



REPUBLIC OF GHANA

STANDARD TENDER DOCUMENTS

# **Procurement of Information Technology Products**

**(Supply, Services & Maintenance)**

**Public Procurement Authority**

**Accra, Ghana**

**March 2004**

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# Introduction

This Standard Tender Document for Procurement of Information Technology Products has been prepared for use by Procurement Entities, in accordance with the Public Procurement Act, 2003, (Act 663) in procuring off-the-shelf Information Technology (IT) products and related installation and maintenance services through single-stage International Competitive Tender (ICT) procedures, with or without pre-qualification. This document reflects best internationally acceptable practices.

A brief description of the contents of this document is provided below.

## **PART 1 – TENDERING PROCEDURES**

### **Section I: Instructions to Tenderers (ITT)**

This Section provides relevant information to help Tenderers prepare their Tenders. Information is also provided on the submission, opening, and evaluation of Tenders and on the award of Contracts. **Section I contains provisions that are to be used without modification.**

### **Section II. Tender Data Sheet (TDS)**

This Section consists of provisions that are specific to each procurement. The section supplements the information or requirements included in Section I (Instructions to Tenderers).

### **Section III. Evaluation and Qualification Criteria**

This Section contains the criteria to determine the lowest evaluated Tender and the qualifications of the Tenderer to perform the contract.

### **Section IV: Tender Forms**

This Section contains the forms to be used for the **Tender, Price Schedules, and Tender Security.**

### **Section V. Eligible Countries**

This Section contains information regarding eligible countries.

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## **PART 2 – SUPPLY REQUIREMENTS**

### **Section VI. Schedule of Supply**

This Section contains the Implementation Schedule, Required Products and Services Schedules, and the Deployment Schedule.

### **Section VII. Technical Specification**

This Section describes the essential attributes of the IT Products and Related Services.

## **PART 3 – CONTRACT**

### **Section VIII. General Conditions of Contract (GCC)**

This Section contains the general clauses to be applied in all contracts. **The text of the clauses in this Section must not be modified.**

### **Section IX. Special Conditions of Contract (SCC)**

This Section contains clauses specific to each contract that modify or supplement Section VIII (General Conditions of Contract).

### **Section X: Contract Forms**

This Section contains the form for the **Contract Form**, which, once completed, incorporates any corrections or modifications to the accepted tender relating to amendments permitted by the Instructions to Tenderers, the General Conditions of Contract, and the Special Conditions of Contract.

The forms for **Performance Security** and the **Bank Guarantee Advance Payment**, when required, shall only be completed by the successful Tenderer after contract award. The form for **Producer's Authorization** shall be completed as required by the Producers of key offered products.

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**TENDER DOCUMENT**  
**Issued on: \_\_\_\_\_**

**for**

**Procurement of**

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**Invitation for Tenders No: \_\_\_\_\_**

**ICT No: \_\_\_\_\_**

**Purchaser: \_\_\_\_\_**

**Republic of Ghana**

# Standard Tender Document

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## **PART 1 – Tendering Procedures**



# Section I. Instructions to Tenderers

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# Section I. Instructions to Tenderers

## A. General

- 1. Scope of Tender**
  - 1.1 In support of the Invitation for Tenders (IFT) indicated in the Tender Data Sheet (TDS), the Procurement Entity named in the TDS, hereinafter referred to as “the Purchaser,” issues this Tender Document for the Procurement of Information Technology Products and Related Services as specified in Part 2 (Supply Requirements). The name, identification, and number of lots of the International Competitive Tender (ICT) are provided in the TDS.
  - 1.2 Throughout this Tender Document the terms defined Clause 1.1 of Section VIII, General Conditions of Contract (GCC) shall have the meanings defined therein and, if the context so requires, singular means plural and vice versa.
  - 1.3 Tendering will be conducted through the competitive tendering procedures specified in the Public Procurement Act, 2003, Act 663 of the Republic of Ghana.
- 2. Source of Funds**
  - 2.1 The Purchaser named in the **Tender Data Sheet** shall fund this procurement from part of its budgetary allocation<sup>1</sup> toward the realization of the project named in the TDS.
  - 2.2 Payments will be made only at the request of the Purchaser and upon approval by a designated official of the Republic of Ghana in accordance with the terms and conditions of the contract agreement between the Purchaser and the Supplier (hereinafter called the Contract Agreement or Contract), and will be subject in all respects to the Financial Administration Act, 2003, Act 654 and the Financial Administration Regulations, 2004 of the Republic of Ghana. No party other than the Supplier shall derive any rights from the Contract Agreement or have any claim to the funds.
- 3. Corrupt Practices**
  - 3.1 The Government of Ghana (GOG) requires that all Procurement Entities as well as Tenderers, Suppliers, Contractors and Consultants participating in contracts financed from the public funds of the Republic of Ghana, adhere to the highest ethical standards, both during the tendering process and throughout the execution of such contracts. The list of definitions set forth below in conjunction with Section 92 and 93 of the Public Procurement Act 2003, Act 663 involves the most

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<sup>1</sup> Where source of fund is different, this is to be specified in addition to any associated terms and conditions of the financing arrangement in the Tender Data Sheet (TDS)

common types of corrupt practices, but is not exhaustive. For this reason, the Public Procurement Authority will also consider claims of similar nature involving alleged acts of corruption, in accordance with the established procedure.

- (a). “Bribery” means the act of unduly offering, giving, receiving or soliciting anything of value to influence the process of procuring goods or services, selecting consultants, or executing contracts.
- (b). “Extortion” or “Coercion” means the act attempting to influence the process of procuring goods or services, selecting consultants, or executing contracts by means of threats of injury to person, property or reputation.
- (c). “Fraud” means the misrepresentation of information or facts for the purpose of influencing the process of procuring goods or services, selecting consultants, or executing contracts, to the detriment of the Procurement Entity/Purchaser or other participants.
- (d). “Collusion” is an agreement between tenderers designed to result in tenders at artificial prices that are not competitive.

3.2 If, in accordance with the administrative procedures of the Public Procurement Authority, it is demonstrated that a government/public official, or anyone acting on his or her behalf, and/or a Tenderer in a procurement process or supplier/contractor during the execution of the contract carried out in connection with a project financed from the public funds of the Republic of Ghana has committed corrupt practices, the Public Procurement Authority or the appropriate Tender review Authority will:

- (a). reject a proposal to award a contract in connection with the respective procurement process; and/or
- (b). declare a firm and/or its personnel directly involved in corrupt practices, temporarily or permanently ineligible to be awarded future contracts financed from the public funds of the Republic of Ghana.

3.3 The Tenderer shall disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the tendering process or execution of the contract. The information disclosed must include the name and address of the agent, representative, or commission agent, the

amount and currency, and the purpose of the commission or fee. The information must be included in the Tender Submission Sheet. Furthermore, Tenderers shall be aware of the provision stated in Clauses 13.6 and 35.1 (c) of the General Conditions of Contract.

3.4 Any communication between the Tenderer and the Purchaser related to matters of alleged fraud or corruption must be made in writing

3.5 Any willful misrepresentation in the Tender Form regarding legal ownership, license or authorization to the Intellectual Property Rights in any Products included in the tender shall be considered a fraudulent practice

#### **4. Eligible Tenderers**

4.1 A Tenderer may be a natural person, private, public or government-owned legal entity, subject to ITT Clause 4.7, or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association, all parties shall comply with the requirements of GCC Clause 4.6.

4.2 A Tenderer, and all parties constituting the Tenderer, shall have the nationality of an eligible country, in accordance with Section V, Eligible Countries. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.

4.3 A Tenderer should not be associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Purchaser to provide consulting services for the preparation of the design, specifications, and other documentations to be used for the procurement of the Products to be purchased under this Invitation for Tender.

4.4 A Tenderer that is under a declaration of ineligibility by the Public Procurement Authority in accordance with ITT Clause 3, at the date of the deadline for Tender submission or thereafter, shall be disqualified.

4.5 Tenderers shall provide such evidence of continued eligibility satisfactory to the Purchaser as the Purchaser may reasonably request.

4.6 Tenderers of an eligible country may be excluded if:

- (a) as a matter of law or official regulation, Ghana prohibits commercial relations with that country.
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Ghana prohibits any import of goods from that country or any payments to persons or entities in that country.

- 4.7 Government-owned enterprises shall be eligible only if they can establish that they are legally and financially autonomous and operate under commercial law.
- 4.8 Unless otherwise specified in the **TDS**, Tenderers may submit more than one (separate and complete) tender in this tendering process, whether for the same or different lots, and may also participate as subcontractors in other tenders. Subcontractors may participate in more than one tender.
- 4.9 If a pre-qualification process has been undertaken for this procurement, as indicated in the Purchaser's Invitation for Tenders, only pre-qualified Tenderers meeting all other eligibility criteria specified in ITT Clause 4 are eligible to tender.

## **5. Eligible Products and Services**

- 5.1 All goods and services to be supplied under the Contract shall have their origin in eligible source countries as specified in Section V, Eligible Countries, and all expenditures made under the contract will be limited to such products and services. Products and services originating from an otherwise eligible country may be excluded if that country is subject to the conditions specified in ITT Clause 4.6.
- 5.2 For purposes of this clause, "origin" means the place where the products are produced or from where the Related Services are supplied. Products are produced when, through manufacturing, processing, software development or substantial and major assembly or integration of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.
- 5.3 The origin of the products and services is distinct from the nationality of the Tenderer and may be different.
- 5.4 By signing the Tender Form, the Tenderer confirms that it has the right or proper authorization to offer the proposed Products to the Purchaser under the terms of the Contract. The Tenderer shall demonstrate in accordance with ITT Clause 18.2 that it has been duly authorized by the

Producer of the Products to supply, in the Ghana, the key Products included in its tender that the Tenderer does not itself produce.

## **B. The Tender Document**

### **6. Contents of Tender Document**

6.1 The required products and related services, tender procedures, and contract terms are prescribed in the tender document. The Tender Document consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITT Clause 9.

