



Quaid-e-Azam Solar Power (Pvt) Ltd



**QUAID-E-AZAM SOLAR POWER (PVT.) LTD. (QASPL) ENERGY DEPARTMENT,
GOVERNMENT OF THE PUNJAB**

BIDDING DOCUMENT

**HIRING OF CONTRACTOR FOR O&M OF QUAID-E-
AZAM SOLAR PARK BAHAWALPUR**

SINGLE STAGE TWO ENVELOPE

NOVEMBER 2024

**QUAID-E-AZAM SOLAR POWER (PVT.) LTD. (QASPL)
ENERGY DEPARTMENT, GOVERNMENT OF THE PUNJAB
Address: 03rd Floor, 83-A/E-1, Main Boulevard, Gulberg III, Lahore**



Quaid-e-Azam Solar Power (Pvt.) Ltd.

REQUEST FOR PROPOSALS HIRING OF CONTRACTOR FOR O&M OF QUAID-E-AZAM SOLAR PARK BAHAWALPUR FOR 2 YEARS

Quaid-e-Azam Solar Power (pvt.) Ltd intends to hire and invites eligible well reputed firms/companies/bidders registered with Income Tax, having experience in the relevant field for the following:

Interested firms /companies shall provide, Technical Proposal (01) original and (01) copies and (01) original Financial Proposals with relevant documents, demonstrating that they have the relevant experience to perform and provide the above-mentioned Services.

Firms/Companies/Bidders will be selected in accordance with the method set out in the PPRA Rules 2014 (as amended) and procedure for Selection of Firms/Companies in Single Stage Two Envelope.

Bidding Document can be down loaded free of cost from PPRA, EPAD & QASPL website.

Interested eligible firms may inspect the bidding documents on the website of QASPL (www.qasolar.com) and PPRA (www.ppra.punjab.gov.pk) used for bidding application submission of request letter on company letterhead.

Bids must be accompanied by a bid Security of not less than Rs, 1,960,000/- {2% of Estimated procurement of Rs. 98,000,000/- (2 years)} in the shape / form of pay order or demand draft favoring Quaid-e-Azam Solar Power (Pvt.) Ltd. Should be attached with technical bid & valid for at least 90 days, shall be provided by the bidding firm.

Bids must be delivered to the address below at or before 5th December, 2024 at 1500 Hours. Technical bids will be opened on the same day at 1530 Hours in the presence of the Bidders 'representatives who choose to attend the meeting.

Terms & Conditions:

1. All Prices shall be quoted inclusive of all applicable taxes. The Prices shall be in PKR.
2. Detailed Terms and conditions are mentioned in the tender document.
3. QA Solar may reject all bids or proposals at any time prior to the acceptance of a bid or proposal.
4. The quoted rates shall be valid for 90 days from the opening of bids.
5. Late or incomplete bids shall be rejected.

Address & contact person for sending Bids, Obtaining Documents and for any Clarification:

Chief Executive Officer

Quaid-e-Azam Solar Power (Pvt.) Ltd.
3rd Floor, 83 - A E/1, Main Boulevard, Gulberg III, Lahore.
Phone No. 042-99332261-65 (Ext: 105/137)
Fax No. 042-35790366
Email: pm@qasolar.com, projectmanagement@qasolar.com
Web Address: www.qasolar.com



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INSTRUCTIONS TO BIDDERS

A. GENERAL

IB.1 Scope of Bid and Source of Funds

1.1 Scope of Bid:

The Quaid-e-Azam Solar Power (Pvt.) Ltd. (QASPL), Energy Department, Government of the Punjab, seeks to hire an O&M Contractor for **QUAID-E-AZAM SOLAR PARK SITUATED AT LAL SOHANRA BAHAWALPUR.**

1.2 Source of Funds:

The above scope of work is funded by the Quaid-e-Azam Solar Power (Pvt.) Ltd.

IB.2 Eligible Bidders

- 2.1 Bidding is open to all firms registered with Pakistan Engineering Council in Category C-3 or above with the following codes (CE01, CE09, CE10, BC01, ME04, EE02, EE04, EE05, EE06, EE07, EE09)

The criteria for the evaluation are given below:

Sr. No.	Category	Weightage/Marks
1.	General Experience	40
2.	Personnel Capabilities	35
3.	Equipment	05
4.	Financial Soundness	20
	Total:	100

Note: *Technical Qualification status shall be decided on the basis of Pass/Fail. The applicant must secure at least 50% marks in General Experience and Financial Soundness category. Overall score for passing / pre- qualification is 65%.*

The firms fulfilling the following basic requirements (a to d) shall only be considered for further evaluation (relevant documents to be attached):

- 2.2 Local firms/companies are eligible to participate in this process if they hold valid registrations with the Securities and Exchange Commission of Pakistan (SECP)/Registrar of Firms/Companies, Income Tax Department/NTN/Sales Tax Number/PRA, and Operator License from Pakistan Engineering Council (PEC) under C- 3 or above Category with the following codes (CE01, CE09, CE10, BC01, ME04, EE02, EE04, EE05, EE06, EE07, EE09).



Joint Venture Allowed.

(a) The interested firms/ companies must have completed O&M of at least Two (02) Infrastructure Facility Project during the last five (05) years in Pakistan. (Project Completion Certificate issued by Client must be attached).

(b) Audit Report (s) duly certified by a Chartered Accountant Firm for the last three (03) years. Average turnover of Rs.10 million or above for the last three years.

(c) Affidavit for Correctness of Information, Non-Blacklisting and No-Litigation must be provided on Non-Judicial Affidavit.

All the Applicants have to fulfill the requirements mentioned in this sub-Clause 2.2 (a to c) otherwise they shall be rejected.

2.3 GENERAL EXPERIENCE

Credit Marks for experience shall be awarded on the basis of following qualifications:

Sr. No.	Salient Feature	Maximum Marks
1.	General Experience (Total Marks 40)	
a)	Projects of similar nature completed over the last five (05) years (Work Order, Contract Agreement and Completion Certificate must be provided by the Client) Marks distribution 02 projects of O&M of infrastructure facilities with equal marks to each	40
	Subtotal	40

Note: Letters of Acceptance (LOA)/ Contract Agreement / Completion Certificates

2.4 PERSONNEL CAPABILITIES

Credit Marks shall be awarded under this category using the following criteria:

Sr. No.	Salient Feature	Maximum Marks
2.	Personnel Capabilities (Total Marks 20) <i>(Attach copies of CVs along with non-judicial affidavit stating the availability of Engineers for the project)</i> Note: Applicants must score at least 50 % in this Category.	
i)	Qualified Graduate Engineers	



(a)	<p>Number of Engineers: 02</p> <p>Marks distribution</p> <ul style="list-style-type: none"> • 10 marks will be given if the total No. of Engineers is two (02) or above with minimum 05 years of experience. • For less than two (02) Engineers, marks will be given as per the following formula: $= (A/10) \times 10$ A = No. of Engineers BSc Engineer (PEC Registration) 	10
(b)	<p>Experience of Engineers in a number of years</p> <p>Marks distribution</p> <ul style="list-style-type: none"> • 05 marks will be given for engineer having relevant experience of 05 years or above. • For less than least five (05) years of relevant experience, marks will be given as per the following formulas: $= (A/5) \times 05$ A = years of relevant experience. 	10
ii)	Number of Supervisors and Support Staff	
(a)	<p>Number of diploma engineers/technicians</p> <p>Marks distribution</p> <ul style="list-style-type: none"> • 05 Marks will be given for supporting staff including: <ul style="list-style-type: none"> • Electrical Supervisor (Qty 01) (01 Mark Each) • Civil Supervisor (Qty 01) (01 Mark Each) • Electrician (Qty 02) (01 Mark Each) • Technician (Qty 2) (01 Mark Each) • Tubewell Operator (Qty 1) (01 Mark Each) • Gardner (Qty 2) (01 Marks each) • Helper (Qty 2) (01 Marks each) • Naib Qasid (Qty 2) (01 Marks each) • Janitors (Qty 1) (01 Marks) • Imam Masjid (Qty 1) (01 Marks) 	15
Sub-Total		35

2.5 EQUIPMENT AND CAPABILITIES

Credit Marks shall be granted on the basis of the following criteria for various kinds of equipment relevant for the Project:

Bidder must provide the following:



Sr. No.	Salient Feature	Maximum Marks
3.	Equipment Capability (Total Marks 05) Note: Applicants must score at least 50 % in this Category.	
a)	Civil Equipment	02
b)	Electrical Equipment	02
c)	Vehicles and Machineries	01
	Sub-Total	05

Note: Evidence of the equipment and workshop facility to be provided otherwise no marks shall be credited. Physical verification shall be arranged by the Constructor (if required)

2.6 FINANCIAL POSITION

Credit Marks shall be awarded on the basis of the following criteria:

Sr. No.	Salient Feature	Maximum Marks
4.	Financial Position (Total Marks 30) Note: Applicants must score at least 50 % in this Category.	
i)	Working Capital = Current Assets – Current Liabilities (Average of Certified Audit Reports of Last 3 years i.e. 2020-21, 2021-22, 2022-23)	
	<p>Marks distribution</p> <ul style="list-style-type: none"> 10 marks will be given if the available average working capital for the last three years or available bank credit line limit is equal to 10 Million PKR or above <p>For a average working capital less than PKR 10 million, the following weightage will be applied: $10 \times (A/10)$</p> <ul style="list-style-type: none"> A= Average Working Capital (in million) for the last three years OR Available Bank Credit Line Limit 	10
ii)	Annual Turnover (Certified Audit Reports of Last 3 years i.e. 2020-21, 2021-22, 2022-23)	
	<p>Marks distribution</p> <ul style="list-style-type: none"> 10 marks to be given if the available average annual turnover for the last three years is equal to 40 Million PKR or above. For turnover less than 40 million PKR, the following weightage will be applied: $10 \times (A/40)$ A= Average Annual Turnover (in PKR million) in last three (03) years (in million) 	10
	Sub-Total	20



IB.3 Eligible Goods and Services

- 3.1 All Goods and Services to be supplied under this Contract shall have their origin in eligible countries listed in Appendix 'A' to Instructions to Bidders and all expenditures made under the Contract will be limited to such Goods and Services.
- 3.2 For purpose of this Clause, "origin" means the place where the Goods are mined, grown or produced or from where the Services are supplied. Goods are produced when, through manufacturing
- 3.3 Processing or substantial and major assembling of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 3.4 The origin of Goods and Services is distinct from the nationality of the Bidder.

IB.4 Cost of Bidding

- 4.1 The Bidder shall bear all costs associated with the preparation and submission of its respective bid and the Owner will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

B. BIDDING DOCUMENTS

IB.5 Contents of Bidding Documents

- 5.1 In addition to Invitations for Bids, the Bidding Documents are those stated below, and should be read in conjunction with any Addendum issued in accordance with Clause IB.7.

1. Instructions to Bidders with Appendices to ITB
2. Form of Bid & Appendices to Bid

Appendices to Bid are the following:

- i Appendix A: List of Eligible Countries
- ii Appendix B: Evidence of Bidders Capabilities
- iii Appendix C: Form of Bid
- iv Appendix D: Summary of Bid Price
- v Appendix E: Human Resource Details of the Contractor

3. General Conditions of Contract, Part-I(GCC)
4. Particular Conditions of Contract, Part-II(PCC)
5. Standard Forms
 - (i) Form of Bid Security
 - (ii) Form of Contract Agreement
 - (iii) Form of Performance Security

- 5.2 The Bidders are expected to examine carefully the contents of all the above documents. Failure to comply with the requirements of bid submission will be at the bidders own risk. Pursuant to Clause



IB.24, bids which are not substantially responsive to the requirements of the Bidding Documents will be rejected.

IB.6 Clarification of Bidding Documents

- 6.1 A prospective Bidder requiring any clarification(s) in respect of the Bidding Documents may notify the Owner in writing or by telex or fax at the address: **QASPL Office: 03rd Floor, 83-A/E-1, Main Boulevard, Gulberg III, Lahore** Owner will examine the request for clarification of the Bidding Documents which it receives not later than Five (05) days prior to the deadline for the submission of bids and if needed will issue the clarification/amendment of the Bidding Documents at least fourteen (14) days before the date of submission of Bids (without identifying the source of enquiry but including its description) to all prospective Bidders who have purchased the Bidding Documents.

IB.7 Amendment of Bidding Documents

- 7.1 At any time prior to the deadline for submission of bids, the Owner may, for any reason, whether at his own initiative or in response to a clarification requested by a prospective Bidder, modify the Bidding Documents by issuing addendum.
- 7.2 Any addendum thus issued shall be part of the Bidding Documents pursuant to Sub-Clause 5.1 hereof, and shall be communicated in writing to all purchasers of the Bidding Documents. Prospective Bidders shall acknowledge receipt of each addendum in writing to the Owner. The Bidder shall also confirm in the Form of Bid that the information contained in such addenda have been considered in preparing his bid.
- 7.3 To afford prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Owner may at its discretion extend the deadline for submission of bids in accordance with Clause IB.19.

C. PREPARATION OF BIDS

IB.8 Language of Bid

- 8.1 The Bid prepared by the Bidder and all correspondence and documents related to the Bid, exchanged by the Bidder and the Owner shall be written in the English language, provided that any printed literature furnished by the Bidder may be written in any other language so long as accompanied by an English translation of its pertinent passages in which case, for purposes of interpretation of the Bid, the English translation shall govern.

