authority for any additional costs for such similar Goods or Related Services. However, the Contractor shall continue performance of the Contract to the extent not terminated.

34.2 Termination for Insolvency.

- (a) The Contracting Authority may at any time terminate the Contract by giving notice to the Contractor if the Contractor becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Contractor, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Contracting Authority

34.3 Termination for Convenience.

- (a) The Contracting Authority, by notice sent to the Contractor, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Contracting Authority's convenience, the extent to which performance of the Contractor under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Contractor's receipt of notice of termination shall be accepted by the

Contracting Authority at the Contract terms and prices. For the remaining Goods, the Contracting Authority may elect:

- (i) to have any portion completed and delivered at the Contract terms and prices; and/or
- (ii) to cancel the remainder and pay to the Contractor an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Contractor.

35. Assignment

35.1 Neither the Contracting Authority nor the Contractor shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

**36. Export
Restriction**

36.1 In case the conclusion of the contract is prevented by any export restrictions attributable to the Contracting Authority, to the country of the Contracting Authority or to the use of the products/goods or systems to be supplied in particular by sanctions arising from trade regulations from a country supplying those products/goods, systems or services, the Contractor shall not be bound by its bid, always provided, however, that the Contractor can demonstrate to the satisfaction of the Contracting Authority that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the delivery of the products/goods, systems or services under the terms of the contract.

36.2 Notwithstanding any obligation under the contract to complete all export formalities, any export restrictions attributable to the Contracting Authority, to the country of the Contracting Authority or to the use of the products/goods, systems or services to be supplied, in particular any export restrictions arising from trade regulations from a country supplying those products/goods, systems or services, that substantially impede the Contractor from meeting its obligations under the contract shall release the Contractor from the obligation to provide deliveries or services, always provided, however, that the Contractor can demonstrate to the satisfaction of the Contracting Authority that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the delivery of the products/goods, systems or services under the terms of the contract.