#### **PART 1 Tendering Procedures**

- Section I. Instructions to Tenderers (ITT)
- Section II. Tender Data Sheet (TDS)
- Section III. Evaluation and Qualification Criteria
- Section IV. Tender Forms
- Section V. Eligible Countries

#### **PART 2 Supply Requirements**

- Section VI. Schedule of Supply
- Section VII. Technical Specifications

#### **PART 3 Contract**

- Section VIII. General Conditions of Contract (GCC)
- Section IX. Special Conditions of Contract (SCC)
- Section X. Contract Forms

6.2 The Invitation for Tenders issued by the Purchaser is not part of the Tender Documents.

6.3 The Purchaser is not responsible for the completeness of the Tender Documents and their addenda, if they were not obtained directly from the Purchaser.

6.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Documents. Failure to submit a tender substantially responsive to the tender documents in every respect or failure to furnish all information or documentation required by the Tender Documents will be at the Tenderer's risk and may result in the rejection of its tender.

### **7. Clarification of Tender Documents**

7.1 A prospective Tenderer requiring any clarification of the Tender Document shall contact the Purchaser in writing at the Purchaser's address indicated in the TDS. The Purchaser will respond in writing to any request for clarification no later than the number of days specified

in TDS prior to the deadline for submission of tenders, provided that such request is received no later than the number of days specified TDS prior to the deadline for submission of tenders. The Purchaser shall forward copies of its response to all those who have acquired the Tender Document directly from it, including a description of the inquiry but without identifying its source. Should the Purchaser deem it necessary to amend the Tender Document as a result of a clarification, it shall do so following the procedure under ITT Clause 9.

7.2 When specified in the **TDS**, the Purchaser will organize and Tenderers may attend a pre-tender meeting at the time and place indicated in the **TDS**. The purpose of the meeting will be to clarify issues and answer questions on any aspect of the Tendering Document. Tenderers are requested, as far as possible, to submit any questions in writing, to reach the Purchaser not later than one week before the meeting. Minutes of the meeting, including the questions raised and responses given, together with any responses prepared after the meeting, will be provided in writing without delay to all those who acquired the Tender Document directly from the Purchaser. Any amendment of the Tender Document resulting from the pre-tender meeting shall be made exclusively by issuing an amendment in accordance with ITT Clause 9 and not through the minutes of the pre-tender meeting.

## **8. Site Visit**

8.1 The Tenderer may wish to visit the Project Sites specified in the Implementation Schedule in Section VI, Schedule of Supply, for installation of the Products and obtain for itself, at its own responsibility, expense and risk, all information necessary for preparing its tender and entering into the Contract.

8.2 The Purchaser will organize the site visits concurrently with the pre-tender meeting referred to in ITT Clause 7.2, as specified in the **TDS**. Alternatively, the Purchaser may arrange for the Tenderer and any of its personnel or agents to visit the sites separate from the pre-tender meeting, provided that the Tenderer gives the Purchaser advance notice of a proposed visit of at least the number of days specified in the **TDS**.

## **9. Amendment of Tender Documents**

9.1 At any time prior to the deadline for submission of Tenders, the Purchaser may amend the Tender Documents by issuing addenda.

9.2 Any addendum issued shall be part of the Tender Documents and shall be communicated in writing to all who have obtained the Tender Documents directly from the Purchaser.

9.3 To give Tenderers reasonable time to take an addendum into account in preparing their Tenders, the Purchaser may, at its discretion, extend the deadline for the submission of Tenders, pursuant to ITT Sub-Clause 23.2

## C. Preparation of Tenders

- 10. Cost of Tendering**
- 9.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Purchaser shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.
- 11. Language of Tender**
- 10.1 The Tender, as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the Purchaser, shall be written in the language specified in the TDS. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages into the language specified in the TDS, in which case, for purposes of interpretation of the Tender, such translation shall govern. Information supplied in any language other than the language of the tender without the proper translation shall be rejected.
- 12. Documents Comprising the Tender**
- 11.1 The Tender shall comprise the following:
- (a) Tender Form furnished in Section IV, Tender Forms, duly completed and signed in accordance with ITT Clauses 21.2. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested;
  - (b) Written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT Clause 21.2;
  - (c) Tender Security furnished in accordance with ITT Clause 20;
  - (d) Price Schedules furnished in Section IV, Tender Forms, duly completed in accordance with ITT Clauses 13 and 14 and the General Instructions for the Tender Forms, signed in accordance with ITT Clause 21.2 and including the declarations of the country of origin required by ITT Clause 16 to confirm that the Products and Related Services offered by the Tenderer are of eligible origin;
  - (e) Unless otherwise specified in the **TDS** under ITT Clause 13.4(d), the Supplemental Agreements required pursuant to GCC Clause 8 for provision of Maintenance Period Products and Services in accordance with GCC Clause 9.2;
  - (f) A list of all key items of the Products or Services that the Tenderer proposes to purchase or subcontract from others, and the full name, address and nationality of the proposed

Subcontractor for each of those items in the Schedule of Key Subcontractors;

- (g) Documentary evidence in accordance with ITT Clause 15 establishing the Tenderer's eligibility to tender;
- (h) Documentary evidence in accordance with ITT Clause 18 establishing the Tenderer's qualifications to perform the contract if its Tender is accepted;
- (i) The Tenderer's committed Implementation Schedule for arrival and Installation of the Products and delivery of the Services specified in the Schedule of Supply;
- (j) The Technical Proposal in accordance with ITT Clauses 17 and 29, which shall include the Project Plan and documentary evidence that the proposed Products and related services conform to the requirements of the Tender Document;
- (k) A list of deviations in the tender to the contractual terms or to the Supply Requirements in the Tender Document. For any of the deviations to be considered, the Tenderer must specify the increase in Tender Price that the Tenderer would accept for the withdrawal of the deviation, and indicate the exact specification or contractual provision in the Tender Document to which the deviation applies. Tenderers are reminded that their tender may be rejected as non-responsive, pursuant to ITT Clause 29, if material deviations are taken or critical requirements are not met.
- (l) any other documentation specified in the TDS.

### **13. Tender Prices and Discounts**

- 13.1 The Tenderer shall identify and express the prices of the proposed Products and Related Services in the Price Schedules and in the Tender Form furnished in Section IV, Tender Forms, in accordance with the instructions therein and the requirements specified below.
- 13.2 The terms EXW, CIP, etc., shall be governed by the rules prescribed in the INCOTERMS 2000 edition published by the International Chamber of Commerce, Paris.
- 13.3 All items in the Required Products and Services Schedules in the Schedule of Supply must be listed and priced separately in the appropriate Price Schedules in accordance with the General

Instructions for the Tender Forms in Section IV, using separate Price Schedules for each lot. If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. Items not listed in the Price Schedule shall be assumed to be not included in the tender and, provided that the tender is substantially responsive, the corresponding adjustment shall be applied in accordance with ITT Sub-Clause 30.4.

- 13.4 Prices for the proposed Products and Related Services shall be entered separately in the Price Schedules, as follows:
- (a) Unless otherwise specified in the **TDS**, unit and total prices of Products offered from outside Ghana shall be quoted CIP (named place of destination) to the Purchaser's Project Sites specified in the Implementation Schedule in Section VI, Schedule of Supply, on the Imported Products Price Schedule, as follows:
    - (i) Unit and total cost of the Products, exclusive of all taxes and duties in Ghana. The Tenderer shall be free to use transportation through carriers registered in any eligible country and to obtain insurance from any eligible source country. Any specific requirements for the contract of carriage shall be specified in **SCC** Clause 18.3(a).
  - (b) Prices of Products offered from within Ghana, on the Locally Supplied Products Price Schedule, as follows:
    - (i) Unit and total prices of Products quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the shelf, as applicable), including all customs duties and sales and other taxes already paid or payable on the components and materials used in the production of the Products, or on the previously imported Products, but excluding sales or other taxes assessed on the Products in Ghana if the contract is awarded.
    - (ii) the price for transportation, insurance, and other local costs incidental to delivery of the EXW components of each Installation Batch of Products specified in the Implementation Schedule in the Schedule of Supply, to its designated Project Site, unless otherwise specified in the **TDS**, listed separately for each Installation Batch on the Related Services Price Schedule in accordance with ITT Clause 13.4 (c).

- (c) Prices for Services required by the Tender Document related to the supply and Installation of the Products during the Implementation Period (e.g., delivery charges for EXW Products and Project Implementation Services as described in GCC Clause 15) and for the Warranty Period (e.g., maintenance and support services as described in GCC Clauses 15, 16 and 17), including all incidental costs associated with the provision thereof, and all taxes, duties, levies and fees imposed on the Tenderer, its subcontractors, or employees on account of the Services in any country, shall be separated into the local and foreign currency components on the Related Services Price Schedule.
  - (d) Unless otherwise specified in the **TDS**, maximum costs (including provision for any appropriate price escalation or adjustments over time) for the Maintenance Period (as defined in GCC Clause 1.1(q)), on the Maintenance Costs Schedule with separate Products and Services subtotals, as follows:
    - (i) The cost of all supplies, software license renewals and new versions, spare parts and other Products required during the Maintenance Period or necessary for continued successful and proper operation of the Products for the Maintenance Period, quoted CIP or EXW in accordance with ITT Clause 13.4(a) or 13.4(b) for foreign or locally supplied Products, respectively; and
    - (ii) The cost of all (recurrent or subscription) maintenance and support services required during the Maintenance Period as indicated in GCC Clause 9.2, separated into the local and foreign currency components in accordance with ITT Clause 13.4(c).
  - (e) Totals of the Prices for Products and Related Services, and for Maintenance Costs, subtotaled by currency and delivery basis (EXW or CIP), on the Tender Price Summary Schedule.
- 13.5 The Tenderer's separation of price components in accordance with ITT Clause 13.4 above will be solely for the purpose of facilitating the comparison of tenders and will not in any way limit the Purchaser's right to contract on any of the terms offered.
- 13.6 The price to be quoted in the Tender Form, in accordance with ITT Clause 12.1(a), shall be the total price of the tender, excluding any discounts offered. The Tenderer shall quote any unconditional

discounts and the methodology for their application separately in the Tender Form.

- 13.7 Prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the contract and not subject to variation on any account, unless otherwise specified in the **TDS**. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to ITT Clause 29. If, however, in accordance with the **TDS**, prices quoted by the Tenderer shall be subject to adjustment during the performance of the contract, a tender submitted with a fixed price quotation will not be rejected, but the price adjustment would be treated as zero.
- 13.8 If so specified in the **TDS** under ITT Clause 1.1, tenders are being invited for individual lots (contracts) or for any combination of lots. Tenderers wishing to offer any discount or price reduction for the award of more than one Contract (lot) shall specify in their tender the price reductions applicable to individual lots or to a combination of lots. Price reductions or discounts shall be submitted in accordance with ITT Sub-Clause 13.6, provided that the tenders for all lots are submitted and opened at the same time.