IB.9 Documents Comprising the Bid

- 9.1 The bid prepared by the Bidder shall comprise the following components:
- (a) Covering Letter
 - (b) Form of Bid duly filled, signed and sealed, in accordance with Clause IB.17.
 - (c) Appendices (A to E) to Bid duly filled and signed, in accordance with the instructions contained therein.
 - (d) Bid Security furnished in accordance with Clause IB.15.



- (e) Power of Attorney in accordance with Clause IB 17.5.
- (f) Joint Venture Agreement (if applicable). A foreign Bidder is entitled to bid only in a joint venture with a Pakistani constructor /Operator in accordance with the provisions of relevant PEC bye-laws.
- (g) Documentary evidence established in accordance with Clause IB.13 that the Bidder is eligible to bid and is qualified to perform the contract if its bid is accepted.
- (h) Documentary evidence established in accordance with Clause IB.14 that the Goods and Services to be supplied by the Bidder are eligible Goods and Services and conform to the Bidding Documents.
- (i) Bidders applying for eligibility for domestic preference in bid evaluation shall supply all information & evidence to establish the claim for domestic preference required to satisfy the criteria for eligibility as described in Clause IB.27. The particulars for domestic Goods prescribed in Appendix C to these Instructions shall also be filled in to substantiate claim for domestic preference.
- (j) Any other documents prescribed in Particular Conditions of Contract or Technical Provisions to be submitted with the bid.

IB.10 Form of Bid and Schedules

- 10.1 The Bidder shall complete, sign and seal the Form of Bid, Appendices (A to E, or as modified) to Bid and Summary of Prices furnished in the Bidding Documents and shall also enclose other information as detailed in Clause IB.9.
- 10.2 For the purpose of granting a margin of domestic preference; applicable only in case of supply of Goods/Equipments, if any; pursuant to Clause IB.27, the Owner will classify the bids, when submitted in one of three groups as follows subject to change if any, as per policy of the Federal Government as applicable at the date of bid opening;
- (a) **Group ‘A’ Bid.** (i) For Goods for which labour, raw materials and components from within Pakistan account for at least 20% of the ex-factory bid price of the products offered
(ii) For Goods for which labour, raw materials and components from within Pakistan account for over 20% and up to 30% of the ex-factory bid price of the products offered
(iii) For Goods for which labour, raw materials and components from within Pakistan account for over 30% of the ex-factory bid price of the products offered.
 - (b) **Group ‘B’ Bid.** For Goods manufactured in Pakistan for which the domestic value added in the manufacturing cost is less than 20% of the exfactory bid price; and
 - (c) **Group ‘C’ Bid.** For Goods of foreign origin.

In preparing their bids, the Bidders, whether local or foreign, shall enter in the Schedule of Prices ex-factory price for indigenously manufactured products and CIF price as well as customs duty and sales tax and other import charges for products to be imported from outside Pakistan.



IB.11 Bid Prices

- 11.1 The Bidder shall fill up the Schedule of Prices attached to these documents indicating the unit rates and prices of the Works/Services to be performed under the Contract. Prices on the Schedule of Prices shall be entered keeping in view the instructions contained in the Preamble to the Schedule of Prices.
- 11.2 The Bidder shall fill in rates and prices for all items of the Works/Services described in the Schedule of Prices. Items against which no rate or price is entered by a Bidder will not be paid for by the Owner when executed and shall be deemed covered by rates and prices for other items in the Schedule of Prices.
- 11.3 The Bidder's separation of price components in accordance with Sub-Clause 11.1 above, will be solely for the purpose of facilitating the comparison of bids by the Owner and will not in any way limit its right to contract on any of the terms offered.
- 11.4 Unless otherwise stipulated in the Conditions of Contract, prices quoted by the Bidder shall remain fixed during the Bidder's performance of the Contract and not subject to variation on any account. When the Bidders are required to quote only fixed price(s) a bid submitted with an adjustable price quotation will be treated as non-responsive and rejected, pursuant to Clause IB.24.
- 11.5 Any discount offered shall be valid for at least the period of validity of the bid. A discount valid for lesser period shall be considered null and void.

IB.12 Currencies of Bid and Payment

- 12.1 Prices shall be quoted in the following currencies:
 - (a) For Goods and Services which the Bidder will supply from within Pakistan, the prices shall be quoted in the Pak. Rupees.
 - (b) For Goods and Services which the bidder will supply from outside Pakistan, the prices shall be quoted either in U.S. Dollars or in any other freely convertible currency.
- 12.2 Further, a Bidder expecting to incur a portion of its expenditure in the performance of the Contract in more than one currency (but use no more than 3 foreign currencies), and wishing to be paid accordingly, shall so indicate in its bid.
- 12.3 The currencies of payment shall be as stated in Particular Conditions of Contract. However, provisions in Sub-Clauses 12.1 & 12.2 above, shall not in any way constitute a contractual or legal binding on the Owner for the payment in the currencies required by the Constructor.

IB.13 Documents Establishing Bidder's Eligibility And Qualifications

- 13.1 Pursuant to Clause IB.9, the Bidder shall furnish, as part of its bid, documents establishing the Bidder's eligibility to bid and its qualifications to perform the Contract if its bid is accepted.
- 13.2 The documentary evidence of the Bidder's eligibility to bid shall establish to the Owner's satisfaction that the Bidder, at the time of submission of its bid, is from an eligible source country as defined under Clause IB.2.



13.3 The documentary evidence of the Bidder's qualification to perform the Contract if its bid is accepted, shall establish to the Owner's satisfaction:

- (a) that, in the case of a Bidder offering to supply Goods under the Contract which the Bidder did not manufacture or otherwise produce, the Bidder has been duly authorized by the Goods manufacturer or producer to supply the Goods to Pakistan;
- (b) that the Bidder/Manufacturer has the financial, technical and production capability necessary to perform the Contract; and
- (c) that, in the case of a Bidder not doing business within Pakistan the Bidder is or will be (if successful) represented by an agent in Pakistan equipped and able to carry out the Supplier's maintenance, repair and spare parts stocking obligations prescribed by the Conditions of Contract and/or Technical Provisions.

13.4 (a) Bidder must possess and provide documentary evidence of the mandatory requirement, equipment and personnel capabilities as required for the technical evaluation of the firm, pursuant to clause IB. 26.2. The Bidder shall certify the capacity and capability for performing the Operation and Maintenance Works/Services, qualified man-power and production/delivery of quality materials according to bid specifications and delivery requirements. Besides, such plant should have produced same items for at least 05 years and such Goods shall have proven successful in the field for at least 05 years and the Bidder shall submit with the bid all necessary documentation in this regard. The Owner will have the right to verify the particulars regarding the plant and other related information furnished with the bid and the joint venture as well as the partners thereof shall be liable for disqualification in the event of any mis-statement/misrepresentation on their part.

The Bidder shall furnish documentary evidence of qualification on the Form "Evidence of Bidder's Capability" (Appendix B to these Instructions)

- (b) The Bidder should have an average annual turnover in the last five years equal to or more than the Total Bid Price. Alternately, the Bidder should have successfully completed in the last five years any specific project having value equal to or higher than the total Bid Price.

13.5 Joint Venture

In order for a Joint Venture to qualify:

- (a) At least one of the partners of joint venture shall satisfy the relevant experience criteria specified in Sub-Clause 13.4(a) hereinabove.
- (b) All firms comprising the joint venture shall be legally constituted and shall meet the eligibility requirement of Sub-Clause 2.1 hereof.
- (c) All partners of the joint venture shall at all times and under all circumstances be liable jointly and severally to Owner for the execution of the entire Contract in accordance with the Contract terms and conditions and a statement to this effect shall be included in the authorization mentioned under para (f) below as well as in the Form of Bid and Form of Contract Agreement (in case of a successful bidder).



- (d) The Form of Bid, and in the case of successful bidder, the Form of Contract Agreement, shall be signed so as to be legally binding on all partners.
- (e) One of the joint venture partners shall be nominated as being in-charge and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the joint venture partners.
- (f) The partner-in-charge shall be authorized to incur liabilities, receive payments and receive instructions for and on behalf of any or all partners of the joint venture.
- (g) A copy of the agreement entered into by the joint venture partners shall be submitted with the bid stating the conditions under which it will function, its period of duration, the persons authorized to represent and obligate it and which persons will be directly responsible for due performance of the Contract and can give valid receipts on behalf of the joint venture, the proportionate participation of the several firms forming the joint venture, and any other information necessary to permit a full appraisal of its functioning. No amendments / modifications whatsoever in the joint venture agreement shall be agreed to between the joint venture partner without prior written consent of the Owner.

13.6 The Bidder shall propose, in order of his priority; plant, equipment or goods of not more than three Manufacturers. Owner at his own jurisdiction will evaluate the plant, equipment or goods of only one of such Manufacturers.

IB.14 Documents Establishing Goods' Eligibility and Conformity to Bidding Documents

14.1 Pursuant to Clause IB.9, the Bidder shall furnish, as part of its bid, documents establishing the eligibility and conformity to the Bidding Documents of all Goods and Services which the Bidder proposes to perform under the Contract.

14.2 The documentary evidence of the Goods and Services eligibility shall establish to the Owner's satisfaction that they will have their origin in an eligible source country as defined under Clause IB.3. A certificate of origin issued at the time of shipment will satisfy the requirements of the said Clause.

14.3 The documentary evidence of the Goods and Services' conformity to the Bidding Documents may be in the form of literature, drawings and data and shall furnish:

- (a) A detailed description of the Goods, essential technical and performance characteristics.
- (b) Complete set of technical information, description data, literature and drawings as required in accordance with Appendix A to Bid, Scope of Services. This will include but not be limited to the following:
 - (i) A sufficient number of drawings, photographs, catalogues, illustrations and such other information as is necessary to illustrate clearly the significant characteristics such as general construction dimensions and other relevant information about the Goods to be furnished.
 - (ii) Details of equipment and machinery with capacity.
 - (iii) Any other information which is required for evaluation purposes.
- (c) A clause-by-clause commentary on Technical Provisions, provided with the Bidding Documents, demonstrating the Goods' and Services' substantial responsiveness to those



Specifications or a statement of deviations and exceptions to the provisions of the Technical Provisions.

14.4 For purpose of the commentary to be furnished pursuant to Sub-Clause 14.3(c) above, the Bidder shall note that standards for workmanship, material and equipment, and references to brand names or catalogue numbers, designated by the Owner in the Technical Provisions are intended to be descriptive only and not restrictive. The Bidder may substitute alternative standards, brand names and/or catalogue numbers in its bid, provided that it demonstrates to the Owner's satisfaction that the substitutions are substantially equivalent or superior to those designated in the Technical Provisions. Copies of the standards proposed by the Bidder other than those specified in the Bidding Documents shall be furnished.

IB.15 Bid Security

15.1 Each Bidder shall furnish, as part of his bid, a Bid Security in the amount of Pak. Rupees.

15.2 The Bid Security shall be, at the option of the Bidder, in the form of Deposit at Call or a Bank Guarantee issued by a Scheduled Bank in Pakistan or from a foreign bank duly counter-guaranteed by a Scheduled Bank in Pakistan or an insurance company having at least AA rating from PACRA/JCR in favour of the Owner valid for a period twenty eight (28) days beyond the bid validity date.

15.3 The Bid Security is required to protect the Owner against the risk of Bidder's conduct which would warrant the security's forfeiture, pursuant to Sub-Clause 15.7 hereof.

15.4 Any bid not accompanied by an acceptable Bid Security shall be rejected by the Owner as non-responsive, pursuant to Clause IB.24.

15.5 The bid securities of unsuccessful Bidders will be returned upon award of contract to the successful Bidder or on the expiry of validity of Bid Security whichever is earlier.

15.6 The Bid Security of the successful Bidder will be returned when the Bidder has furnished the required Performance Security, pursuant to Clause IB.34 and signed the Contract Agreement, pursuant to Clause IB.35.

15.7 The Bid Security may be forfeited:

- (a) if a Bidder withdraws his bid during the period of bid validity; or
- (b) if a Bidder does not accept the correction of his Bid Price, pursuant to Sub Clause 24.2 hereof; or
- (c) in the case of a successful Bidder, if he fails to:
 - (i) furnish the required Performance Security in accordance with Clause IB.34, or
 - (ii) sign the Contract Agreement, in accordance with Clause IB.35.

IB.16 Validity of Bids

16.1 Bids shall remain valid for 90 days after the date of bid opening as prescribed in Clause IB.19.

16.2 In exceptional circumstances prior to expiry of original bid validity period, the Owner may request the Bidders to extend the period of validity for a specified additional period which shall in no case be



more than the original bid validity period. The request and the responses thereto shall be made in writing. A Bidder may refuse the request without forfeiture of his Bid Security. A Bidder agreeing to the request will be required to extend the validity of his Bid Security for the period of the extension, and in compliance with Clause IB.15 in all respects in which case, the Owner will be obligated to compensate the Bidders, upon substantiation for their increase in costs (if it is a fixed price bid).

IB.17 Format and Signing of Bid

- 17.1 Bidders are particularly directed that the amount entered on the Form of Bid shall be for performing the Contract strictly in accordance with the Bidding Documents.
- 17.2 All Appendices to Bid are to be properly completed and signed.
- 17.3 No alteration is to be made in the Form of Bid nor in the Appendices thereto except in filling up the blanks as directed. If any alteration be made or if these instructions be not fully complied with, the bid may be rejected.
- 17.4 Each Bidder shall prepare one (1) Original of the documents comprising the bid as described in Clause IB.9 and clearly mark them “ORIGINAL” and ‘COPY” as appropriate. In the event of discrepancy between them, the original shall prevail.
- 17.5 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign (in the case of copies, Photostats are also acceptable). This shall be indicated by submitting a written Power of Attorney authorizing the signatory of the Bidder to act for and on behalf of the Bidder. All pages of the bid shall be initialed and stamped by the person or persons signing the bid.
- 17.6 The bid shall contain no alterations, omissions or additions, except to comply with instructions issued by the Owner, or as are necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the bid.
- 17.7 Bidders shall indicate in the space provided in the Form of Bid their full and proper addresses at which notices may be legally served on them and to which all correspondence in connection with their bids and the Contract is to be sent.
- 17.8 Bidders should retain a copy of the Bidding Documents as their file copy.