#### **14. Currencies of Tender**

- 14.1 Tender Prices shall be quoted in the following currencies:
- (a) for Products and Related Services originating in Ghana, including delivery and insurance for EXW products, the Tender prices shall be quoted in the currency of Ghana, the Cedi (GHC) unless otherwise specified in the **TDS**; and
  - (b) For Products and Services to be supplied from outside Ghana, in the currency of the Tenderer's home country or in another currency widely used in international trade. If the Tenderer wishes to be paid in a combination of different currencies, it must quote its price accordingly, but no more than three foreign currencies may be used.

#### **15. Documents Establishing the Eligibility of the Tenderer**

- 15.1 To confirm their eligibility in accordance with ITT Clause 4, Tenderers shall complete the eligibility declarations in the Tender Form, included in Section IV, Tender Forms.
- 15.2 In the absence of pre-qualification, documentary evidence of the Tenderer's eligibility to tender shall establish to the Purchaser's satisfaction that the Tenderer and all parties constituting the Tenderer are, at the time of tender submission, eligible to participate in the Tender process as defined in ITT Clause 4, including but not limited to documentary evidence that the Tenderer is legally

incorporated or registered in a territory of an eligible country as defined in ITT Clause 4.2 and operates in conformity with the provisions of the laws of that country.

- 15.3 If a Tenderer intends to subcontract the supply of any Products or Services designated as a “Key Item” in the Schedule of Supply, it shall include in the tender details of the name and nationality of the proposed Subcontractor, ensure that the Subcontractor complies with the requirements of ITT Clause 4 and that the Products or Services to be provided by the Subcontractor comply with the requirements of ITT Clause 5, and shall be responsible for submitting the related evidence required by ITT Clause 15.2 with the tender.
- 15.4 In the case of a joint venture, consortium, or association, unless otherwise specified in the **TDS**, all parties shall comply with and formally agree to the requirements of ITT Clause 4 and GCC Clause 4.6, which agreement shall be evidenced by including a statement to this effect in the authorization mentioned under ITT Clauses 12.1(b) and 21.2, as well as in the tender.

**16. Documents  
Establishing  
Eligibility of  
Products and  
Services**

- 16.1 To establish the eligibility of the Products and Related Services in accordance with ITT Clause 5, Tenderers shall complete the country of origin declarations in the Price Schedules furnished in Section IV, Tender Forms. Countries should be identified using official ISO standard 3166 country codes.

**17. Technical Proposal**

- 17.1 Standards for workmanship, process, material, and equipment, as well as references to brand names or model numbers or national or proprietary standards specified by the Purchaser in Part 2 — Supply Requirements, are intended to be descriptive only and not restrictive. Except where explicitly prohibited in the **TDS** for specific items or standards, the Tenderer may substitute alternative standards, brand names, and/or model numbers, provided that it demonstrates to the Purchaser's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Supply Requirements.
- 17.2 To establish the conformity of the Products and Related Services to the Tender Document, the Tenderer shall furnish as part of its tender the documentary evidence constituting the Technical Proposal, which should follow the outline and structure (including section and specification numbering) of Section VII, Technical Specifications, including the following:
- (a) A point-by-point response to the Purchaser's Technical Specifications, including a detailed description of the essential technical and performance characteristics of the proposed Products and Related Services, demonstrating their substantial responsiveness to the specifications and the underlying business requirements;
  - (b) A detailed and comprehensive Project Plan for successful and timely project implementation in accordance with the Implementation Schedule and the project planning and management requirements in the Technical Specifications;
  - (c) Annex I, consisting of a description of any deviations and exceptions to the Technical Specifications; and
  - (d) Annex II, consisting of any additional literature, documentation, drawings, data or other information or documentary evidence specified in **TDS** or offered by the Tenderer in support of the Tender.

**18. Documents Establishing the Qualifications of the Tenderer**

- 18.1 To establish its qualifications to perform the Contract, the Tenderer shall submit the evidence indicated for each qualification criteria specified in Section III.C, Mandatory Qualification Criteria.
- 18.2 By submission of documentary evidence in its tender, the Tenderer must also establish the following to the Purchaser's satisfaction:

- (a) that it has the financial, technical, and production capability necessary to perform the Contract and has a successful performance history with similar projects.
- (b) that, in the case of a Tenderer offering to supply those items of the Products or recurrent supply Services designated as “Key Items” in Section VI, Schedule of Supply which the Tenderer did not itself produce, the Tenderer has been duly authorized by the Producer or the Service provider to offer and supply those Products and/or Services in Ghana. This will be accomplished by submission of a Producer’s Authorization Form furnished in Section IV, Tender Forms for each key item.
- (c) that, in the case of a Tenderer not doing business within Ghana, the Tenderer is or will be (if awarded the Contract) represented by an Agent in Ghana who is equipped, and able to carry out the Tenderer’s Implementation, Warranty and Maintenance Period service obligations specified in GCC and the Supply Requirements.

18.3 Tenders submitted by a joint venture, consortium or association shall also comply with the requirement that the party or combination of parties responsible for provision of a specific component or aspect of the project and Contract must meet the relevant minimum qualification criteria for that component or aspect.

18.4 If a pre-qualification process has been undertaken for this procurement, as indicated in the Purchaser’s Invitation for Tenders, the Tenderer shall, as part of its tender, update any information submitted with its application for pre-qualification.

## **19. Period of Validity of Tenders**

19.1 Tenders shall remain valid for the period specified in the TDS after the Tender submission deadline date prescribed by the Purchaser. A Tender valid for a shorter period shall be rejected by the Purchaser as non-responsive.

19.2 In exceptional circumstances, prior to the expiration of the tender validity period, the Purchaser may request Tenderers to extend the period of validity of their tenders. The request and the responses shall be made in writing. A Tenderer may refuse the request without forfeiting its tender security. A Tenderer that has submitted more than one tender must either provide the requested extension for all its tenders or refuse the extension for all its tenders. A Tenderer agreeing to the request will not be required or permitted to modify its tender, but will be required to extend the validity of its tender

security for all of its tenders for a corresponding period. A Tenderer may refuse the request without forfeiting its tender security.

- 20. Tender Security**
- 20.1 Pursuant to ITT Clause 12.1, the Tenderer shall furnish, as part of its tender, a tender security in the amount and currency specified in the **TDS**. The Tender security shall be valid for thirty days (30) beyond the end of the period of validity of the Tender specified in ITT Clause 19, including any extensions thereto.
- 20.2 The Tender security shall be, at the Tenderer's option, in the form of:
- (a) a bank guarantee;
  - (b) an irrevocable letter of credit; or
  - (c) a cashier's or certified check;
  - (d) an insurance bond
- all from a reputable bank or insurance/bonding company acceptable to the Purchaser, from an eligible country. The tender security shall be submitted either using the Tender Security Form included in Section IV, Tender Forms, or in another substantially similar format. In any case, the form must include the complete name of the Tenderer.
- 20.3 The tender security of a joint venture, consortium or association shall be issued in the name of the entity submitting the Tender. In the event that the joint venture, consortium or association agreement is not to be executed until notification of award, the Tender security shall be issued so as to commit fully all parties thereto.
- 20.4 Any tender not accompanied by an acceptable tender security shall be rejected by the Purchaser as non-responsive.
- 20.5 The tender security is required to protect the Purchaser against the risk of the following conduct by a Tenderer which would warrant and may result in the security's forfeiture for all of the Tenderer's Tenders:
- (a) if a Tenderer withdraws any of its Tenders after the deadline for Tender submission but during the period of Tender validity specified under ITT Clause 19, except as provided in ITT Clause 19.2; or

(b) fails to accept the Purchaser's adjustments to Tender Price, pursuant to ITT Clause 34.

(c) in the case of the successful Tenderer, if the Tenderer fails to:

(i) sign the Contract or any Supplemental Agreements in accordance with ITT Clause 45; or

(ii) furnish performance security in accordance with ITT Clause 46; or

20.6 The tender security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's furnishing of the performance security pursuant to ITT Clause 46, but not later than thirty (30) days after the expiration of the period of Tender validity.

20.7 The tender security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required performance security.

## 21. Format and Signing of Tender

21.1 The Tenderer shall prepare one original and the number copies of the tender specified in the TDS clearly marking each one as "ORIGINAL TENDER," "COPY 1," "COPY 2," etc., as appropriate. In the event of any discrepancy between the original and the copies, the original shall govern.

21.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the **BDS** and shall be attached to the Tender. In the case of a joint venture, consortium, or association, authorizations are also required from all parties therein in accordance with ITT Clauses 4.1 and 15.4. The name and position held by each person signing an authorization must be typed or printed below the signature.

21.3 All pages of the tender, except for unamended printed literature, shall be signed or initialed by the person or persons signing the tender. Any interlineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person or persons signing the Tender.

21.4 The Tenderer shall furnish information as described in the Tender Form on commission or gratuities, if any, paid or to be paid to agents

relating to this Tender, and to contract execution if the Tenderer is awarded the contract.

#### **D. Submission and Opening of Tenders**

#### **22. Sealing and Marking of Tenders**

- 22.1 The Tenderer shall seal the original and each copy of the bid in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY NO.” These envelopes containing the original and the copies shall then be enclosed in one single outer envelope.
- 22.2 The inner and outer envelopes shall:
- (a) be addressed to the Purchaser at the address specified in **TDS** under ITB Clause 23.1;
  - (b) bear the Project name and the ICB name and number specified in **TDS** under ITB Clauses 2.1 and 1.1, respectively; and
  - (c) bear a warning “DO NOT OPEN BEFORE \_\_\_\_\_,” to be completed with the time and the date of bid opening specified in **TDS** under ITB Clause 26.
- 22.3 The inner envelopes shall also bear the name and address of the Tenderer so that the tender can be returned unopened in case it is declared late under ITT Clause 24
- 22.4 If the outer envelope is not sealed and marked as required, the Purchaser will assume no responsibility for the tender’s misplacement or premature opening. If the outer envelope discloses the Tenderer’s identity, the Purchaser will not guarantee the anonymity of the tender submission, but this disclosure will not constitute grounds for tender rejection.