D. SUBMISSION OF BIDS

IB.18 Sealing and Marking of Bids

- 18.1 Each bidder shall submit his bid as under:
 - (a) ORIGINAL and each COPY of the Bid shall be separately sealed and put in separate envelopes and marked as such.
 - (b) The envelopes containing the ORIGINAL and COPIES will be put in one sealed envelope and addressed / identified as given in Sub- Clause 18.2 hereof.
- 18.2 The inner and outer envelopes shall;



- (a) be addressed to the Owner at the address given in Sub-Clause 6.1 heretofore.
- (b) bear the Project name, Bid No. and Date of opening of Bid.
- (c) provide a warning not to open before the time and date for bid opening.

- 18.3 The Bid shall be delivered in person or sent by registered mail at the address to Owner as given in Sub-Clause 6.1 heretofore.
- 18.4 In addition to the identification required in Sub-Clause 18.2 hereof, the inner envelope shall indicate the name and address of the Bidder to enable the bid to be returned unopened in case it is declared “late” pursuant to Clause IB.20.
- 18.5 If the outer envelope is not sealed and marked as above, the Owner will assume no responsibility for the misplacement or premature opening of the bid.

IB.19 Deadline for Submission of Bids

- 19.1 (a) Bids must be received by the Owner at the address specified in Sub-Clause 6.1 hereof not later than the time and date stipulated in the Invitation for Bids.
- (b) Bids with charges payable will not be accepted, nor will arrangements be undertaken to collect the bids from any delivery point other than that specified above. Bidders shall bear all expenses incurred in the preparation and delivery of bids. No claims for refund of each expense will be entertained.
 - (c) Where delivery of a bid is by mail and the Bidder wishes to receive an acknowledgment of receipt of such bid, he shall make a request for such acknowledgment in a separate letter attached to but not included in the sealed bid package.
 - (d) Upon request, acknowledgment of receipt of bids will be provided to those making delivery in person or by messenger.
- 19.2 Bids submitted through telegraph, telex, fax or e-mail shall not be considered.
- 19.3 The Owner may, at his discretion, extend the deadline for submission of bids by issuing an addendum in accordance with Clause IB.7, in which case all rights and obligations of the Owner and the Bidders previously subject to the original deadline will thereafter be subject to the deadline as extended.

IB.20 Late Bids

- 20.1 (a) Any bid received by the Owner after the deadline for submission of bids prescribed in Clause IB.19 will be returned unopened to such Bidder.
- (b) Delays in the mail, delays of person in transit, or delivery of a bid to the wrong office shall not be accepted as an excuse for failure to deliver a bid at the proper place and time. It shall be the Bidder’s responsibility to determine the manner in which timely delivery of his bid will be accomplished either in person, by messenger or by mail.

IB.21 Modification, Substitution and Withdrawal of Bids

- 21.1 Any Bidder may modify, substitute or withdraw his bid after bid submission provided that modification, substitution or written notice of the withdrawal is received by the Owner prior to the deadline for submission of bids.



- 21.2 The modification, substitution or notice for withdrawal of any bid shall be prepared, sealed, marked and delivered in accordance with the provisions of Clause IB.18 with the outer and inner envelopes additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.
- 21.3 Withdrawal of a bid during the interval between the deadline for submission of bids and the expiration of the period of bid validity specified in the Form of Bid may result in forfeiture of the Bid Security pursuant to Clause IB.15.

E. BID OPENING AND EVALUATION

IB.22 Bid Opening

- 22.1 A committee consisting of nominated members by the Owner will open the bids, including withdrawals, substitution and modifications made pursuant to Clause IB.21, in the presence of Bidders’ representatives who choose to attend, at the time, date and location stipulated in the Invitation for Bids.
The Bidders’ representatives who are present shall sign in a register evidencing their attendance.
- 22.2 Envelopes marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL” shall be opened and read out first and the name of the Bidder shall be read out. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause IB.21 shall not be opened.
- 22.3 The Bidder’s name, Bid Prices, unit rates, any discount and price of any Alternate Proposal(s), bid modifications, substitutions and withdrawals, the presence or absence of Bid Security, and such other details as the Owner at its discretion may consider appropriate, will be announced by the Owner at the bid opening. The Owner will record minutes of bid opening.
Any Bid Price or discount which is not read out and recorded at bid opening will not be taken into account in the evaluation of bid.
- 22.4 Discounts offered for lesser period than the bid validity shall not be considered in evaluation.

IB.23 Clarification of Bids

- 23.1 To assist in the examination, evaluation and comparison of Bids the Owner may, at his discretion, ask the Bidder for a clarification of his Bid. The request for clarification and the response shall be in writing and no change in the price or substance of the Bid shall be sought, offered or permitted.

IB.24 Preliminary Examination & Determination of Responsiveness of Bids

- 24.1 Prior to the detailed evaluation of bids, pursuant to Clause IB.26:
- (a) the Owner will examine the Bids to determine whether;
 - (i) the Bid is complete and does not deviate from the scope,
 - (ii) any computational errors have been made,
 - (iii) required sureties have been furnished,
 - (iv) the documents have been properly signed,
 - (v) the Bid is valid till required period,
 - (vi) the Bid prices are firm during currency of contract if it is a fixed price bid,
 - (vii) completion period offered is within specified limits,



- (viii) the Bidder/Manufacturer is eligible to Bid and possesses the requisite experience,
- (ix) the Bid does not deviate from basic technical requirements, and (x) the Bids are generally in order.

(b) A bid is likely not to be considered, if;

- (i) it is unsigned,
- (ii) its validity is less than specified,
- (iii) it is submitted for incomplete scope of work,
- (iv) it indicates completion period later than specified,
- (v) it indicates that Works/Services and materials to be supplied do not meet eligibility requirements,
- (vi) it indicates that Bid prices do not include the amount of income tax.

(c) A bid will not be considered, if;

- (i) it is not accompanied with bid security,
- (ii) it is submitted by a Bidder who has participated in more than one bid,
- (iii) it is received after the deadline for submission of bids,
- (iv) it is submitted through fax, telex, telegram or email,
- (v) it indicates that prices quoted are not firm during currency of the contract whereas the Bidders are required to quote fixed price(s),
- (vi) the Bidder refuses to accept arithmetic correction,
- (vii) it is materially and substantially different from the Conditions/ Specifications of the Bidding Documents.

24.2 Arithmetical errors will be rectified on the following basis:

If there is a discrepancy between the unit price and total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected. If there is a discrepancy between the words and figures the amount in words shall prevail. If there is a discrepancy between the total Bid price entered in Form of Bid and the total shown in Schedule of Prices Summary, the amount stated in the Form of Bid will be corrected by the Owner in accordance with the Corrected Schedule of Prices.

If the Bidder does not accept the corrected amount of Bid, his Bid will be rejected and his Bid Security forfeited.

24.3 Prior to the detailed evaluation pursuant to Clause IB.26, the Owner will determine the substantial responsiveness of each Bid to the Bidding Documents. For purpose of these Clauses, a substantially responsive Bid is one which conforms to all the terms and conditions of the Bidding Documents without material deviations.

A material deviation or reservation is one

- (i) which affects in any substantial way the scope, quality or performance of the Works/Services.
- (ii) which limits in any substantial way, inconsistent with the Bidding Documents, the Owner's rights or the Bidder's obligations under the Contract; or



- (iii) whose rectification/adoption would affect unfairly the competitive position of other Bidders presenting substantially responsive bids.

The Owner's determination of a Bid's responsiveness will be based on the contents of the Bid itself without recourse to extrinsic evidence.

- 24.4 A Bid determined as substantially non-responsive will be rejected and will not subsequently be made responsive by the Bidder by correction of the nonconformity.
- 24.5 Any minor informality or non-conformity or irregularity in a Bid which does not constitute a material deviation may be waived by Owner, provided such waiver does not prejudice or affect the relative ranking of any Bidder.

IB.25 Conversion to Single Currency

- 25.1 To facilitate evaluation and comparison, the Owner will convert, all Bid Prices expressed in the amount in various currencies in which Bid Price is payable, to Pak. Rupees at the Telegraphic Transfer and Over Draft (TT&OD) composite (selling) exchange rates published/authorised by State Bank of Pakistan and applicable to similar transactions, on the date of the opening of Bids.

IB.26 Detailed Evaluation of Bids

- 26.1 The Owner will evaluate and compare only the bids previously determined to be substantially responsive pursuant to Clause IB.24 as per requirements given hereunder.

26.2 Evaluation and Comparison of Bids

- (a) Bids will be evaluated for each item and/or complete scope of work/Services.

- (b) Basis of Price Comparison

The prices will be compared on the basis of the Evaluated Bid Price pursuant to Para (e) herein below.

- (c) Technical Evaluation

It will be examined in detail whether the Goods offered by the Bidder comply with the Technical Provisions of the Bidding Documents. For this purpose, the Bidder's data submitted with the bid will be compared with the specific scope of Services prescribed by the Owner and technical features/criteria of the Goods detailed in the Technical Provisions. Other technical information submitted with the bid regarding the Scope of Work/Services will also be reviewed.

- (d) Commercial Evaluation

It will be examined in detail whether the bids comply with the commercial/contractual conditions of the Bidding Documents. It is expected that no major deviation/stipulation shall be taken by the Bidders.

- (e) Evaluated Bid Price

In evaluating the bids, the Owner will determine for each bid in addition to the Bid Price, the following factors (adjustments) in the manner and to the extent indicated below to determine the Evaluated Bid Price:



- (i) making any correction for errors pursuant to Sub-Clause 24.2 hereof.
- (ii) excluding Provisional Sums, if any, but including priced Daywork.
- (iii) making an appropriate adjustment for any other acceptable variation or deviation.

26.3 Evaluation Methods

Pursuant to Sub-Clause 26.2, Bids indicating completion beyond later than the dates set out in Preamble to Conditions of Contract, shall not be considered and rejected as non-responsive.

26.4 If the bid of the successful Bidder is seriously unbalanced in relation to the Owner's estimate of the cost of work to be performed under the Contract, the Owner may require the Bidder to produce detailed price analyses for any or all items of the Schedule of Prices to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, the Owner may require that the amount of the Performance Security set forth in Clause IB.34 be increased at the expense of the successful Bidder to a level sufficient to protect the Owner against financial loss in the event of default of the successful Bidder under the Contract.

IB.27 Domestic Preference

27.1 In the comparison of evaluated Bids, the Goods manufactured in Pakistan, will be granted a margin of preference in accordance with the following procedures, provided the Bidder shall have established to the satisfaction of Owner that the manufacturing cost of such Goods includes a domestic value addition equal to at least 20% of the ex-factory Bid price of such Goods. Bidders applying for domestic preference shall fill in Appendix C to these Instructions to substantiate their claim.

27.2 The Owner will first review the Bids to determine, the Bid group classification in accordance with Sub-Clause 10.2 hereof.

27.3 The comparison shall be Ex-factory price of the Goods to be offered from within Pakistan (such prices to include all costs as well as custom duties and taxes paid or payable on raw materials and components incorporated or to be incorporated in the Goods) and the DDP (CIF + Customs duty, sales tax and other import charges) Pakistan seaport price of the Goods to be offered from outside Pakistan.

27.4 The lowest evaluated bid of each Group shall first be determined by comparing all evaluated bids in each Group among themselves taking into account:

- (a) In the case of Goods manufactured in Pakistan, sales tax, local body charges and other similar taxes which will be payable on the furnished Goods in Pakistan.
- (b) In the case of Goods of foreign origin offered from abroad, customs duties, sales tax and other import charges which will be payable on furnished Goods in Pakistan.
- (c) In the case of Goods of foreign origin already located in Pakistan, customs duty, sales tax and import charges on CIF price as applicable for SubClause 27.4(b) here above.

27.5 The price preference to Group A bids will be:



- (i) 15% of the ex-factory bid price, if the value addition through indigenous manufacturing is at least 20%;
- (ii) 20% of the ex-factory bid price, if the value addition through indigenous manufacturing is over 20% and up to 30%; and
- (iii) 25% of the ex-factory bid price, if the value addition through indigenous manufacturing is over 30%.

27.6 The applicable price preference i.e., as per Sub-Clause 27.5 herein above will be applied to Group A Bid by reducing the ex-factory bid price.

27.7 The computation for the purpose of domestic preference under sub-clause 10.2 and clause 27, and award of contract shall be subject to change as per policy of the Federal Government as applicable on the date of bid opening.

IB.28 Process to be Confidential

28.1 Subject to Clause 23 heretofore, no Bidder shall contact Owner on any matter relating to his Bid from the time of the Bid opening to the time the bid evaluation result is announced by the Owner. The evaluation result shall be announced at least ten (10) days prior to award of Contract. The announcement to all Bidders will include table(s) comprising read out prices, discounted prices, price adjustments made, final evaluated prices and recommendations against all the bids evaluated.

28.2 Any effort by a Bidder to influence Owner in the Bid evaluation, Bid comparison or Contract Award decisions may result in the rejection of his Bid. Whereas any Bidder feeling aggrieved may lodge a written complaint not later than fifteen (15) days after the announcement of the bid evaluation result; however, mere fact of lodging a complaint shall not warrant suspension of the procurement process.

F. AWARD OF CONTRACT

IB.29 Post-Qualification

29.1 The Owner, at any stage of the bid evaluation, having credible reasons for or prima facie evidence of any defect in supplier's or Constructor's capacities, may require the suppliers or Constructors to provide information concerning their professional, technical, financial, legal or managerial competence whether already pre-qualified or not:

Provided that such qualification shall only be laid down after recording reasons therefore in writing. They shall form part of the records of that bid evaluation report.

29.2 The determination will take into account the Bidder's financial, technical and production capabilities. It will be based upon an examination of the documentary evidence of the Bidder's qualification submitted under Appendix B to Instructions to Bidders "Evidence of Bidder's Capability" by the Bidder pursuant to Clause IB.13, as well as such other information as required under the Bidding Documents.

29.3 An affirmative determination will be a pre-requisite for award of the Contract to the lowest evaluated Bidder. A negative determination will result in rejection of that Bidder's bid in which event, Owner will proceed to undertake a similar determination of the next lowest evaluated Bidder's capabilities to perform the Contract satisfactorily.



IB.30 Award Criteria

30.1 Subject to Clause IB.32, the Owner will award the Contract to the Bidder whose bid has been determined to be substantially responsive to the Bidding Documents and who has offered the lowest evaluated Bid Price, provided that such Bidder has been determined to be eligible in accordance with the provisions of clause IB.2 qualified to satisfactorily perform the Contract in accordance with the provisions of Clause IB.29.

IB.31 Owner's Right to Vary Quantities

31.1 Owner reserves the right at the time of award of Contract to increase or decrease by upto 15% the quantity of Goods and Services specified in the Schedule of Prices without any change in the unit price or other terms and conditions.

IB.32 Owner's Right to Accept any Bid and to Reject any or all Bids

32.1 Notwithstanding Clause IB.30, the Owner reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids, at any time prior to award of Contract, without thereby incurring any liability to the affected Bidders or any obligation to inform the affected Bidders of the grounds for the Owner's action except that the grounds for its rejection shall upon request be communicated, to any Bidder who submitted a bid, without justification of grounds. Rejection of all bids shall be notified to all Bidders promptly.

32.2 No negotiations with the Bidder having been evaluated as lowest responsive or any other Bidder shall be permitted. However, the Owner may have clarification meeting(s) to get clarify any item(s) in the bid evaluation report.

IB.33 Notification of Award

33.1 Prior to expiration of the period of bid validity prescribed by the Owner, the Owner will notify the successful Bidder in writing ("Letter of Acceptance") that his bid has been accepted. This letter shall name the sum which the Owner will pay the Constructor in consideration of the execution and completion of the Works/Services by the Constructor as prescribed by the Contract (hereinafter and in the Conditions of Contract called the "Contract Price").

33.2 The Letter of Acceptance and its acceptance by the Bidder will constitute the formation of the Contract, binding the Owner and the Bidder till signing of the formal Contract Agreement.

33.3 Upon furnishing by the successful Bidder of a Performance Security, the Owner will promptly notify the other Bidders that their bids have been unsuccessful and return their bid securities.

IB.34 Performance Security

34.1 The successful Bidder shall furnish to the Owner a Performance Security in the form and the amount stipulated in the Conditions of Contract within a period of twenty-eight (28) days after the receipt of Letter of Acceptance.

34.2 Failure of the successful Bidder to comply with the requirements of Sub-Clause IB.34.1 or Clause IB.35 or Clause IB.43 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security.



IB.35 Signing of Contract Agreement

- 35.1 Within fourteen (14) days from the date of furnishing of acceptable Performance Security under the Conditions of Contract, the Owner will send to the successful Bidder the Form of Contract Agreement provided in the Bidding Documents, duly filled in and incorporating all agreements between the parties for signing and returning it to the Owner.
- 35.2 The formal Agreement between the Owner and the successful Bidder shall be executed within fourteen (14) days of the receipt of such Form of Contract Agreement by the successful Bidder from the Owner.

G. ADDITIONAL INSTRUCTIONS

IB.36 Instructions not Part of Contract

- 36.1 Bids shall be prepared and submitted in accordance with these Instructions which are provided to assist Bidders in preparing their bids, and do not constitute part of the Bid or the Contract Documents.

IB.37 Contract Documents

- 37.1 The Documents which will be included in the Contract are listed in the Form of Contract Agreement set out in these Bidding Documents.

IB.38 Sufficiency of Bid

- 38.1 Each Bidder shall satisfy himself before Bidding as to the correctness and sufficiency of his Bid and of the rates and prices entered in the Schedule of Prices. Except insofar as it is otherwise expressly provided in the Contract, the rates and prices entered in the Schedule of Prices shall cover all his obligations under the Contract and all matters and things necessary for the proper completion of the Works/Services.

IB.39 One Bid per Bidder

- 39.1 Each Bidder shall submit only one bid either by himself, or as a partner in a joint venture. A Bidder who submits or participates in more than one bid (other than alternatives pursuant to Clause IB.41) will be disqualified and bids submitted by him shall not be considered for evaluation and award.

IB.40 Bidder to Inform Himself

- 40.1 The Bidder is advised to obtain for himself at his own cost and responsibility all information that may be necessary for preparing the bid and entering into a Contract for execution of the Works/Services. This shall include but not to be limited to the following:
1. inquiries on Pakistani Income Tax/Sales Tax to the Commissioner of the Income Tax and Sales Tax, Punjab Pakistan.
 2. inquiries on customs duties and other import taxes, to the concerned authorities of Customs and Excise Department.
 3. information regarding port clearance facilities, loading and unloading facilities, storage facilities, transportation facilities and congestion at Pakistan seaports.



4. Investigations regarding transport conditions and the probable conditions which will exist at the time the Goods will be actually transported.

IB.41 Alternate Proposals by Bidder

- 41.1 Any Bidder should consider that he can offer any advantage to the Owner by a modification to the designs, specifications or other conditions, he may, in addition to his bid to be submitted in strict compliance with the Bidding Documents, submit any Alternate Proposal(s) containing (a) relevant design calculations; (b) technical specifications; (c) proposed construction methodology; and (d) any other relevant details / conditions, provided always that the total sum entered in the Form of Bid shall be that which represents complete compliance with the Bidding Documents.
- 41.2 Alternate Proposal(s), if any, of the lowest evaluated responsive Bidder only may be considered by the Owner as the basis for the award of Contract to such Bidder.

IB.42 Local Conditions

- 42.1 Bidder must verify and supplement by his own investigations the information about site and local conditions. However, Owner will assist the Bidder wherever practicable and possible.

IB.43 Integrity Pact

- 43.1 The Bidder shall sign and stamp the Integrity Pact provided at Appendix-G to Bid in the Bidding Document for all Federal Government procurement contracts exceeding Rupees ten (10) million. Failure to provide such Integrity Pact shall make the bid non-responsive.



APPENDICES TO INSTRUCTION OF BIDDERS



APPENDIX-A TO ITB (NAME OF ELIGIBLE COUNTRIES)

Bidders from every country of the world are eligible to apply except:

- a. India
- b. Israel
- c. Any Other Country Notified as ineligible by Government of Pakistan



APPENDIX-B TO ITB (EVIDENCE OF BIDDER'S CAPABILITY)

[Note: Bidders to provide the following information with the bid separately and indicate herein its references where this information is available.]

Sr.No.	Information to be Supplied	Bid References
1.	Name of bidder, business address and country of incorporation.	
2.	Type of firm whether individually owned, partnership, corporation or joint venture and the names of its owners or partners.	
3.	The annual reports or qualification statements giving general description of the firm, sort of business carried out, balance sheets, profit and loss statements, turn over and business done by the firm, duly authenticated, for the last three (3) years. Audited Balance Sheets for the preceding 3 years and projected assets and liabilities for the next 2 years shall be provided.	
4.	Full description of plant and equipments owned and/or to be hired or leased the annual manufacturing capacities of various items made therein.	
5.	Detailed description of the quality control testing and research facilities.	
6.	Names, qualifications and experience of the key technical personnel.	
7.	The time since the Constructor/Operator has been in this business and the time since he has been doing work of similar nature.	
Sr.No.	Information to be Supplied	Bid References
8.	Reference lists of similar works done/services performed by the bidder in its country and abroad indicating the name of customer, description and quantity of product, year of supply and the approximate value.	



9. Details of projects under execution and future contractual commitments (for each partner, in case of a joint venture).
10. Banking reference, names of banks and addresses may be given to whom reference regarding financial capability of the bidder may be made, with authority to make inquiries from the bidder's bankers and clients regarding any financial and technical aspects (for each partner, in case of a joint venture).
11. Information on any litigation or arbitration resulting from contracts completed or under execution by the bidder over the last ten (10) years. The information shall indicate the parties concerned, the matter of dispute, the disputed amounts and the result thereof (for each partner, in case of a joint venture).



FORM OF BID AND APPENDICES TO BID

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Appendix C - FORM OF BID (LETTER OF OFFER)

Bid Reference No. _____

(Name of Works/Services) To:

Gentlemen,

1. Having examined the Bidding Documents including Instructions to Bidders, Conditions of Contract, Specifications, Drawings, Schedule of Prices and Addenda Nos. _____ for the execution of the above-named Works/Services, we, the undersigned, being a company doing business under the name of _____ and address _____ and being duly incorporated under the laws of _____ hereby offer to execute and complete such Works/Services and remedy any defects therein in conformity with the said Documents including Addenda thereto for the Total Bid Price comprising Foreign Currency Component of _____ (_____) and Local Currency Component of Rs. _____ (Rupees _____) or such other sum as may be ascertained in accordance with the said Documents.
2. We understand that all the Schedules attached hereto form part of this Bid.
3. As security for due performance of the undertakings and obligations of this Bid, we submit herewith a Bid Security in the amount of _____ (Rs.) _____ drawn in your favour or made payable to you and valid for a period of twenty eight (28) days beyond the period of validity of Bid.
4. We undertake, if our Bid is accepted, to commence the Works/Services and to deliver and complete the whole of the Works/Services comprised in the Contract within the time stated in the Conditions of Contract (PCC 1.2).
5. We agree to abide by this Bid for the period of _____ days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
6. Unless and until a formal Agreement is prepared and executed, this Bid, together with your written acceptance thereof, shall constitute a binding contract between us.
7. We undertake, if our Bid is accepted, to execute the Performance Security referred to in Sub-Clause 15.15 of Conditions of Contract for the due performance of the Contract.
8. We understand that you are not bound to accept the lowest or any Bid you may receive.



9. We do hereby declare that the Bid is made without any collusion, comparison of figures or arrangement with any other Bidder making a Bid for the Works/Services.

10. We confirm, if our Bid is accepted, that all partners of the joint venture shall be liable jointly and severally for the execution of the Contract and the composition or the constitution of the joint venture shall not be altered without the prior consent of the Owner. (Please delete in case of Bid from a single firm).

Dated this _____ day of _____ 20_____

Signature _____ in the capacity of _____ duly

authorized to sign bids for and on behalf of _____
(Name of Bidder in Block Capitals)
(Seal)

Address

Witness:

(Signature) _____

(Name) _____

Address: _____

Occupation _____

**Appendix D - Summary of Bid Price**

Sr No	Description	Unit Price	Qty	Unit	Total Price Inclusive of all taxes
1	Human Resource		As Per Appendix-E	Salary/month	
2	Hilux Double Cabin 4X4 vehicle above 2015 Model		1	Monthly Cost including Fuel	
3	Tractors with water bouser		02	Monthly Cost including Fuel	
4	Bikes		03	Monthly Cost including Fuel	
5	Repairing Cost for cameras		All Cameras of Solar Park	Service	
6	Repairing Cost for lights		All Lights of Solar Park	Service	
7	Maintenance of Building / Control Room		All Buildings of Solar Park	Service	
8	Repair/Maintenace of Boundary Wall (25km)/ IR Fence, Security Track and roads			Services	
9	Maintenance of Electric Gate/Barriers/Walkthrough gates/Security Scanners			Services	
10	General Maintenance of Plants and Vegetation			Services	
Grand Total Inclusive of all taxes					

Amount in Words**Note:**

Least cost shall be determined on the basis of grand total.

Price Must be inclusive of all taxes

All the construction will be based on newly procured material. Contractor will not be allowed to use any material from dismantled wall.

Appendix E - Human Resource details of the Contractor

Sr. No.	Staff	Qty.
1	Electrical Engineer	1
3	Civil Engineer	1
4	Electrical Supervisor	1
5	Civil Supervisor	2
6	Electrician	2
7	Technical	1
8	Tubewell Operator	2
9	Imam Masjid	1
10	Naib-Qasid	2
11	Helpers	2
12	Gardeners	2
13	Janitors	1
Total		17

TORs of the O&M Contractor:

- Operation & Maintenance of all Buildings, and IR Fence situated in Quaid-e-Azam Solar Park.
- Operation and Maintenance of Lights, Cameras, and Control Room equipment of the Solar Park.
- Provision of all the required vehicles i.e., Double-Cabins, tractors with water bouser, motorcycles etc.
- Inspection of the Boundary Wall at least once a week and repair if necessary.
- To maintain a stock register of all available material.
- To ensure the successful operation of electric Gates, Scanning machines, Cameras, Attendance Machines, etc.
- Maintenance of the security track around the boundary wall
- Payment will be made on monthly basis after progress report



Quaid-e-Azam Solar Power (Pvt) Ltd

GENERAL CONDITIONS OF CONTRACT



GENERAL CONDITIONS OF CONTRACT

1. AGREEMENT

1.1. AGREEMENT

This Agreement consists of the terms and conditions set forth in the sections captioned by numbered clause designations (“Clauses”) and the following appendices, which are incorporated and made part of this Agreement by this reference and are included in any reference to this Agreement:

- a. Appendixes
- b. Appendix C to Bid: Form of Bid
- c. Appendix D to Bid: Summary of Bid Price
- d. Appendix E to Bid: Human Resource details of the contractor

Appendix F to Bid: Human Resource details of the contractor If the terms and conditions of the Clauses of this Agreement vary or are inconsistent with any portion of the Appendices, the terms of the Clauses this Agreement shall control and be given priority, and the provisions of the Appendices shall be subject to the terms of the Clauses. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement. Neither party will be bound by or be deemed to have made any representations, warranties, commitments or other undertakings with respect to the subject matter of this Agreement that are not contained in this Agreement.