#### **23. Deadline for Submission of Tenders**

- 23.1 Tenders must be received by the Purchaser at the address and no later than the date and time indicated in the TDS.
- 23.2 The Purchaser may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Document in accordance with ITT Clause 9, in which case all rights and obligations of the Purchaser and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

#### **24. Late Tenders**

- 24.1 The Purchaser shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT Clause 24. Any Tender received by the Purchaser after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

**25. Withdrawal and Modification of Tenders**

- 25.1 The Tenderer may modify or withdraw its tender after submission, provided that written notice of the modification or withdrawal is received by the Purchaser prior to the deadline prescribed for submission of tenders. No tender may be modified after the deadline for submission of tenders.
- 25.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of ITT Clauses 21 and 22. A withdrawal notice may be sent electronically, but must be followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders. Notices received after the tender submission deadline will be ignored, and the submitted tender will be deemed to be a valid tender as originally submitted. Modifications shall include the same number of copies as required for the tender.
- 25.3 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the Tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the forfeiture of the tender security for all of the Tenderer's tenders, pursuant to ITT Clause 20.5.

**26. Tender Opening**

- 26.1 The Purchaser open all tenders in the presence of Tenderers' representatives who choose to attend, at the place, date and time specified in the **TDS**. Tenderers' representatives who attend shall sign a register as proof of their attendance
- 26.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the corresponding tender envelope shall be returned unopened to the Tenderer. Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding tender. No tender withdrawal or modification shall be permitted unless the corresponding notice contains a valid authorization to request the withdrawal or modification and the notice is read out at tender opening.
- 26.3 All tenders shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the Tender Prices, including any discounts offered; the presence of any required tender security; the presence or absence of required authorizations; and any other details as the Purchaser may consider appropriate.
- 26.4 Only envelopes that are opened and read out at tender opening shall be considered further, irrespective of the circumstances. No tender shall be rejected at tender opening, except for late tenders as defined in ITT Clause 24.

- 26.5 During the tender opening, the Purchaser shall prepare minutes of the proceedings that shall include, as a minimum: the name of the Tenderer and whether there is a withdrawal or modification; the Tender Price, per lot if applicable, including any discounts offered; and the presence or absence of the required tender security and authorization.
- 26.6 The Tenderers' representatives who are present shall be requested to sign the minutes. The omission of a Tenderer's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Tenderers who request them.

### **E. Evaluation and Comparison of Tenders**

- 27. Confidentiality**
- 27.1 Information relating to the examination, evaluation, comparison, and post-qualification of tenders, and recommendation of contract award, shall not be disclosed to tenderers or any other persons not officially concerned with such process until information on Contract award is communicated to all tenderers.
- 27.2 Any effort by a Tenderer to influence the Purchaser in the examination, evaluation, comparison, and post-qualification of the tenders or Contract award decisions may result in the rejection of its tender.
- 27.3 From the time of tender opening to the time of Contract award, if any Tenderer wishes to contact the Purchaser on any matter related to the Tender process, it should do so in writing.
- 28. Clarification of Tenders**
- 28.1 To assist in the examination, evaluation, comparison and post-qualification of the Tenders, the Purchaser may, at its discretion, ask any Tenderer for a clarification of its Tender. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Purchaser shall not be considered. The Purchaser's request for clarification and the response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the evaluation of the Tenders, in accordance with ITT Clause 30.

- 29. Responsiveness of Tenders**
- 29.1 The Purchaser's determination of a tender's responsiveness will be based on the contents of the tender itself and any clarifications thereto obtained in accordance with ITT Clause 28.
- 29.2 A substantially responsive tender is one that conforms to all the terms, conditions, and mandatory requirements of the Tender Document without material deviation, reservation, objection, or omission. A material deviation, reservation, objection, or omission is one that:
- (a) affects in any substantial way the scope, quality, or performance of the Products and Related Services specified in the Tender Document; or
  - (b) limits in any substantial way, inconsistent with the Tender Document, the Purchaser's rights or the Tenderer's obligations under the Contract; or
  - (c) the acceptance of which would unfairly affect the competitive position of other Tenderers presenting substantially responsive tenders.
- 29.3 If a tender is not substantially responsive, it shall be rejected by the Purchaser and may not subsequently be made responsive by the Tenderer by correction of the nonconformity.
- 30. Non-conformities, Errors, and Omissions**
- 30.1 Provided that a tender is substantially responsive, the Purchaser may waive any non-conformity, error or omission in the tender that does not constitute a material deviation.
- 30.2 Provided that a tender is substantially responsive, the Purchaser may request that the Tenderer submit necessary information or documentation within a reasonable period of time, to rectify nonmaterial non-conformities or omissions in the tender related to documentation requirements. Such omission shall not be related to any aspect of the price of the tender. Failure of the Tenderer to comply with the request may result in the rejection of its tender
- 30.3 Provided that a tender is substantially responsive, the Purchaser shall correct arithmetical errors on the following basis:
- (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Purchaser there is an obvious

misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;

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

30.4 Provided that a tender is substantially responsive, the cost of any Product or Related Service that has been omitted or is necessary to correct a minor deviation will be added to the Tender Price, for comparison purposes only, using the highest unit cost from among the other responsive tenders, or, in the absence of such costs, from the source indicated in the **TDS**. If the missing Product or Service corresponds to a technical evaluation criteria, it will be scored at zero points.

30.5 If the Tenderer that submitted the lowest evaluated tender does not accept the correction of errors, all of its tenders shall be disqualified and its tender security may be forfeited.

### **31. Preliminary Examination of Tenders**

31.1 The Purchaser shall examine the tenders to confirm that all documents, securities and authorizations requested in ITT Clause 12 have been provided, and to determine the completeness of each document submitted. If any of the following documents or information are missing, the tender shall be rejected:

- (a) Complete and properly signed Tender Form and Price Schedules, valid for the requisite period;
- (b) Written confirmation of authorization to commit the Tenderer; and
- (c) The requisite Tender Security

31.2 The Purchaser shall examine the tenders, including the list of deviations defined in ITT Clause 12.1(k), to confirm that all terms and conditions specified in the GCC and the SCC have been accepted by the Tenderer without any material deviation or reservation.

31.3 The Purchaser shall examine the tenders to verify their eligibility and qualifications in accordance with ITT Clauses 15, 16 and 18, and

Section III.C, Mandatory Qualification Criteria. In the case of pre-qualification, the Purchaser will ensure that each tender is from a pre-qualified Tenderer.

- 31.4 The Purchaser shall examine the Annex to the Technical Proposal described in ITT Clause 17.2© to verify that each tender fulfills the mandatory technical specifications in Section VI, Schedule of Supply.
- 31.5 If, after the examination of a tender's acceptance of the terms and conditions, eligibility and qualifications, and compliance with the mandatory technical specifications, the Purchaser determines that the tender is not substantially responsive in accordance with ITT Clause 29, it shall reject the tender.

### 32. Evaluation of Technical Merit

- 32.1 The Purchaser shall conduct a detailed evaluation of the Technical Proposals of all tenders which remain responsive following the Preliminary Examination to confirm that they fulfill all the mandatory requirements of the Tendering Document.
- 32.2 Unless otherwise specified in Section III.B, Technical Merit Evaluation Criteria, the Purchaser's detailed evaluation of responsive tenders will take into account technical factors, in addition to cost factors, by calculating a technical merit discount factor (Dt), employed as described in ITT Clause 38 and calculated as follows:

**Dt = 1 - ((St / 100) x (T / 100)), where:**

**St** = The technical score, up to 100 points, awarded to the tender as prescribed in Section III.B, Technical Merit Evaluation Criteria.

**T** = The percentage weight for technical merit, as specified in Section III.B, Technical Merit Evaluation Criteria.

### 33. Conversion to Single Currency

- 33.1 The currency and the date and source of the exchange rate to be used for converting tender prices from the various currencies in which they are quoted by Tenderers to a common base for the purpose of evaluation and comparison of tenders is specified in the **TDS**, which shall be either
- (a) Ghanaian Cedi (GHC) and the selling exchange rate established for similar transactions by the Central Bank or a commercial bank in Ghana; or

- (b) a currency widely used in international trade, such as US dollars, and the selling rate of exchange published in the international press for the amount payable in foreign currency; and the selling exchange rate established for similar transactions by the Bank of Ghana for the amount payable in the Ghanaian Cedi (GHC).
- 34. Adjustments to Tender Prices**
- 34.1 The Purchaser will calculate the Adjusted Tender Price (P) of each tender on the basis of the total prices for Products and for Related Services (but initially excluding the Total Maintenance Costs) quoted in the Tender Price Summary Schedule provided in Section IV, Tendering Forms, and completed in accordance with ITT Clause 13, plus or minus the following adjustments.
- 34.2 Correction of arithmetic errors and omissions determined pursuant to ITT Clause 30;
- 34.3 Adjustments due to discounts offered pursuant to ITT Clause 13.6. If specified in the TDS under ITT Clause 1.1 that tenders are being invited for individual lots (contracts) or for any combination of lots, the methodology of evaluation to determine the lowest evaluated lot combinations, including any multi-lot discounts offered in the Tender Form, is specified in Section III, Evaluation and Qualification Criteria.;
- 34.4 Adjustments for Implementation Schedule deviations, if permitted in the **TDS**, as follows: If a Tenderer offers an Implementation Schedule for some or all of the items that deviates from the Schedule of Supply, a pro rata increase or decrease of the total price of the affected items will be added or subtracted using the percentage(s) specified in the **TDS** for each week of delay or advance. Tenders offering Installations beyond the maximum permissible delay specified may be rejected.;
- 34.5 Adjustments for deviations taken to the Contract payment schedule specified in the **SCC**. If deviations are permitted in **TDS**, the Adjusted Tender Price will be increased pro rata by the amount of interest that could otherwise be earned on the amount of any payments that would fall due under the proposed schedule earlier than the schedule stipulated in the Tendering Document, at the annual interest rate specified in the **SCC**;
- 34.6 The price increases associated with the withdrawal of the deviations or exceptions included the tender, in accordance with ITT Clause 12.1(k);
- 34.7 Adjustments due to the application of a margin of Domestic Preference in accordance with ITT Clause 36

- 35. Exclusions** 35.1 For the purpose of evaluation, the Purchaser will exclude the following from the Adjusted Tender Price (P) and also from the evaluation of Technical Merit:
- (a) any Ghanaian taxes or duties due upon delivery of the Products or Services if the Contract is awarded to the Tenderer that are not included in tender prices pursuant to ITT Clause 13.4;
  - (b) any allowance for price adjustment during the period of execution of the Contract, if provided in the tender; and
  - (c) any unsolicited options or alternative offers included in the tender.