1.2. EFFECTIVE DATE AND TERM

This Agreement shall be effective and shall govern the rights and obligations of the parties from and after the date of this Agreement for a period *as mentioned in PCC*

1.3. RELATIONSHIP OF THE PARTIES

Constructor /Operator has been retained by Owner as an independent Constructorto operate, maintain and manage the Project on behalf of Owner, in accordance with Prudent Utility Practice and the requirements of the Project Agreements. Owner has delegated to Constructor /Operator overall responsibility for operating, maintaining and managing the Project to ensure that the Project is available for its function namely *as provided in PCC* for Owner and meets all requirements under the Project Agreements. Neither Constructor /Operator nor any of its employees, subConstructors or agents shall be deemed to have any other status, except that Constructor /Operator is the agent of Owner to the limited extent that this



Agreement expressly grants Constructor /Operator the authority to act on behalf of Owner.

1.4. REPRESENTATIVES

Owner and Constructor /Operator shall each designate a representative ("Designated Representative") to act on its behalf in overseeing the performance of this

Agreement. Owner and Constructor /Operator may change their respective Designated Representatives upon written notice to the other party given as provided in this Agreement. Designated Representatives shall be the primary means for communication and all other interactions between Owner and Constructor /Operator that are required under this Agreement. Designated Representatives shall have the power and authority to bind their respective principals under the terms of this Agreement, with any required internal corporate approvals with respect to such authority being the responsibility of each representative to obtain from his or her principal.

1.5. INTEGRITY PACT.

For Contracts of worth Rupee ten million or more, which relate to federal finance, the Integrity Pact duly signed between the Constructor /Operator(Constructor/supplier) shall be binding till completion of the contract. In other cases, this Sub-Clause 1.5 of the Agreement is not applicable.

2. DEFINITIONS

Unless otherwise required by the context in which a defined term appears, the following terms shall have the meanings specified in this Clause 2. Terms that are defined in other Clauses shall have the meanings given to them in those Clauses.

"Annual Project Operating Plan" has the meaning set forth in Sub-Clause 6.2.

"Annual Operating Fee" means an annual operating fee paid to Constructor /Operator during each Contract Year as set forth in Sub-Clause 5.2.

"Annual Budget" has the meaning set forth in Sub-Clause 6.2

"Bankruptcy" means a situation in which (i) 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; (ii) 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); (iii) a party admits in writing its inability to pay its



debts as they mature; (iv) a party gives notice to any person or entity of its current (or pending) insolvency or suspension of operations; or (v) 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 Sunday or any other day on which commercial banks are authorized or required to close the business *as mentioned in PCC*.

"Contract Year" means: (i) for the first Contract Year, that period from the date of this Agreement to and including June 30 of such year; and (ii) for each Contract Year thereafter, the fiscal year.

"Five-Year Budget" has the meaning set forth in Sub-Clause 6.2(e).

"Force Majeure Event" means an event, condition or circumstance beyond the reasonable control of, and not due to the fault or negligence of, the party affected, and which could not have been avoided by due diligence and use of reasonable efforts, which prevents the performance by such affected party of its obligations hereunder; provided, that a "Force Majeure Event" shall not be deemed to have occurred or to be continuing unless the party claiming Force Majeure complies with the requirements of Sub-Clause 15.3 (*Force Majeure*). Subject to the foregoing, "Force Majeure Event" shall include, as to either party, explosion and fire (in either case to the extent not attributable to the negligence of the affected party), flood, earthquake, storm or other natural calamity or act of God, strike or other labor dispute, war, insurrection or riot, actions or failures to act by governmental entities or officials, failure to obtain governmental permits or approvals (despite timely application thereof and due diligence) and changes in laws, rules, regulations, orders or ordinances affecting operation of the Project, which events were not pending on the date of this Agreement.

"Operating Manuals" means the operating data, design as-built drawings, specifications, vendors' manuals, warranty requirements, procedures (including those for maintenance of the Project and environmental and safety compliance), and similar materials with respect to the Project.

"Procedures Manual" has the meaning set forth in Clause 6.1.

"Project" means the project *as mentioned in PCC* and related assets, together with other facilities and related assets, to be constructed on certain real property, *as mentioned in PCC*.

"Project Agreements" means the agreements relating to the Project, *as mentioned in PCC*, Interconnection Agreement, this Agreement and all other agreements applicable to the Project, permits, and licenses required for the operation, maintenance and management of the Project, as identified in writing by Owner.



"Prudent Utility Practice" means (i) any of the practices, methods, and acts engaged in or approved by a significant portion of the project related industry in the country and geographic region where the Project is located during the relevant time period, or (ii) 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 discount rate published by the State Bank of Pakistan from time to time.

"Reimbursable Costs" has the meaning set forth in Sub-Clause 5.3.

"Services" has the meaning set forth in Sub-Clause 3.1.

3. SERVICES

3.1. SCOPE OF SERVICES

Constructor /Operator shall (i) operate, maintain and manage the Project on behalf of Owner ("Services") and (ii) also perform the specific duties set forth in this Agreement if they are not otherwise required by the standards defined in Sub-Clause 3.2.

3.2. STANDARDS FOR PERFORMANCE OF THE SERVICES.

Constructor /Operator 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) Operating Manuals, the Administrative Procedures Manual and applicable vendor warranties, (ii) the applicable Annual Project Operating Plan and Annual Budget, (iii) all applicable Laws, (iv) Prudent Utility Practices, (v) the Project Agreements, (vi) the requirements of any System Constructor /Operator. Constructor /Operator shall use all reasonable efforts to optimize the useful life of the Project and to minimize Reimbursable Costs and Project outages or other unavailability.

3.3. CONSTRUCTOR /OPERATOR 'S PERSONNEL STANDARDS

Constructor /Operator 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 Constructor /Operator to perform the Services shall be employees of Constructor/Operator, and their working hours,



rates of compensation and all other matters relating to their employment shall be determined solely by Constructor/Operator (subject to Owner's approval rights with respect to the Annual Budget). With respect to labor matters, hiring personnel, and employment policies, Constructor/Operator shall comply with all applicable Laws. Constructor/Operator also shall act in a reasonable manner that is consistent with the intent and purpose of this Agreement and with Constructor/Operator's acknowledgment (hereby given) that Constructor/Operator has no authority to enter into any contracts with respect to labor matters that purport to bind or otherwise obligate Owner.

3.4. COMPLIANCE

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

3.5. OPERATING RECORDS AND REPORTS

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

3.6. NO LIENS OR ENCUMBRANCES

Constructor/Operator shall maintain the Project free and clear of all liens and encumbrances resulting from any action of Constructor/Operator or work done at the request of Constructor/Operator, except for such liens or encumbrances that



result directly from nonpayment by Owner of amounts due and owing to Constructor/Operator under this Agreement.

3.7. NO ACTION

Except where such action is expressly permitted by this Agreement, Constructor/Operator shall not take any action that would cause a default under any Project Agreement.

3.8. EMERGENCY ACTION

If an emergency endangering the safety or protection of persons, the Project, or property located near the Project occurs, Constructor/Operator shall promptly notify Owner and take all necessary action to attempt to prevent or mitigate any such threatened damage, injury or loss. Constructor/Operator shall make reasonable efforts to minimize any cost associated with remedial action in case of such an emergency.

3.9. ACTION IN EXTRAORDINARY CIRCUMSTANCES

In the event that:

- (A) The Project or major Project equipment suffers an unplanned outage (or Constructor/Operator reasonably believes that such an occurrence is imminent), and
- (B) Constructor/Operator has made reasonable, but unsuccessful, efforts to notify and communicate with Owner regarding such occurrence or imminent occurrence in accordance with the terms of this Agreement, then Constructor/Operator 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 Owner regarding the occurrence and the remedial action, and
 - (iv) not expend for such purposes more than an aggregate *as mentioned in PCC* in any Contract Year.



4.

OWNER RESPONSIBILITIES

4.1. INFORMATION

Owner shall provide Constructor/Operator with all vendor manuals, spare parts lists, Project data books and drawings which are provided to Owner pursuant to any Project Agreement or by any Constructorresponsible for construction, installation, repair or maintenance of the Project or a part thereof. Subject to the standards of performance set forth in Sub-Clause 3.2, Constructor/Operator shall be entitled to rely upon such information in performance of the Services. Owner shall also provide Constructor/Operator with copies of all Project Agreements and any amendments thereto and any other documents that define the Project's operating requirements.

4.2. OVERHAUL OF MAJOR EQUIPMENT AND CAPITAL *IMPROVEMENT*

The cost of all major equipment teardowns and overhauls and all capital improvements shall be the responsibility of Owner. Constructor/Operator shall promptly notify Owner in writing of any such teardowns and overhauls of major equipment or capital improvements that Constructor/Operator 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 Owner has otherwise consented in writing to reimburse Constructor/Operator for such costs, Constructor/Operator shall schedule, coordinate, contract and oversee the performance of such activities. Constructor/Operator also shall be responsible for monitoring and enforcing contract compliance by the Constructorperforming such work, including taking such steps, short of litigation, to enforce any warranties granted to Owner by such Constructor.

4.3. ANNUAL BUDGET AND PROJECT OPERATING PLAN

In accordance with Clause 6, Owner shall be responsible for approval of the Annual Budget, the Annual Project Operating Plan and the Five-Year Budget.

5.

COMPENSATION AND PAYMENT

5.1. PAYMENTS

As compensation to Constructor/Operator for performance of the Services hereunder, Owner shall pay Constructor/Operator the Annual Operating Fee (or a pro rata portion thereof in the case of a Contract Year of less than 12 months). In addition, Owner shall (at Owner's Option) either (i) reimburse Constructor/Operator, in the manner and at the times specified in this Clause 5 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.

5.2. ANNUAL OPERATING FEE

For the first Contract Year and each subsequent Contract Year, Owner shall pay to Constructor/Operator the sum *as mentioned in PCC* per month of the Contract Year, for an annual fee *as mentioned in PCC* (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 *as mentioned in PCC*

5.3. REIMBURSABLE COSTS

Owner shall reimburse Constructor/Operator for all costs incurred by Constructor/Operator in performing the Services, including the costs set forth in Appendix B (collectively, the "Reimbursable Costs"). Owner's obligation under this provision is subject to (i) Owner's express approval of the costs as part of an Annual Budget or separately in writing, or (ii) Constructor/Operator incurring costs in accordance with Sub-Clauses 3.8 (*Emergency*), 3.9 (*Extraordinary Circumstances*). Expenditures made by Constructor/Operator in excess of the Annual Budget that are required to comply with any Law applicable to the Services or to the Project, shall be approved and reimbursed by Owner. Subject to Owner's right to modify the provisions of this Sub-Clause 5.3 from time to time. Owner shall pay Reimbursable Costs as follows:

- (a) Owner will advance to Constructor/Operator on a mutually agreed basis, funds required for given Constructor/Operator 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, Constructor/Operator shall submit to Owner an estimate of funds required for such month, which estimate shall be in accordance with the Annual Budget. Owner shall pay to Constructor/Operator the amount of such estimate prior to the time such funds are required by Constructor/Operator. Such advances shall be deposited in a separate account in Constructor/Operator's name, as agent for Owner, in a scheduled Bank of Pakistan, subject to withdrawal by Constructor/Operator solely for the purpose of making required payments. Within fifteen (15) days of the end of each month, Constructor/Operator shall submit to Owner a statement of receipts and disbursements, in detail satisfactory to Owner, together with supporting documentation.
- (b) Constructor/Operator shall not incur Reimbursable Costs unless they are incurred in accordance with the applicable Annual Budget, or are permitted by SubClauses 3.8 (*Emergency*), 3.9 (*Extraordinary Circumstances*). If Constructor/Operator becomes aware that Reimbursable Costs exceed or



will exceed the amount provided in the applicable Annual Budget by 5% or more, Constructor/Operator shall use all reasonable efforts to notify Owner within ten (10) days and shall not, without Owner's approval to amend the applicable Annual Budget or Owner's authorization for Constructor/Operator to make such expenditure, perform any further Services that will cause or increase a budget overrun, except as provided in Sub-Clauses 3.8 (*Emergency*), 3.9 (*Extraordinary Circumstances*). If Owner refuses to authorize expenditures in excess of the Annual Budget, Constructor/Operator shall be relieved of those duties or obligations of this Agreement that cannot be performed without the expenditures Owner refuses to approve.

- (c) In all cases, Constructor/Operator shall use reasonable commercial efforts to mitigate any adverse effect from Owner's refusal to authorize expenditures in excess of the Annual Budget. Owner's reimbursement of any cost related to the Services shall not be construed as Owner's approval or acceptance of the Services.

5.4. ADJUSTMENT AND CONDITIONS

Notwithstanding the payment of any amount pursuant to the foregoing provisions, Owner shall remain entitled to conduct a subsequent audit and review of all Reimbursable Costs incurred and paid by Owner and of any supporting documentation for a period of two 2 years after the applicable Contract Year. If such audit and review shows that any amount previously paid by Owner to Constructor/Operator did not constitute a Reimbursable Cost, Owner may (a) recover such amount from Constructor/Operator, plus interest at the Reference Rate, calculated from the date the audit commenced, or (b) deduct such amount from any payment that thereafter may become due to Constructor/Operator.

5.5. BILLING AND PAYMENT

Within 15 days following the end of each month, Constructor/Operator shall submit the receipts and disbursements showing Reimbursable Costs for such month in accordance with Sub-Clause 5.3(a). Within 15 days after receipt of any such invoice, Owner shall:

- (a) pay Constructor/Operator the sum specified in such invoice, less (i) any amounts previously deposited with Constructor/Operator relating to such invoice as well as net interest (if any) earned on the bank deposit, and (ii) any portion of such invoice amount that Owner disputes in good faith or is permitted to offset under this Agreement; and
- (b) with respect to any disputed portion of such invoice, provide Constructor/Operator 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 Clause 14.



6. PROCEDURES, PLANS AND REPORTING

6.1. 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 Procedures Manual shall govern the covered activities of Constructor/Operator for the term of this Agreement, subject to such revision and amendment as agreed in writing by Owner and Constructor/Operator.

6.2. ANNUAL PROJECT OPERATING BUDGET AND PLAN

- (a) **Proposal:** At least ninety (90) days before the beginning of each Contract Year, Constructor/Operator shall prepare and submit to Owner 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 Owner, (i) anticipated operations, repairs and capital improvements, (ii) maintenance and overhaul schedules, (iii) planned procurement (including equipment, spare parts, and consumable inventories), (iv) labor activities (including staffing, labor rates, and holidays), (v) administrative activities, and (vi) other work proposed to be undertaken by Constructor/Operator, 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 Constructor/Operator under the proposed annual operating plan shall be consistent with Constructor/Operator's obligations set forth in this Agreement.
- (b) **Adoption:** Owner shall review Constructor/Operator's proposed annual budget and annual operating plan within thirty (30) days following receipt of the proposals. Owner may, by written request, propose changes, additions, deletions and modifications to the proposals. If requested by Constructor/Operator, Owner shall provide Constructor/Operator any cost information in Owner's possession from previous Contract Years applicable to items in the proposed annual budget. Owner and Constructor/Operator will then meet and use their reasonable commercial efforts to agree upon a final budget and plan (the "Annual Budget" and "Annual Project Operating Plan", respectively), which shall be approved in writing by both parties. Except to the extent that the terms of Sub-Clause 3.8 and 3.9 permit Constructor/Operator to take actions which are outside the final Annual Budget without the consent of Owner, the final Annual Budget and Annual Project 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.

- (c) **Changes:** Constructor/Operator shall notify Owner as soon as reasonably possible of any significant deviations or discrepancies from the projections contained in the Annual Budget or Annual Project Operating Plan.
- (d) **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.
- (e) **Five-Year Budget.** At least ninety (90) days before the first day of each Contract Year, Constructor/Operator shall prepare and submit to Owner a proposed budget for the next 5 Contract Years or the remaining term of the Agreement, whichever period is shorter. The proposed five-year budget shall be established on an annual basis and shall include separate operating and capital budgets. The proposed five-year budget shall also set forth, in detail acceptable to Owner,
 - (i) anticipated operations, repairs and capital improvements;
 - (ii) maintenance and overhaul schedules;
 - (iii) planned procurement (including equipment, spare parts, and consumable inventories);
 - (iv) labor activities (including staffing, labor rates, and holidays);
 - (v) administrative activities; and
 - (vi) other work proposed to be undertaken by Constructor/Operator, 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. Owner shall review Constructor/Operator's proposed five-year budget within 30 days following receipt of the proposal. Owner may, by written request, propose changes, additions, deletions and modifications to the proposals. Owner and Constructor/Operator will then meet and use their reasonable commercial efforts to agree upon a final five-year budget (the "FiveYear Budget"), which shall be approved in writing by both Parties. If a final Five-Year Budget is not approved in its entirety by both parties, the proposed five-year budget submitted by Constructor/Operator, together with Owner's final suggested changes, additions, deletions

and modifications shall serve as the Five Year Budget. The FiveYear Budget shall be used only for planning and comparison purposes, and shall not constrain Constructor/Operator in its actions or expenditures, provided, however, that Constructor/Operator shall be



required to conform in its operations to the Annual Budget and Annual Project Operating Plan as provided in this Agreement.

6.3. OPERATING DATA AND RECORDS

Constructor/Operator shall monitor and record all operating data and information that (i) Owner must report to any person or entity under any Project Agreement, (ii) Owner must report to any government agency or other person or entity under applicable Laws and (iii) Owner reasonably requests. Constructor/Operator shall report required or requested operating data and information to Owner as specified by Owner to support monthly invoicing under the Project Agreements, and within fifteen (15) Calendar Days following a request by Owner. Operating data to be reported include information from operating (logs, meter and gauge readings) and maintenance records.

6.4. ACCOUNTS AND REPORTS

Constructor/Operator shall cooperate with Owner in complying with reporting requirements set forth in the Project Agreements and shall, during the term of this Agreement, furnish or cause to be furnished to Owner the following reports concerning the Project operations and the Services:

- (a) **Monthly Reports:** Within ten (10) calendar days following the last day of each calendar month, Constructor/Operator shall submit: (i) a progress report, in detail acceptable to Owner, covering all activities during such month with respect to operations and maintenance (including information regarding the inputs and outputs of the project / facility.

(Specify) 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 (ii) a statement setting forth all Reimbursable Costs paid or incurred in such month, which statement shall itemize, in detail acceptable to Owner, the computation of such Reimbursable Costs including documentary evidence and shall state whether or not the Project operations have conformed to the applicable Annual Project Operating Plan and Annual Budget during such reporting period and if not, the extent and reasons for any deviation and the planned remedial action.

- (b) **Annual Reports:** As soon as available, and in any event within sixty (60) days after the end of each Contract Year, Constructor/Operator shall submit



an annual report describing, in detail substantially similar to that contained in the monthly reports referred to in Sub-Clause 6.4(a), the Project activities and operating data for such Contract Year. The annual report shall present a comparison of such Project activities and operating data with the goals set forth in the Annual Project 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 thirty (30) days after submission of each annual report, Constructor/Operator shall meet with Owner to review and discuss the report and any other aspects of Project operations that Owner may wish to discuss.

- (c) **Litigation, Permit Lapses:** Upon obtaining knowledge thereof, Constructor/Operator shall promptly notify Owner in writing of: (i) any event of default under any of the Project Agreements; (ii) any litigation, claims, disputes or actions, threatened or filed, concerning the Project or the Services; (iii) 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 Project or the Services; and (iv) any dispute with any governmental authority relating to the Project or the Services.
- (d) **Other Information:** Constructor/Operator shall promptly submit to Owner any material information concerning new or significant aspects of the Project's activities and, upon Owner's request, shall promptly submit any other information concerning the Project or the Services.

6.5. ADDITIONAL COMMUNICATIONS

Constructor/Operator shall communicate certain additional events specified in Appendix C to Owner and third parties in accordance with the communication protocols set forth in Appendix C to this Agreement.

7. LIMITATIONS ON AUTHORITY

7.1. GENERAL LIMITATIONS

Notwithstanding any provision in this Agreement to the contrary, unless previously approved by Owner in writing or through Owner's approval of the Annual Budget, Constructor/Operator and any employee, representative, Constructor or other agent of Constructor/Operator are prohibited from taking the specified actions with respect to the matters indicated below.

- (a) **Disposition of Assets:** Sell, lease, pledge, mortgage, convey, or make any license, exchange or other transfer or disposition of any property or assets of Owner, including any property or assets purchased by Constructor/Operator where the purchase cost is a Reimbursable Cost;



- (b) **Contract:** Make, enter into, execute, amend, modify or supplement any contract or agreement (i) on behalf of, in the name of, or purporting to bind Owner or (ii) that prohibits or otherwise restricts Constructor/Operator's right to assign such contract or agreement to Owner at any time;
- (c) **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 Constructor/Operator pursuant to SubClauses 3.8 (*Emergency*), 3.9 (*Extraordinary Circumstances*), Constructor/Operator may, without prior approval from Owner, make limited expenditures outside the Annual Budget in accordance with those provisions;
- (d) **Other Actions:** Take or agree to take any other action that materially varies from the applicable Annual Project Operating Plan, Annual Budget or the requirements of any Project Agreement;
- (e) **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, Owner or Constructor/Operator, the cost of which, in the case of Constructor/Operator, 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;
- (f) **Liens:** Create, incur or assume any lien upon the Project;
- (g) **Transactions on Behalf of Others:** Engage in any other transaction on behalf of Owner or any other person or entity not expressly authorized by this Agreement or that violates applicable Laws, this Agreement or any Project Agreement; or
- (h) **Agreements:** Enter into any agreement to do any of the foregoing.

7.2. EXECUTION OF DOCUMENTS

Any agreement, contract, notice or other document that is expressly permitted hereunder (or under written approval of Owner) to be executed by Constructor/Operator shall be executed by the authorized representative of Constructor/Operator or, subject to prior written notice to Owner, by such other representative of Constructor/Operator who is authorized and empowered by Constructor/Operator to execute such documents.



8.

TERM AND TERMINATION

8.1. TERM

The term of this Agreement shall be from and including the date of this Agreement to and including *as mentioned in PCC*. Upon agreement of Owner and Constructor/Operator, this Agreement may be extended for certain periods of agreed duration. This Agreement is subject to earlier termination pursuant to Sub-Clauses 8.2, 8.3, 8.4, 8.5 or 8.6.

8.2. IMMEDIATE TERMINATION BY OWNER

Subject to the terms of any Project Agreements, Owner may terminate this Agreement immediately:

- (i) upon the Bankruptcy of Constructor/Operator; or
- (ii) upon the occurrence of a Force Majeure Event that is not remedied within one hundred and twenty (120) days of its initial occurrence. If the Agreement is terminated by Owner pursuant to Sub-Clause 8.2(i) or 8.2(ii), Constructor/Operator shall be compensated for all Reimbursable Costs incurred by Constructor/Operator to and including the date of termination. In addition, if the Agreement is terminated by Owner pursuant to Sub-Clause 8.2(ii), Constructor/Operator shall be paid all unpaid Annual Operating Fees to and including the date of termination.

8.3. TERMINATION UPON NOTICE BY OWNER

Subject to the terms of any Project Agreements, Owner may terminate this Agreement upon ten (10) days prior written notice to Constructor/Operator in the event

- (i) that Constructor/Operator violates, or consents to a violation of, any Laws applicable to the Services or the Project, where the violation has or may have a material adverse effect on the maintenance or operation of the Project or Owner's interest, and Constructor/Operator does not cure such violation within thirty (30) days (or, if not curable within thirty (30) days, within such period of time as is reasonably necessary, but in no event more than ninety (90) days, provided Constructor/Operator diligently commences and pursues such cure and indemnifies Owner for all related costs, of whatever kind), or
- (ii) of a material breach by Constructor/Operator in the performance of the Services, if
Constructor/Operator does not cure such breach within thirty (30) days from the date of Constructor/Operator's receipt of notice from Owner demanding cure (or, if not curable within thirty (30) days, within such



period of time as is reasonably necessary, but in no event more than 90 days, provided Constructor/Operator diligently commences and pursues such cure and indemnifies Owner for all related costs, of whatever kind). If the Agreement is terminated by Owner pursuant to this Sub-Clause 8.3, Constructor/Operator shall be compensated for all Reimbursable Costs incurred by Constructor/Operator and all unpaid Annual Operating Fees to and including the date of termination.

8.4. OTHER TERMINATION UPON NOTICE BY OWNER

Subject to the terms of any Project Agreements, Owner may terminate this Agreement with sixty (60) days prior written notice to Constructor/Operator, upon the occurrence of :

- (a) a sale or transfer by Owner of its rights in the Project or a sale or transfer of all or substantially all of the assets of or interests in Owner, (b) Constructor/Operator's Reimbursable Costs for Services exceeding 110% of the approved Annual Budget with respect to Reimbursable Costs, for any 2 consecutive Contract Years, where such overruns are the fault of, or due to the negligent operation of the Project by, Constructor/Operator, (c) a determination by Owner that, for any reason, it no longer intends to continue operation of the Project or (d) a determination by Owner that it does not wish to extend this agreement pursuant to Sub-Clause 8.1. If the Agreement is terminated by Owner pursuant to this Section 8.4, Constructor/Operator shall be compensated for all Reimbursable Costs incurred by Constructor/Operator and all unpaid Annual Operating Fees to and including the date of such termination under this Sub-Clause 8.4.

8.5. TERMINATION BY OWNER WITHOUT CAUSE

In addition to its rights set forth in this Clause 8, subject to the terms of any Project Agreements, Owner reserves the right to terminate this Agreement without cause upon ninety (90) days written notice to Constructor/Operator. If the Agreement is terminated by Owner pursuant to this Sub-Clause 8.5, Constructor/Operator shall be compensated for all Reimbursable Costs incurred by Constructor/Operator and all unpaid Annual Operating Fees to and including the date of such termination under this Sub-Clause 8.5. Such payments, together with the termination payment set forth in Sub-Clause 8.8, shall be Constructor/Operator's sole remedy in respect of such termination and shall be made by Owner within 30 days of receipt of a final invoice from Constructor/Operator.