- 36. Domestic Preference** 36.1 Unless otherwise specified in the **TDS**, the Purchaser will not grant a margin of preference for supply of domestic Products. Under this preference, for Products supplied from outside Ghana, the total CIP price of such Products shall be increased by the applicable import tariff (custom duties and other import taxes) or fifteen (15) percent, whichever is less. If duties vary from item to item, the appropriate tariff for each item shall apply. No preference shall be applied for any Related Services or works components of the tender.
- 36.2 No margin of preference will be granted for any other price component, and Tenderers will not be permitted or required to modify the source of any hardware, software, related equipment, materials, or other Products, after tender opening

- 37. Maintenance Costs** 37.1 The Maintenance Costs (R) are reduced to present value using the following formula:

$$R = \sum_{x=1}^L \frac{R_x}{1(1+I)^x}$$

where:

L = total number of years spanning the Useful Life Period (per GCC Clause 1.1 (gg) ) of all Products and including any additional years due to phased installations.

X = an index number 1, 2, 3, ..... L, representing each year for which Maintenance Costs are quoted.

R<sub>x</sub> = total Maintenance Costs for year 'x', from the Maintenance Costs Schedule.

I = discount rate for the present value calculation specified in Section III, Evaluation and Qualification Criteria.

38. 38.1 For comparison purposes, the Purchaser will calculate the Evaluated Tender Price ( $P_1$ ) for each tender, as follows:

$$P_1 = \text{Adjusted Tender Price (P), per ITT Clause 34, minus any Price Exclusions, per ITT Clause 35, plus the Maintenance Costs present value (R), per ITT Clause 37}$$

**39. Comparison of Tenders**

- 39.1 To evaluate a tender, the Purchaser shall only use all the criteria and methodologies defined in the Instructions to Tenderers and in Section III, Evaluation and Qualification Criteria. No other criteria or methodology shall be permitted.

- 39.2 In the final step of the evaluation and comparison of responsive tenders, the Purchaser selects as the *Lowest Evaluated Tender* and eligible for contract award, the tender with the lowest Evaluated Tender Cost (C). The formula for the Evaluated Tender Cost (C), calculated using the technical merit discount factor ( $D_t$ ) per ITT Clause 32.2, is as follows:

$$C = P_1 \times D_t$$

**F. Post-Qualification and Award of Contract**

**40. Postqualification of the Tenderer**

- 40.1 The Purchaser will determine at its own cost and to its satisfaction whether the Tenderer selected as having submitted the Lowest Evaluated Tender is qualified to perform the Contract satisfactorily. This determination may include visits interviews with the Tenderer's clients referenced in its tenders, site inspections, and any other measures specified in **Section III.D, Post-Qualification Measures**. In cases of pre-qualification, the Purchaser shall also verify that no changes in the Tenderer's qualifications have occurred since pre-qualification.

- 40.2 The Purchaser will evaluate the documentary evidence of the conformity of the Products and Services offered to the Tendering Document, through detailed examination of the Tender, as well as other information the Purchaser deems necessary and appropriate. Factors not included in Section III shall not be used in the evaluation of the Tenderer's qualifications. If specified in **Section III.D, Post-Qualification Measures**, at the time of post-qualification the Purchaser may also carry out tests to determine that the performance or

functionality of the Products offered meets those specified in the Supply Requirements.

40.3 If supply of Products or Services for the Maintenance Period are required by the TDS for ITT Clause 13.4(d), the determination of the capabilities of the lowest evaluated Tenderer will take into account its ability to execute and successfully perform the Supplemental Agreements for Maintenance Cost items with terms substantially equivalent to those offered in the tender, the signing of which is a prerequisite for the release of the Tender Security and the project implementation Start Date pursuant to GCC Clause 3.

40.4 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the tender, in which event the Purchaser shall proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

**41. Purchaser's  
Right to  
Accept Any  
Tender, and  
to Reject Any  
or All  
Tenders**

41.1 The Purchaser reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to Tenderers.

**42. Award  
Criteria**

42.1 The Purchaser shall award the Contract to the Tenderer whose offer has been determined to be the lowest evaluated tender and is substantially responsive to the Tender Documents, provided further that the Tenderer is determined to be qualified to perform the Contract satisfactorily.

**43. Purchaser's  
Right to  
Vary  
Quantities at  
Time of  
Award**

41.1 At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of Products and Services originally specified in the Tender Document by an amount up to the percentage indicated in the TDS, and without any change in the unit price or other terms and conditions.

- 44. Notification of Award**
- 44.1 Prior to the expiration of the period of tender validity, the Purchaser shall notify the successful Tenderer in writing and to be confirmed in writing, that its tender has been accepted. The notification of award will constitute the formation of the Contract.
- 44.2 Upon the successful Tenderer's furnishing of the signed Contract Form, any Supplemental Agreements and the performance security pursuant to ITT Clauses 45 and 46, the Purchaser will promptly notify each unsuccessful Tenderer in writing and will discharge its tender security, pursuant to ITT Clause 20.
- 44.3 If, after notification of award, a Tenderer wishes to ascertain the grounds on which its tender was not selected, it should address its request to the Purchaser. The Purchaser will promptly respond in writing to the unsuccessful Tenderer.
- 45. Signing of Contract**
- 45.1 At the same time as the Purchaser notifies the successful Tenderer that its tender has been accepted, the Purchaser will send the Tenderer the Contract Form provided in the Tendering Documents, incorporating all agreements between the parties.
- 45.2 As soon as practically possible, but no more than twenty eight (28) days following receipt of the Contract Form, the successful Tenderer shall sign and date the Contract Form and, unless additional days are allotted therefor in the TDS, any Supplemental Agreements, and return them to the Purchaser.
- 46. Performance Security**
- 46.1 Within twenty eight (28) days following receipt of notification of award from the Purchaser, the successful Tenderer shall furnish the performance security in accordance with the GCC, using the Performance Security Form provided in Section X, Contract Forms, or another form acceptable to the Purchaser.
- 46.2 Failure of the successful Tenderer to comply with the requirements of ITT Clauses 45 or 46.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security for all the Tenderer's tenders. In that event the Purchaser may award the Contract to the next lowest evaluated responsive tender submitted by a qualified Tenderer, or call for new tenders
- 47. Protests or Claims**
- 47.1 Tenderers may submit a protest or claim to the Purchaser, in writing, at anytime but not later than ten (10) days after the Notification of award date, pursuant to ITT Clause 44.

## Section II. Tender Data Sheet

The following information and provisions shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in the ITT.

<b>A. General</b>	
<b>ITT 1.1</b>	The number and title of the Invitation for Tenders is : _____ _____
<b>ITT 1.1</b>	The Purchaser is: _____
<b>ITT 1.1</b> <b>22.2(b)</b>	The name of the ICT is: _____ The identification number of the ICT is: _____ The number and identification of lots comprising this ICT is: _____ _____
<b>ITT 2.1</b>	The Source of Funds is: _____
<b>ITT 2.1</b> <b>22.2(b)</b>	The name of the Project is: _____ _____
<b>ITT 2.1</b>	The name of the Contract(s) is/are: _____
<b>ITT 4.8</b>	Tenderers <u>may</u> submit more than one separate and complete bid.
<b>B. Contents of Tender Document</b>	
<b>ITT 7.1</b>	For <b><u>tender clarification purposes</u></b> only, the Purchaser's address is: Attention: _____ Street Address: _____ Floor-Room number: _____ City: _____ Region: _____, Ghana.

	Telephone: _____ Facsimile number: _____ Electronic mail address: _____
<b>ITT 7.1</b>	The Purchaser shall provide written responses to clarification requests no later than <u>10</u> days prior to the deadline for submission of tenders, for all requests received at least <u>14</u> days prior to the deadline for submission of tenders.
<b>ITT 7.2</b>	The pre-tender meeting is scheduled for the following date, time and place: Date and Time: _____ Location: _____
<b>ITT 8.2</b>	Tenderers are invited to participate in a group visit to the Project Site(s) that will be scheduled <u>after</u> the pre-tender meeting noted above under ITT 7.2 at: _____. Advance notice of at least <u>7</u> days of the Tenderer's intention to visit the Purchaser's Project Site(s) at its convenience is required.
	<b>C. Preparation of Tenders</b>
<b>ITT 11.1</b>	The language of the Tender is: <u>English</u> .
<b>ITT 12.1 (I)</b>	The Tenderer shall submit with its Tender the following additional documents: _____ _____ _____ _____
<b>ITT 13.4(a)</b>	<u>No changes</u> to ITT Incoterm provisions for Imported Products.
<b>ITT 13.4(b)(ii)</b>	<u>No changes</u> to ITT requirement for quotation of transportation, insurance, and other local costs incidental to delivery of the EXW components of each Installation batch of Products to its Project Site.
<b>ITT 13.4(d)</b>	Maintenance Costs <u>shall</u> be included in the tender.