8.6. TERMINATION BY CONSTRUCTOR/OPERATOR

Subject to the terms of any Project Agreements, Constructor/Operator may terminate this Agreement for cause upon fifteen (15) days prior written notice to Owner in the event of: (i) Owner's Bankruptcy; or (ii) Owner's failure to perform in a timely manner any of its material obligations under this Agreement and such failure is not cured within thirty (30) days of Owner's receipt of a notice from Constructor/Operator demanding cure (or, if not curable within thirty (30) days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided that Owner diligently commences and continues to pursue such cure).

8.7. PROJECT CONDITION AT END OF TERM

Upon expiration or termination of this Agreement, Constructor/Operator shall remove its personnel from the Project. Constructor/Operator shall leave the Project in as good condition as it was on the Effective Date, normal wear and tear and casualty excepted. Constructor/Operator shall be paid all unpaid Reimbursable Costs. All special tools, improvements, inventory of supplies, spare parts, safety equipment, Operating Manuals and Procedures Manuals, operating logs, records and documents maintained by Constructor/Operator pursuant to Sub-Clause 3.5 and any other items furnished on a Reimbursable Cost basis under this Agreement will be left at the Project and will become or remain the property of Owner without additional charge. Owner shall also have the right, in its sole discretion, to assume and become liable for any contracts or obligations that Constructor/Operator may have undertaken with third parties in connection with the Services. Constructor/Operator shall cooperate in taking all reasonable steps requested by Owner required to effect the assumption of the contracts, provided that Owner agrees to indemnify and hold harmless Constructor/Operator for all liabilities arising out of events and obligations arising from the assumption of contract rights and obligations after the date of any such assumption. Constructor/Operator shall use commercially reasonable efforts to cooperate with Owner or a succeeding Constructor/Operator to assure that the operation, maintenance and management of the Project are not disrupted.

8.8. TERMINATION PAYMENT

- (a) In the event of a termination of this Agreement pursuant to the above SubClauses 8.2 (ii), 8.4 (a), 8.4 (c), 8.4 (d) or 8.5, Constructor/Operator shall be entitled, in addition to all other amounts due under this Agreement as of the date of termination, to a demobilization and cancellation payment equal to the total of all relocation and severance costs incurred with respect to Constructor/Operator's employees and all costs Constructor/Operator is at such time contractually or legally obligated to pay to its employees, or which are incurred with the prior written approval of Owner. Severance costs for each of Constructor/Operator's employees shall be *as mentioned*



in PCC for each year such employee has worked for Constructor/Operator at the Project. Subject to Owner's right to conduct a subsequent audit and review pursuant to Sub-Clause 8.8(b), such amounts shall be due and payable by Owner within 30 days of Constructor/Operator's submission of an invoice, which invoice shall include a statement of all such costs and expenses in the form and with the substantiation required by Sub-Clause 6.2(a). Owner shall pay any and all legal costs incurred by Constructor/Operator to collect payments under this Sub-Clause 8.8.

- (b) **Audit.** Notwithstanding payment of any amount pursuant to this Section 8.8, Owner shall remain entitled to conduct a subsequent audit and review of all costs incurred and paid by Owner pursuant to this Section 8.8, together with any supporting documentation requested by Owner, for a period of 2 years from and after the date of such payment. If, pursuant to such audit and review, it is determined that any amount previously paid to Constructor/Operator did not constitute, in whole or in part, a reimbursable item pursuant to this Sub-Clause 8.8, Owner may recover such amount from Constructor/Operator plus interest at the Reference Rate calculated from the date such audit commences, or Owner may deduct or cause to be deducted such amount from any payment that may be due to Constructor/Operator.

9. WARRANTY

9.1. **VENDOR'S WARRANTIES**

For Owner's benefit, Constructor/Operator shall obtain from sellers of equipment, material, or services (other than the Services), warranties against defects in materials and workmanship to the extent such warranties are reasonably obtainable, and, to the extent of any such warranties actually obtained, Owner releases Constructor/Operator from any further liability arising in respect of such equipment, material or services (other than the Services) to the extent such liability is covered by any such warranty. Constructor/Operator itself shall not be liable for any such warranties, or for any defects or damage caused by such equipment, material or services (other than the Services). Upon Owner's request, Constructor/Operator agrees to take such steps as are necessary, short of litigation, to enforce said warranties. Each such warranty shall be enforceable by Owner for Owner's benefit or assignable by Constructor/Operator to Owner without any further action or consent by or on the part of any third party. Unless otherwise requested, Constructor/Operator shall administer such warranties and immediately notify Owner of any defects discovered or suspected that may be covered by such warranties. When requested, Constructor/Operator shall assign any such warranty to Owner and assist Owner with the administration and enforcement of such warranty, or, if such warranty is not assignable to Owner, assist Owner with the administration and enforcement of such warranty.



10.

INDEMNIFICATION AND LIABILITIES

10.1. INDEMNIFICATION

- (a) **Indemnification by Constructor/Operator:** Constructor/Operator shall indemnify, defend and hold harmless Owner, the members thereof, and their respective officers, directors, employees, agents, Affiliates and representatives (the "Owner Indemnified Parties"), from and against any and all claims (in whatever

form and to the fullest extent permitted by law) arising out of or in any way connected with, but only to the extent of, any gross negligence, fraud or willful misconduct of Constructor/Operator or anyone acting on Constructor/Operator's behalf or under its instructions, in connection with this Agreement and Constructor/Operator's obligations thereunder. Any costs or expenses incurred by Constructor/Operator pursuant to its indemnity obligations under this Sub-Clause 10.1(a) shall be the sole responsibility of the Constructor/Operator.

- (b) **Indemnification by Owner:** Owner shall indemnify, defend and hold harmless Constructor/Operator, its officers, directors, employees, agents, Affiliates and representatives (the "Constructor/Operator Indemnified Parties") from and against any and all claims (in whatever form and to the fullest extent permitted by law) arising out of or in any way connected with, but only to the extent of, any gross negligence, fraud or willful misconduct of Owner or anyone acting on Owner's behalf or under its instructions (other than Constructor/Operator and its suppliers, subConstructors, vendors, and their subConstructors and vendors and any employee or agent of the foregoing), in connection with this Agreement and Owner's obligations thereunder.

10.2. ENVIRONMENTAL LIABILITY

- (a) **Constructor/Operator Liability:** Constructor/Operator shall not be responsible for claims directly or indirectly related to hazardous materials present at the Project before the date of this Agreement, except to the extent Constructor/Operator acted with respect to such materials in a grossly negligent manner. Owner shall defend, indemnify and hold Constructor/Operator harmless against such claims, except to the extent such claims arise from Constructor/Operator's grossly negligent or intentional acts.
- (b) **Owner's Liability:** Owner shall not be responsible for claims directly related to hazardous materials at the Project arising out of the grossly negligent or intentional acts of Constructor/Operator. This provision of the Agreement shall not be construed to require Constructor/Operator to take



corrective action with respect to any hazardous materials at the Project before the date of this Agreement.

- (c) **Governmental Actions:** If action is required at the Project to comply with any applicable environmental laws during the term of this Agreement, Owner (with Constructor/Operator's assistance) shall be responsible for the costs of compliance. Costs for such compliance action shall only be incurred by Constructor/Operator only with Owner's prior written consent, unless a governmental authority requires Constructor/Operator to incur such costs and expenses prior to obtaining such written consent.

11. LIMITATIONS OF LIABILITY

11.1. LIMITATIONS OF LIABILITY

- (a) **Consequential Damages:** Notwithstanding any provision in this Agreement to the contrary, Constructor/Operator and Owner each agree not to assert against the other any claim, demand or suit for consequential, incidental, indirect or special damages arising from any aspect of the performance or nonperformance of the other party or any third-party engaged by such other party under this Agreement, and each party hereto waives any such claim, demand or suit against the other in connection with this Agreement.
- (b) **Damages Limited to Annual Operating Fee:** The aggregate liability of Constructor/Operator [except for those claims that are subject to the provisions of SubClause 10.1(a) (Indemnification by Constructor/Operator)] shall in no event exceed, during any Contract Year, the Annual Operating Fee payable to Constructor/Operator during such Contract Year plus the amount necessary to satisfy Constructor/Operator's indemnification responsibilities under Clause 10.
- (c) **Limited Personal Liability:** Constructor/Operator and Owner each understand and agree that there shall be absolutely no personal liability on the part of any of the members, partners, officers, employees, directors, agents, authorized representatives or Affiliates of Owner or Constructor/Operator for the payment of any amounts due hereunder, or performance of any obligations hereunder. Constructor/Operator shall look solely to the assets of Owner for the satisfaction of each and every remedy of Constructor/Operator in the event of any breach by Owner. Owner shall look solely to the assets of Constructor/Operator for the satisfaction of each and every remedy of Owner in the event of any breach by Constructor/Operator.
- (d) **Survival:** The parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability, and limitations on liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply at all times (unless otherwise expressly indicated), regardless of fault, negligence, strict liability, or breach of warranty of the party indemnified,



released or whose liabilities are limited, and shall extend to the members, partners, principals, officers, employees, controlling persons, executives, directors, agents, authorized representatives, and affiliates of such party.

- (e) **Exclusivity.** The provisions of this Agreement constitute Constructor/Operator's and Owner's exclusive liability, respectively, to each other, and Constructor/Operator's and Owner's exclusive remedy, respectively, with respect to the Services to be performed hereunder and Owner hereby releases Constructor/Operator performing Services hereunder, and Constructor/Operator hereby releases Owner performing its obligations hereunder, from any further liability.

12. **CONFIDENTIALITY**

12.1. **Constructor/Operator**

Constructor/Operator agrees to hold in confidence for a period *as mentioned in PCC* from the date of disclosure, any information supplied to Constructor/Operator by Owner or others acting on its behalf. Constructor/Operator further agrees, to the extent requested by the supplier of such information, to require its subConstructors, vendors, suppliers and employees to enter into appropriate nondisclosure agreements relative to such information, prior to the receipt thereof.

12.2. **Owner**

Owner agrees to hold in confidence for a period *as mentioned in PCC* from the date of disclosure, any information supplied to Owner by Constructor/Operator or others acting on its behalf, provided that Owner may disclose such information as is reasonably necessary but without affecting the proprietary (intellectual property) rights, if any of the Constructor/Operator or others. Owner further agrees, to the extent requested by the supplier of such information, to require its members and Constructors to enter into such appropriate nondisclosure agreements relative to such information, prior to their receipt thereof.

12.3. **Exceptions**

The provisions of this Clause shall not apply to information that was in the public domain, was already in the receiving party's possession, or was received lawfully and free of any obligation to treat it as confidential.

12.4. **Required Disclosure**

If a receiving party or any of its respective representatives is required by applicable law to disclose any of the information that is otherwise required to remain confidential pursuant to this Clause 12, the receiving party will notify the other party promptly in writing so that the other party may seek a protective order or



other appropriate remedy (which the receiving party will not oppose), or, in the other party's sole discretion, waive compliance with the terms of this Agreement.

13. TITLE, DOCUMENTS AND DATA

13.1. Materials and Equipment

Title to all materials, equipment, tools, supplies, consumables, spare parts and other items purchased or obtained by Constructor/Operator on a Reimbursable Cost basis hereunder shall pass immediately to and vest in Owner upon the passage of title from the vendor or supplier thereof, provided, however, that such transfer of title shall in no way affect Constructor/Operator's obligations as set forth in this Agreement.

13.2. Documents

All materials and documents prepared or developed by Constructor/Operator, its employees, representatives or Constructors in connection with the Project or performance of the Services, including all manuals, data, drawings, plans, specifications, reports and accounts, shall become Owner's property when prepared, and Constructor/Operator, its agents, employees, representatives, or Constructors shall not use such materials and documents for any purpose other than performance of the Services, without Owner's prior written approval. All such materials and documents, together with any materials and documents furnished to Constructor/Operator, its agents, employees, representatives, or Constructors by Owner, shall be delivered to Owner upon expiration or termination of this Agreement and before final payment is made to Constructor/Operator.

13.3. Review By Owner

All materials and documents referred to in Sub-Clause 13.2 hereof shall be made available for review by Owner (including their agents or advisors) at all reasonable times during development and promptly upon completion. All such materials and documents required to be submitted for approval by Owner shall be prepared and processed in accordance with the requirements and specifications set forth in the Administrative Procedures Manual. However, Owner's approval of materials and documents submitted by Constructor/Operator shall not relieve Constructor/Operator of its responsibility for the correctness thereof or of its obligation to meet all requirements of this Agreement.



13.4. Proprietary Information

Where materials or documents prepared or developed by Constructor/Operator or its agents, employees, representatives or Constructors contain proprietary information, systems, techniques, or know-how acquired from third parties by Constructor/Operator or others acting on its behalf, such persons or entities shall retain all rights to use or dispose of such information, provided, however, that Owner shall have the right to the same to the extent necessary for operation or maintenance of the Project.

14. RESOLUTION OF DISPUTES

14.1. Resolution Through Discussions

If any dispute or difference of any kind (a Dispute") arises between Owner and Constructor/Operator in connection with, or arising out of, this Agreement, the Owner and Constructor/Operator within thirty (30) days shall attempt to settle such Dispute in the first instance through discussions. The designated representatives of Owner and Constructor/Operator shall promptly confer and exert their best efforts in good faith to reach a reasonable and equitable resolution of such Dispute. If the representatives are unable to resolve the Dispute within five (5) calendar days, the Dispute shall be referred within two (2) calendar days of the lapse of the five (5) calendar day period to the responsible senior management of each party for resolution. Neither party shall seek any other means of resolving any Dispute arising in connection with this Agreement until the responsible senior management of Owner and Constructor/Operator have had at least five (5) Business Days to resolve the Dispute following referral of the Dispute to them. If the parties are unable to resolve the Dispute using the procedure described in this Clause, either party may deliver notice to the other party of its intent to submit the Dispute to arbitration ("Arbitration Notice"). The Arbitration Notice shall include the specific issues concerning the Dispute which must be resolved by the arbitration.

14.2. Arbitration

Any Dispute arising out of, or in connection with, this Agreement and not settled by the procedure prescribed in Sub-Clause 14.1, shall (regardless of the nature of the Dispute) be finally settled in accordance with Arbitration Act 1940 as amended or any statutory modification or re-enactment thereof for the time being in force the place of arbitration shall be *as mentioned in PCC*.

14.3. Continued Performance

During the pendency of any arbitration, Constructor/Operator and Owner shall continue to perform their obligations under this Agreement.



15. CLAUSE 15 MISCELLANEOUS PROVISIONS

15.1. Assignment

Neither Owner nor Constructor/Operator party may assign its rights or obligations under this Agreement without the prior written consent of the other party hereto, except that this Agreement may be assigned by Owner without such prior consent to any successor of Owner, to a person or entity acquiring all or substantially all of the Project, or any purchaser of the Project upon the exercise of remedies under a Project Agreement.

15.2. Access to Project

(a) Owner: Owner, and their respective agents and representatives shall have access at all times to the Project and any documents, materials and records and accounts relating to Project operations for purposes of inspection and review. Upon the request of Owner, or their respective agents and representatives, Constructor/Operator shall make available to such persons or entities and provide them with access to any operating data and all operating logs.

(b) Cooperation: During any such inspection or review of the Project, each of Owner, and their respective agents and representatives shall use its reasonable commercial efforts to cause authorized visitors to comply with Constructor/Operator's safety and security procedures and to conduct such inspection and review in a manner which causes minimal interference with Constructor/Operator's activities. Constructor/Operator agrees to cooperate fully with Owner, and their respective agents and representatives in providing requested information and documentation for the support of any financial or legal transactions associated with the Project.

15.3. Force Majeure

If either Owner or Constructor/Operator is rendered wholly or partially unable to perform its obligations under this Agreement (other than payment obligations) due to a Force Majeure Event, the party affected by such Force Majeure Event shall be excused from whatever performance is impaired by such Force Majeure Event, provided that the affected party promptly, upon learning of such Force Majeure Event and ascertaining that it will affect its performance hereunder, (i) promptly gives notice to the other party stating the nature of the Force Majeure Event, its anticipated duration, and any action being taken to avoid or minimize its effect and (ii) uses its reasonable commercial efforts to remedy its inability to perform. The suspension of performance shall be of no greater scope and no longer duration than that which is necessary. No obligations of either party which arose before the



occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence. The burden of proof shall be on the party asserting excuse from performance due to a Force Majeure Event.

15.4. Amendments

No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both parties.

15.5. Survival

Notwithstanding any provisions herein to the contrary, the obligations set forth in Clauses 7, 10, 12 and 14, and the limitations of liabilities set forth in Clause 11, shall survive in full force despite the expiration or termination of this Agreement.

15.6. No Waiver

It is understood and agreed that any delay, waiver or omission by Owner or Constructor/Operator with respect to enforcement of required performance by the other under this Agreement shall not be construed to be a waiver by Owner or Constructor/Operator of any subsequent breach or default of the same or other required performance on the part of Owner or Constructor/Operator.

15.7. Notices

All notices and other communications (collectively "Notices") required or permitted under this Agreement shall be in writing and shall be given to each party at its address or fax number set forth in this Sub-Clause 15.8 or at such other address or fax number as hereafter specified as provided in this Section 15.8. All Notices shall be:

- (i) delivered personally, or
- (ii) sent by fax, electronic mail, telegraph, registered or certified mail (return receipt requested and postage prepaid), or
- (iii) sent by a nationally recognized overnight courier service. Notices shall be deemed to have been given
 - (A) when transmitted if sent by fax, electronic mail, or telegraph (provided the transmittal is confirmed), or
 - (B) upon receipt by the intended recipient if given by any other means.

Notices shall be sent to the following addresses:

To Constructor/Operator:



[As mentioned in PCC]

To Owner:

[As mentioned in PCC]

15.8. Fines and Penalties

If during the term of this Agreement any governmental or regulatory authority or agency assesses any fines or penalties against Constructor/Operator or Owner arising from Constructor/Operator's failure to operate and maintain the Project in accordance with applicable

Laws without Owner's prior written consent, such fines and penalties shall, subject

to the limitations set forth in Clause 11, be the sole responsibility of Constructor/Operator and shall not be deemed a Reimbursable Cost.

15.9. Representations and Warranties

Each party represents and warrants to the other party that:

- (a) such party has the full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby;
- (b) to the best of such party's knowledge, the execution, delivery and performance by such party of this Agreement, does not and will not materially conflict with any legal, contractual, or organizational requirement of such party; and
- (c) there are no pending or threatened legal, administrative, or other proceedings that if adversely determined, could reasonably be expected to have a material adverse effect on such party's ability to perform its obligations under this Agreement.

15.10. Counterparts

The parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both parties constitute one instrument. Thereafter, each counterpart shall be deemed an original instrument as against any party who has signed it.

15.11. Governing Law

This Agreement is executed and intended to be performed *as mentioned in PCC* and the laws of country shall govern its construction, interpretation and effect.



15.12. Partial Invalidity

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect and in no way be affected, impaired or invalidated.

15.13. Captions

Titles or captions of Clauses contained in this Agreement are inserted as a matter of convenience and for reference, and do not affect the scope or meaning of this Agreement or the intent of any provision hereof.

15.14. Amounts

All amounts of money in this Agreement are denominated in the currency *as mentioned in PCC*.

15.15. Performance Security

The Constructor/Operator shall provide Performance Security in the currency and amount, *as mentioned in PCC*, to the Owner before signing the Contract. The security shall be in the form of Bank Guarantee or on the form provided in the Bidding Document lead from an insurance company rated as AA by PACRA/JCT, which shall be valid 28 days beyond the Term of the Contract. In case of guarantee from a foreign bank, it shall be counter guaranteed by a scheduled bank in Pakistan.



STANDARD FORMS



STANDARD FORMS OF CONTRACT

- Form of Bid Security (Bank Guarantee)
- Form of Contract Agreement

- Form of Performance Security (Bank Guarantee/Insurance Bond)
- Form of Bank Guarantee for Advance Payment

FORM OF BID SECURITY

(Bank Guarantee)

Guarantee No. _____
Executed on _____
Expiry date _____

Name of Guarantor (Bank) with address:

(Scheduled Bank in Pakistan) Name
of Principal (Bidder) with address:

Penal Sum of Security (express in words and figures): _____

Bid Reference No. _____ Date of Bid Opening _____

KNOW ALL MEN BY THESE PRESENTS, that in pursuance of the terms of the Bid and at the request of the said Principal, we the Guarantor above-named are held and firmly bound unto the _____, (hereinafter called the "Owner") in the sum stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the accompanying Bid numbered dated as above for _____ (Particulars of Bid) to the said Owner; and

WHEREAS, the Owner has required as a condition for considering the said Bid that the Principal furnishes a Bid Security in the above said sum to the Owner, conditioned as under:

- (1) that the Bid Security shall remain valid for a period 28 days beyond the period of validity of the Bid;
- (2) that in the event of;
 - (a) the Principal withdraws his Bid during the period of validity of Bid, or
 - (b) the Principal does not accept the correction of his Bid Price, pursuant to Sub-Clause 24.2 of Instructions to Bidders, or



- (c) failure of the successful bidder to
 - (i) furnish the required Performance Security, in accordance with Clause 34 of Instructions to Bidders, or
 - (ii) sign the proposed Contract Agreement, in accordance with Clause 35 of Instructions to Bidders,

then the entire sum be paid immediately to the said Owner as liquidated damages and not as penalty for the successful bidder's failure to perform.

NOW THEREFORE, if the successful bidder shall, within the period specified therefor, on the prescribed form presented to him for signature enter into a formal Contract with the said Owner in accordance with his Bid as accepted and furnish within twenty eight (28) days of his being requested to do so, a Performance Security with good and sufficient surety, as may be required, upon the form prescribed by the said Owner for the faithful performance and proper fulfilment of the said Contract or in the event of non-withdrawal of the said Bid within the time specified for its validity then this obligation shall be void and of no effect, but otherwise to remain in full force and effect.

PROVIDED THAT the Guarantor shall forthwith pay to the Owner the said sum stated above upon first written demand of the Owner without cavil or argument and without requiring the Owner to prove or to show grounds or reasons for such demand notice of which shall be sent by the Owner by registered post duly addressed to the Guarantor at its address given above.

PROVIDED ALSO THAT the Owner shall be the sole and final judge for deciding whether the Principal has duly performed his obligations to sign the Contract Agreement and to furnish the requisite Performance Security within the time stated above, or has defaulted in fulfilling said requirements and the Guarantor shall pay without objection the sum stated above upon first written demand from the Owner forthwith and without any reference to the Principal or any other person.

IN WITNESS WHEREOF, the above bounden Guarantor has executed the instrument under its seal on the date indicated above, the name and seal of the Guarantor being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

Guarantor (Bank)



FORM OF CONTRACT AGREEMENT

This OPERATION AND MAINTENANCE AGREEMENT (hereinafter called the "Agreement") is made and entered into the _____ day of _____ (month) 20____ by and between [Legal name, form and country of Project Owner] (hereinafter called the "Owner"), and [Legal name, form and country of O&M firm] (hereinafter called the "Constructor/Operator").

WHEREAS, Owner owns a [Description of Project] , [Name of Project] ("Project") and desires to contract for operation, maintenance and management of the Project,

WHEREAS, Constructor/Operator provides operation, maintenance and management services for Projects and has agreed to provide those services for the Project on the terms and conditions set forth in this Agreement,

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 hereinafter referred to.
2. The following documents after incorporating addenda, if any except those parts relating to Instructions to Bidders shall be deemed to form and be read and construed as part of this Agreement, viz:
 - 1 (a) The Contract Agreement;
 - 1 (b) The Letter of Award;
 - 2 (c) The completed Form of Bid;
 - 1 (d) The Particular Conditions of Contract;
 - (e) The General Conditions of Contract;
 - (f) The priced Schedule of Prices;
 - (g) Completed Appendices to Bid ;
 - (i) The Specifications-Technical and Special Provisions
 - 1 (h) The Drawings;
 - (i) any other
3. In _____ Consideration _____ Constructor/Operator Covenants _____
4. The Owner hereby covenants _____



IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed on the day, month and year first before written in accordance with their respective laws..

[Legal Name of Owner]

By: _____

Witness: _____

Name:

Title:

Seal:

Name:

Address:

[Legal Name of Constructor/Operator]

By: _____

Witness: _____

Name:

Title:

Seal:

Name:

Address:

FORM OF PERFORMANCE SECURITY

(Bank Guarantee/ Insurance Bond)

Guarantee No. _____

Executed on _____

Expiry date _____

Name of Guarantor (Bank/Approved Insurance Company) with address: _____

Name of Principal (Constructor) with address:

Penal Sum of Security (express in words and figures)

Letter of Acceptance No. _____ Dated _____

KNOW ALL MEN BY THESE PRESENTS, that in pursuance of the terms of the Bidding Documents and above said Letter of Acceptance (hereinafter called the Documents) and at the request of the said Principal we, the Guarantor above named, are held and firmly bound unto the _____ (hereinafter called the "Owner") in the penal sum of the amount stated above for the payment of which sum well and truly to be made to the said Owner, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has accepted the Owner's above said Letter of Acceptance for _____ (Name of Contract) for the _____ (Name of Project).

NOW THEREFORE, if the Principal (Constructor) shall well and truly perform and fulfill all the undertakings, covenants, terms and conditions of the said Documents during the original terms of the said Documents and any extensions thereof that may be granted by the Owner, with or without notice to the Guarantor, which notice is, hereby, waived and shall also well and truly perform and fulfill all the undertakings, covenants terms and conditions of the Contract and of any and all modifications of said Documents that may hereafter be made, notice of which modifications to the Guarantor being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue till all requirements of Sub-Clause 8.7, Project Condition at End of Term,, , of Conditions of Contract are fulfilled.



Our total liability under this Guarantee is limited to the sum stated above and it is a condition of any liability attaching to us under this Guarantee that the claim for payment in writing shall be received by us within the validity period of this Guarantee, failing which we shall be discharged of our liability, if any, under this Guarantee.

We, _____ (the Guarantor), waiving all objections and defences under the Contract, do hereby irrevocably and independently guarantee to pay to the Owner without delay upon the Owner's first written demand without cavil or arguments and without requiring the Owner to prove or to show grounds or reasons for such demand any sum or sums up to the amount stated above, against the Owner's written declaration that the Principal has refused or failed to perform the obligations under the Contract which payment will be effected by the Guarantor to Owner's designated Bank & Account Number.

PROVIDED ALSO THAT the Owner shall be the sole and final judge for deciding whether the Principal (Constructor) has duly performed his obligations under the Contract or has defaulted in fulfilling said obligations and the Guarantor shall pay without objection any sum or sums up to the amount stated above upon first written demand from the Owner forthwith and without any reference to the Principal or any other person.

IN WITNESS WHEREOF, the above-bounden Guarantor has executed this Instrument under its seal on the date indicated above, the name and corporate seal of the Guarantor being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Guarantor (Bank/Approved Insurance Co.)

Witness:

1. _____

Signature _____

Name _____

Corporate Secretary (Seal)

Title _____

2. _____

Name, Title & Address

Corporate Guarantor (Seal)