<b>ITT 13.7</b>	Tender prices shall be <u>fixed</u> during contract execution.
ITT 14.1(a)	<u>No changes</u> to ITT local currency requirement.
<b>ITT 15.4</b>	<u>No changes</u> to the ITT provisions concerning joint ventures, consortiums, and associations.
<b>ITT 17.1</b>	<u>No changes</u> to ITT provisions concerning equivalent standards, brand names and model numbers.
<b>ITT 17.2(d)</b>	<u>No additional information</u> needs to be submitted with the Technical Proposal.
<b>ITT 19.1</b>	The tender validity period shall be _____
<b>ITT 20.1</b>	A tender security of _____ per cent (____%) of the tender price denominated in the currency of the tender is required.
<b>ITT 21.1</b>	In addition to the original tender, the number of copies required is _____
<b>ITT 21.2</b>	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of a <u>a notarized power of attorney signed by legally authorized signatories of all parties comprising the Tenderer.</u>
	<b>D. Submission and Opening of Tenders</b>
<b>ITT 23.2 (c)</b>	The inner and outer envelopes shall bear the following additional identification marks: _____
<b>ITT 23.1</b>	For <b>Tender submission purposes</b> only, the Purchaser's address is: Attention: _____ StreetAddress: _____ Floor-Room number: _____ City: _____ Region: _____, Ghana. The deadline for the submission of Tenders is: Date: _____ Time: _____
<b>ITT 26.1</b>	The Tender opening shall take place at: Street Address: _____

	Floor/Room number: _____ City: _____ Region: _____, Ghana. The date and time are <u>the same as are specified for the deadline for tender submission under ITT 23.1 above.</u>
	<b>E. Evaluation and Comparison of Tenders</b>
<b>ITT 30.4</b>	The alternate source for pricing missing or nonconforming items for evaluation purposes is <u>not applicable.</u>
<b>ITT 33.1</b>	The currency and exchange rates that shall be used to convert all tender prices into a common currency used for tender evaluation purposes are <u>the Ghanaian Cedi and the selling exchange rate established for similar transactions by the Bank of Ghana on the date of the deadline for tender submission.</u>
<b>ITT 34.4</b>	Implementation Schedule deviations and adjustments are <u>not permitted</u>
<b>ITT 34.5</b>	Payment schedule deviations and adjustments are <u>not permitted.</u>
<b>ITT 36.1</b>	<u>No changes</u> to ITT domestic preference provisions.
	<b>F. Award of Contract</b>
<b>ITT 43.1</b>	The maximum percentage by which quantities may be increased is: _____ _____ The maximum percentage by which quantities may be decreased is: _____ _____
<b>ITT 45.2</b>	<u>No additional days are allotted</u> for signing and returning any Supplemental Agreements to the Purchaser.

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## Section III. Evaluation and Qualification Criteria

The Evaluation and Qualification Criteria specify the criteria that the Purchaser will use to evaluate the tenders and post-qualify the lowest-evaluated Tenderer. This section specifies the parameters for and any other adjustments to the ITT Clauses related to the evaluation of tenders and the qualification of Tenderers and the proposed IT products, similar to the role of the TDS.

### III.A. Cost Evaluation Parameters

The discount rate (I) to be used in the present value calculation as described in ITT Clause 37 shall be 7.5 percent.

If specified in the TDS under ITT Clause 1.1 that tenders are being invited for individual lots (contracts) or for any combination of lots, as indicated in ITT Clause 34.3 the methodology of evaluation to determine the lowest evaluated lot combinations, including any discounts offered in the Tender Form, is, as follows:

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### III.B. Technical Merit Evaluation Criteria

As part of the determination and comparison of Evaluated Tender Prices, responsive tenders will be evaluated by the Purchaser against technical and qualifications criteria using the procedures specified herein and in ITT Clauses 32 and 38. The Technical Score (st) for each tender will be calculated as the sum of scores given by the Purchaser's Technical Evaluation Team to the criteria shown in the following table. The maximum value of the discount given to the Evaluated Tender Price for technical merit (T) is \_\_\_\_ %, as defined in ITT Clause 32.

<b><u>TECHNICAL EVALUATION CRITERIA</u></b>	<b>Technical Specifications Cross Reference</b>	<b>POINTS</b>
<b><u>Technical Features of the Products</u></b>		
<p><i>Technical Features of the Products</i></p> <p><i>Quality of the overall information system solution</i></p> <p><i>Quality and capabilities of key products</i></p> <p><i>Performance and capabilities beyond key minimum requirements</i></p>		
<b><u>Technical Criteria for Related Services</u></b>		
<p><i>Quality of the proposed Project Plan</i></p> <p><i>Quality of Installation and Acceptance test support services proposal</i></p> <p><i>Quality of warranty and maintenance period services proposals</i></p>		
<b><u>Tenderer and Key Product Qualifications</u></b>		
<p><i>Risk profile as a long-term business partner</i></p> <p><i>Success with similar projects and customers</i></p> <p><i>Quality of relevant past experience</i></p>		
<b><u>Hands-on Application software Evaluation Criteria</u></b>		
<p><i>Substantiate or qualify tender claims for specific</i></p> <p><i>Software, including conformance to Technical</i></p> <p><i>Specifications, and adjust scoring for relevant Product</i></p> <p><i>Technical Features (above) based on actual findings.</i></p> <p><i>Ease of Installation, Configuration and Management</i></p> <p><i>Quality of Documentation, Online Help and Tutorials</i></p> <p><i>Ease of Use and Consistency of User Interface</i></p> <p><i>Quality of Remote Technical Support</i></p>		
		<b>100</b>

## III.C. Mandatory Qualification Criteria

Tenderers and the proposed Products and Related Services must meet the following mandatory qualification criteria for the tender to be considered responsive.

### 1. Tenderer Qualifications

<b>Criteria</b>	<b>Requirement</b>	<b>Necessary Documentary Evidence</b>
<b><u>Eligibility</u></b>		
<b><u>Legal Aspects</u></b>		
<b><u>Financial Situation</u></b>		
<b><u>Similar Project Experience</u></b>		
<b><u>Performance Capacity</u></b>		

## 1. Qualification of the Products and Related Services

For the purposes of establishing the qualifications of the proposed Products and Related Services, Tenderers must provide the documentary evidence or certifications stipulated for each mandatory qualification requirement included in the following table.

<b>Criteria</b>	<b>Requirement</b>	<b>Necessary Documentary Evidence or Certification</b>
<b><u>Eligibility</u></b>		
<b><u>Market Penetration</u></b>		
<b><u>Similar Installation Sites</u></b>		

## III.D. Post-Qualification Measures

The Purchaser may employ the following measures to determine at its own cost and to its satisfaction whether the Tenderer selected as having submitted the Lowest Evaluated Tender is qualified to perform the Contract satisfactorily, in accordance with ITT Clause 40:

(1) \_\_\_\_\_.

(2) \_\_\_\_\_.

(3) \_\_\_\_\_.

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## Section IV. Tender Forms

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## General Instructions for the Tender Forms

1.	Complete the Price Schedules and Tender Form in accordance with ITT Clause 13 and Section VI, the Schedule of Supply. Non-conformities, errors and omissions in the completed Schedules and Forms will be handled in accordance with ITT Clause 30.
2.	Tenderers should provide the actual (trade) name of the offered items (instead of the generic descriptions shown in the Schedule of Supply), along with page or section number cross-reference(s) to the corresponding section(s) of the Technical Proposal.
3.	<p>Item codes used in the Price Schedules should correspond exactly to those specified in the Schedule of Supply, in accordance with ITT Clause 13.3. Item codes shall in all cases be unique (to facilitate contract administration, e.g., deliveries, invoice processing, change orders, etc.) and not repeated in any given Price Schedule. However, if the Tenderer's offerings do not correspond one-to-one with the items in the Schedule of Supply, proceed as follows:</p> <ul style="list-style-type: none"> <li>• When offering multiple Products or Services to fulfill a single requirement from the Required Products and Services Schedules, create unique item codes for each offered item by appending a hyphen and a sequential suffix to the Purchaser's original item code (e.g., Server-1, Server-2).</li> <li>• When offering a single Product or Service to fulfill multiple requirements, define a replacement item code and indicate the original item codes which it fulfills in either the Item Name field or in a footnote (e.g., RServ1, "Server and Operating System combination for Serv1 and OS1")</li> <li>• Always underline replacement item codes in the Price Schedules and clearly describe the rationale for the replacement and how the offered item fulfills all the technical requirements in the cross-referenced sections of the Technical Proposal.</li> </ul>
4.	<p>Tally total product and service prices in the appropriate columns based on the currency of the unit prices. Use a separate line in the Price Schedule for each different currency component of the unit price of a Product or Service, using only one currency combination per Product or Service. Specify currencies in accordance with ITT Clause 14 using ISO (standard 4217) currency codes, which are available from most banks or on the Internet, as follows:</p> <ul style="list-style-type: none"> <li>• <input type="checkbox"/> The URL for the official ISO 4217 currency codes at time of STD publication is: <a href="http://www.bsi.org.uk/bsi/products/standards/products/currency.xhtml">http://www.bsi.org.uk/bsi/products/standards/products/currency.xhtml</a></li> <li><input type="checkbox"/></li> <li>• Official ISO 4217 maintenance agency home page: <a href="http://www.bsi.org.uk/">http://www.bsi.org.uk/</a></li> <li>• <input type="checkbox"/> International Standards Organization (ISO) home page: <a href="http://www.iso.ch/">http://www.iso.ch/</a></li> </ul>

## General Instructions for the Tender Forms

5. Specify countries of origin using official ISO (standard 3166) country codes, which are available from most banks or on the Internet, as follows:
- The URL for the official ISO 3166 country codes at time of STD publication is:  
<http://www.din.de/gremien/nas/nabd/iso3166ma/codlstp1/index.html>
  - ISO 3166 maintenance agency home page:  
<http://www.din.de/gremien/nas/nabd/iso3166ma/>
  - International Standards Organization (ISO) home page: <http://www.iso.ch/>

## Imported Products Price Schedule

Date: \_\_\_\_\_

Invitation for Tender No.: \_\_\_\_\_

ICT No.: \_\_\_\_\_

Tender & Lot Nos.: \_\_\_\_\_

Name of Tenderer: \_\_\_\_\_

Signature of Tenderer: \_\_\_\_\_

Required Products Schedule Item Code	Product Name	Technical Proposal Cross Ref.	Country of Origin	Product Quantity	CIP Unit Price <sup>1</sup>	Currency	Total CIP Product Price in Currency: _			
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H = E x F)	(I = E x F)	(J = E x F)	(L = E x F)
<b>Imported Products Price Totals (To Tender Price Summary Schedule):</b>										

- 5. Specify CIP Unit Prices in accordance with ITT Clauses 13.4(a) and 14.1(b) and the General Instructions for the Tender Forms.
- 6. Quote only one CIP price per Product, regardless of any incremental differences in transportation and insurance charges for different Project Sites.

## Locally supplied Products Price Schedule

Date: \_\_\_\_\_

Invitation for Tender No.: \_\_\_\_\_

ICT No.: \_\_\_\_\_

Tender & Lot Nos.: \_\_\_\_\_

Name of Tenderer: \_\_\_\_\_

Signature of Tenderer: \_\_\_\_\_

Required Products Schedule Item Code	Product Name	Technical Proposal Cross Reference.	Country of Origin	Product Quantity	EXW Unit Product Price <sup>1</sup> in Currency: _____	Total EXW Product Price
(A)	(B)	(C)	(D)	(E)	(F)	(G = E x F)
<b>Locally supplied Products Price Total (To Bid Price Summary Schedule)</b>						

4. Specify a single EXW Price for each locally supplied Product in accordance with ITT Clauses 13.4(b) and 14.1(a) and the General Instructions for the Tender Forms. Indicate costs for delivery and insurance of each Installation Batch separately on the Related Services Price Schedule.



## Maintenance Costs Schedule

Date: \_\_\_\_\_

Invitation for Tender No.: \_\_\_\_\_

ICT No.: \_\_\_\_\_

Tender &amp; Lot Nos.: \_\_\_\_\_

Name of Tenderer: \_\_\_\_\_

Signature of Tenderer: \_\_\_\_\_

Products/ Services Schedule Item Code	Maintenance Item <sup>1</sup>	Technical Proposal Cross Ref.	Country of Origin	Currency	Price <sup>1</sup> per Year							Total Service Price			
					Y1	Y2	Y3	Y4	Y5	Y6	Y7	Currency:	Currency:	Currency:	Local Currency
												_____	_____	_____	
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M = $\sum F-L$ )	(M = $\sum F-L$ )	(M = $\sum F-L$ )	(M = $\sum F-L$ )
<b>Related Services Price Totals (To Tender Price Summary Schedule):</b>															

1. Specify Prices for services required under column E of the Required Services Schedule in Section VI, Schedule of Supply, and for Products to be provided during Maintenance Period (only). Quote prices in accordance with ITT Clauses 13.4(d) and 14.1 and the General Instructions for the Tender Forms.
2. Specify Maintenance Costs for the Products beginning on the date of expiration of the Warranty Period and running through the end of the Useful Life Period. Since the Warranty Period is usually at least one year long, there will generally be no Maintenance Costs for the first year (Y1) following the start Date of the Implementation Schedule (as defined in GCC Clause 3), even if some Products are installed immediately thereafter. Similarly, Products with one year Warranty installed and accepted at the end of a year-long Implementation Period may generate Maintenance Costs only for years Y3-Y6, given a 4 year Maintenance Period. The Schedule provides for up to 7 years of Maintenance Costs beyond the Start Date, and columns for additional years of Maintenance may be added as needed.

## Tender Price Summary Schedule

Date: \_\_\_\_\_

Invitation for Tender No.: \_\_\_\_\_

ICT No.: \_\_\_\_\_

Tender &amp; Lot Nos.: \_\_\_\_\_

Name of Tenderer: \_\_\_\_\_

Signature of Tenderer: \_\_\_\_\_

Tender Price Component	Total in Foreign Currency: _____	Total in Foreign Currency: _____	Total in Foreign Currency: _____	Total in Local Currency: _____
Imported Products Price Totals				
Locally Supplied Products Price Totals				
Related Services Price Totals				
<b>Total supply and Warranty Costs</b>				
Maintenance Costs for Products				
Maintenance Service Costs				
<b>Total Maintenance Costs</b>				
<b>Total Tender Price (to Tender Form):</b>				



## Tender Form

Date: \_\_\_\_\_

ICB No.: \_\_\_\_\_

Invitation for Tender No.: \_\_\_\_\_

Tender & Lot Nos.: \_\_\_\_\_

To: \_\_\_\_\_

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Tender Document, including Addenda Nos. \_\_\_\_\_, the receipt of which is hereby duly acknowledged;
- (b) We offer to supply in conformity with the Tendering Document and in accordance with the Implementation Schedule the following Products and Related Services: \_\_\_\_\_  
\_\_\_\_\_;
- (c) The total amount and currency of our Tender is: \_\_\_\_\_  
\_\_\_\_\_;
- or such other sums as may be ascertained in accordance with the Price Schedules attached herewith and made part of this Tender;
- (d) The discounts offered and the methodology for their application are: \_\_\_\_\_  
\_\_\_\_\_;
- (e) If our Tender is accepted, we will obtain the guarantee of a bank in a sum equivalent to \_\_\_\_\_ percent of the Contract Price for the due performance of the Contract, in the form prescribed by the Purchaser;
- (f) Our tender shall be valid for the Tender Validity Period specified in Clause 19 of the Tender Data Sheet and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (g) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the tendering process or execution of the Contract (If none, indicate "none"):

Name of Recipient	Address	Purpose	Amount & Currency
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

- (h) Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.
- (i) We understand that you are not bound to accept the lowest or any tender you may receive.
- (j) We certify/confirm that we and all subcontractors and producers for any part of the contract comply with the eligibility requirements as per ITT Clause 4 of the Tender Document.
- (k) We hereby certify that the Intellectual Property Rights in all the Products offered in this tender are either owned by us, or are offered under a legal and valid authorization and/or license from the owner.

Dated this \_\_\_\_\_ day of \_\_\_\_\_,

Name \_\_\_\_\_ In the capacity of \_\_\_\_\_

Signed \_\_\_\_\_

Duly authorized to sign the tender for and on behalf of \_\_\_\_\_

\_\_\_\_\_

## Tender Security Form

Date: \_\_\_\_\_

ICT No: \_\_\_\_\_

Invitation for Tender No.: \_\_\_\_\_

Tender &amp; Lot Nos.: \_\_\_\_\_

To: \_\_\_\_\_

Whereas \_\_\_\_\_  
 (hereinafter “the Tenderer”) has submitted its tender dated \_\_\_\_\_ for the  
 above-mentioned ICB No. for the supply of \_\_\_\_\_  
 hereinafter called “the Tender.”

KNOW ALL PEOPLE by these presents that WE \_\_\_\_\_  
 of \_\_\_\_\_ having our registered office at  
 \_\_\_\_\_ (hereinafter “the Guarantor”), are bound unto  
 \_\_\_\_\_ (hereinafter  
 “the Purchaser”) in the sum of \_\_\_\_\_  
 for which payment well and truly to be made to the aforementioned Purchaser, the Guarantor  
 binds itself, its successors, or assignees by these presents. Sealed with the Common Seal  
 of this Guarantor this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

THE CONDITIONS of this obligation are the following:

1. If the Tenderer withdraws any of its tenders during the period of tender validity specified by the Tenderer in the Tender Form, except as provided in ITT Clause 25.1; or
2. If the Tenderer, having been notified of the acceptance of its tender by the Purchaser, during the period of tender validity, fails or refuses to:
  - (a) execute the Contract Form; or
  - (b) furnish the Performance Security, in accordance with the ITT Clause 46; or
  - (c) accept the correction of its tender by the Purchaser, pursuant to ITT Clause 30.

We undertake to pay the Purchaser up to the above amount upon receipt of its first written demand, without the Purchaser having to substantiate its demand, provided that in its demand the Purchaser states that the amount claimed by it is due to it, owing to the occurrence of one or more of the above conditions, specifying the occurred conditions

This security shall remain in force up to and including twenty-eight (28) days after the period of tender validity, and any demand in respect thereof should be received by the Guarantor no later than the above date.

Name \_\_\_\_\_ In the capacity of \_\_\_\_\_

Signed \_\_\_\_\_

Duly authorized to sign the tender security for and on behalf of \_\_\_\_\_

---

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

## Producer’s Authorization Form

Date: \_\_\_\_\_

ICT No.: \_\_\_\_\_

Invitation for Tender No.: \_\_\_\_\_

Tender & Lot Nos.: \_\_\_\_\_

To: \_\_\_\_\_

WHEREAS \_\_\_\_\_ who are official producers of  
 \_\_\_\_\_ and having production facilities at  
 \_\_\_\_\_ do hereby authorize  
 \_\_\_\_\_ located at  
 \_\_\_\_\_ (hereinafter, the “Tenderer”)  
 to submit a tender and subsequently negotiate and sign a Contract with you for resale of the  
 following Products produced by us, for the quantities, specifications, and delivery schedule  
 called for by the Supply Requirements associated with the above-mentioned Invitation for  
 Tenders: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_.

We hereby extend to you a full guarantee and warranty in accordance with Clause 26,  
 Warranty, of the General Conditions of Contract and with our own standard product warranty,  
 and duly authorize the Tenderer to act on our behalf in fulfilling all warranty obligations with  
 respect to the above-listed products offered for resale by the Tenderer in relation to this  
 Invitation for Tenders.

We also certify that the Tenderer is qualified by us to provide the following maintenance,  
 support, software version upgrade or other required services related to the above-listed  
 Products in accordance with Clause 9, Scope of the Contract, of the General Conditions of  
 Contract: \_\_\_\_\_  
 \_\_\_\_\_.

Name \_\_\_\_\_ In the capacity of \_\_\_\_\_

Signed \_\_\_\_\_

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

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Note: This letter of authority must be on the letterhead of the Producer, must be signed by a person competent and having the power of attorney to bind the Producer, and must be included by the Tenderer in its tender as specified in the Instructions to Tenderers



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## **PART 2 – Supply Requirements**

## **Section VI. Schedule of Supply**

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## **General Instructions for the Schedule of Supply**

1. The Schedule of Supply contains several related schedules itemizing the Purchaser's Product and Service requirements, as follows:
  - a) The Products are to be installed and the Services are to be delivered at the Purchaser's Project Sites and according to the timetables specified in the Implementation Schedule. The Purchaser's Implementation Schedule defines the major milestones and required timetable for the project, which Tenderers shall prepare their version of in their tender.
  - b) The total quantities of Products and Related Services to be supplied under the Contract are listed in the Required Products and Services Schedules, which aggregate the requirements for all Project Sites and Installation Batches. All items in the Required Products and Services Schedules must be listed by Tenderers in the appropriate Price Schedules in their tenders.
  - c) The specific quantities of Products and Services comprising each Installation Batch at each Project Site are specified in the Deployment Schedule. Particulars about the delivery and installation timetables and associated tasks for each Installation Batch shall be provided by Tenderers in their detailed Project Plans.
2. An Installation Batch is a unique name given to specific quantities of Products to be Installed and Related Services to be delivered together at a particular Project Site at a specific time during project implementation. Installation Batches should generally be defined by the Purchaser to correspond to the Project Sites, except where a given Site will receive multiple Installations, e.g., in projects with several implementation phases or application sub-systems being Installed and/or Accepted at significantly different points in time. Installation Batches are defined as appropriate for each particular project, but should not span multiple delivery destinations (to facilitate tender pricing, comparisons and Contract administration, esp. of delivery and insurance costs for locally supplied (EXW) products quoted as a service in accordance with ITT Clause 13.4(b)(ii)).
3. The unique Item Codes specified for the Products and Services here in the Schedule of Supply shall correspond exactly to the Item Codes used by Tenderers in the Price Schedules furnished in Section IV. Tendering Forms, shall be included in the Supplier's tender in accordance with ITT Clause 13 and the General Instructions for the Tendering Forms in Section IV.
4. Terms defined in Clause 1 of Section VIII, General Conditions of Contract (GCC) have the meanings defined therein, e.g., Acceptance is defined in GCC Clause 1.1(a) and the Project Plan in GCC Clause 1.1(t). Acceptance testing schedules and procedures are specified in GCC Clause 12, Inspections and Tests, and elaborated further in the Technical Specifications and the Project Plan. The schedule for payments based on deliveries (shipment), Installation and Acceptance are as specified in GCC and SCC Clauses 19.

## Implementation Schedule

The Purchaser's Implementation Schedule defines the major milestones and required timetable for the Tenderer's tender. Tenderers shall prepare their response to the Purchaser's Implementation Schedule requirements as part of their tender. The Supplier's Implementation Schedule shall specify the committed timetable for arrival and Installation of the Products at each of the Purchaser's Project Sites, and it shall be supported by a detailed Project Plan that fulfills the requirements of GCC Clause 1.1(t) and the Technical Specifications. Pursuant to GCC Clauses 1.1(m), 22, 32 and 34.1, the Supplier's performance of the Contract shall be managed based on the Implementation Schedule provided in its tender and included in the Contract.

Site Code	Project Site Name	Site Location (Delivery Address)	Arrival Schedule	Installation Schedule <sup>1</sup>	Project Plan <sup>2</sup> Cross Ref.	Installation Batch <sup>3</sup>	
						Code <sup>4</sup>	Description
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)

1. Installation Schedule dates are measured in weeks from the Start Date for project implementation, as defined in GCC Clause 3.1. The Installation Schedule column indicates the acceptable ranges of dates for Installation (as defined in GCC Clause 1.1(o)) of each of the uniquely named Installation Batches at its Project Site. In defining dates in the Implementation Schedule, the time required for delivery to the Project Site, for any customs clearance procedures and for performance of all necessary services for Installation must be taken into account.
2. The Purchaser's input and requirements for the Project Plan are included in sub-section 5, Project Planning and Management, of the Technical Specifications, which should describe the rationale for how project Installations are broken down and scheduled. Tenderers shall provide a complete and detailed Project Plan in their tender for successful and timely project implementation in conformance with the Implementation Schedule, GCC Clause 1.1(t) and the Technical Specifications.
3. If there is only one Installation Batch for a given Project Site, then the Batch Code can equate to the Site Code. Logical associations between Installation Batches (e.g., based on project phases or stages, on deployment of a common application or sub-system, or to a particular department or building) may be indicated by naming conventions for the batches (e.g., HQ-Phase1, HQ-Accounting, Phase2-District3, as appropriate for the project), by grouping related batches in consecutive rows, and can be further elaborated in the Technical Specifications.
4. Installation Batch Codes must be unique, so that the Deployment Schedule can clearly and unambiguously identify the exact quantities of the specific Products and Services comprising each Installation Batch

## Required Products and Services Schedules

The total quantities for each Product and Service item for the entire Contract (aggregated over all Installation Batches and Project Sites on the Deployment Schedule) are shown in the Required Products Schedule and the Required Services Schedule below. All items in the Required Products and Services Schedules must be listed and priced separately by Tenderers in the appropriate Price Schedules in accordance with ITT Clause 13.3 and the General Instructions for the Tendering Forms in Section IV.

### Required Products Schedule

Site	Item Code	Total <sup>1</sup> Quantity	Product Description	Key <sup>2</sup> Item Yes/No	Technical Specifications Cross-reference
	(A)	(B)	(C)	(D)	(E)

1. Total Quantities for each Product should be carried forward from the Total Quantity column (H) from the Deployment Schedule, which sums the quantities required for each Product across all Installation Batches. Specify required Software License quantities and types according to the business requirements elaborated in the Technical Specifications (sub-section 2.3) and using the terminology from GCC Clause 1.1. Also indicate the required numbers of copies of the Software Distribution Media and associated documentation for each Project Site/Installation Batch in the Deployment Schedule.
  
2. Products flagged as “Key Items” that are not produced by the Supplier require the inclusion of Producer’s Authorization Forms with the tender, in accordance with ITT Clause 18.2(b), and also require that the subcontractor or producer be specifically identified in the Schedule of Key Subcontractors in accordance with ITT Clause 12.1 (f)



## Deployment Schedule

The Deployment Schedule specifies the detailed Product and Service quantities required for each of the Installation Batches indicated in the Implementation Schedule, which may logically correspond to Project Sites, implementation phases, application sub-systems, or some combination thereof. Each row in the Implementation Schedule identifies and specifies the Installation schedule for one Installation Batch.

Product/ Service Item Code <sup>1</sup>	Installation Batch Code <sup>2</sup>						Total Quantity <sup>3</sup>	Notes
	<i>Batch 1</i>	<i>Batch 2</i>	<i>Batch 3</i>	<i>Batch 4</i>	<i>Batch 5</i>	<i>Batch 6</i>		
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)

1. Each Item Code from the Required Products and Services Schedules should have a corresponding entry (row) in the Deployment Schedule, indicating the detailed deployment (delivery & installation) requirements for each and every Product and Service for each Installation Batch.
2. Installation Batch Codes are uniquely defined in column (G) of the Implementation Schedule. Separate columns are used here in the Deployment Schedule to specify the Product and Service quantities comprising each Installation Batch. Columns should be added as necessary to accommodate more Installation Batches.
3. The Total Quantity of each Product and Service (aggregated across all Installation Batches) in the Deployment Schedule shall correspond to the Total Quantities specified for the corresponding item in the Required Products and Services Schedules.



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## **Section VII. Technical Specification**

### **1. INTRODUCTION**

#### **1.1 Executive Overview of the Required Information System**

#### **1.2 Background Information**

##### **1.2.1 The Purchaser's Organization**

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##### **2.1.1 Environmental and Site Preparation Specifications**

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##### **2.2.2 Workstation Specifications**

#### **2.3 Software Licensing and Technical Specifications**

The terminology for categories of Software defined in GCC Clause 1.1(z) and for Software Licensing in GCC Clause 1.1(aa) is used here to define the Purchaser's Software supply requirements. The required license parameters for each required software package are specified here (along with the corresponding functional, technical and performance specifications) and tallied in summary form (using corresponding Item Codes) in the Required Products Schedule in Section VI, the Schedule of Supply

## Software Requirements Table

Software Licensing (ref. GCC Clause 24), Media and Documentation Requirements

Item Code	Software Product Description	Site Code	Installed Computer (Brand/Model)	Aggregate Licensing Requirements		Media Quantity	Documentation Quantity	Tech. Spec. Section No.	
				No. of Computers	Total Users				
					Concurrent				Registered

### 2.3.1 System Software Technical Specifications

### 2.3.2 Application Software Technical Specifications

## 2.4 Networking Requirements

### 2.4.1 Overall Network Design

### 2.4.2 Local Area Network Specifications

### 2.4.3 Private Wide Area Network Requirements

### 2.4.4 Internet Requirements

## 3. SERVICE REQUIREMENTS

### 3.1 Installation, Configuration and Systems Integration Requirements

### 3.2 Acceptance Testing Setup and Support Services

### 3.3 Systems Operation and Technical Support Service Requirements

### 3.4 Hardware Maintenance Service Requirements

### 3.5 Software Maintenance: Technical Support, Maintenance and New Version Release Services

**3.5.1 System Software Maintenance Requirements: Technical Support, Maintenance and New Version Release Services.**

**3.5.2 Application Software Maintenance Requirements: Technical Support, Maintenance and New Version Release Services**

**4. TRAINING REQUIREMENTS**

**4.1 Learning Objectives of the Training Program**

**4.2 Required Curriculum including prerequisite and Program Features**

**4.3 Participants, Locations, Facilities, and Course Schedule**

**5. PROJECT PLANNING AND MANAGEMENT**

The Tenderer shall provide a complete and detailed Project Plan in its tender for successful and timely project implementation in conformance with the Implementation Schedule. The Project Plan shall conform to GCC Clause 1.1(t) and fulfill the requirements indicated in this section of the Technical Specifications.

**5.1 The Purchaser's Project Team**

**5.2 The Supplier's Project Team Organization and Qualifications**

**5.3 Project Management Controls, Documentation and Reporting Requirements**

**5.4 Project Baseline Schedule (Chart)**

**5.5 Detailed Descriptions of Project Activities (Tasks)**

**5.6 Acceptance Test Procedures and Success Criteria**

Acceptance of the Products shall be conducted separately for each Installation Batch, for groups of Batches combined and working together, or for the entire set of Products supplied under the Contract working as a complete, integrated System—in accordance with the testing scheme and against the success criteria specified below.

**5.6.1 Testing of Individual Installation Batches**

**5.6.2 Complete System Integration Testing**

**5.7 Purchaser Activities, Resource Requirements and Dependencies**

The Project Plan shall include detailed descriptions of the activities, deliverables and timetables for all tasks and resources that the Purchaser should provide for Contract execution, including but not limited to computer room site preparation, installation of local area network cabling, customs clearance procedures, arranging for wide area network telecommunications facilities or an Internet connection, conduct of Acceptance tests, etc.

#### **5.8 Third Party Activities, Resource Requirements and Dependencies**

The Project Plan shall include detailed descriptions of the activities, deliverables and timetables for all activities and resources that any third parties (not party to the Contract) should provide or perform, or on which the execution of the Contract otherwise depends, including but not limited to provision of wide area network telecommunications facilities, Internet connections, etc.

#### **5.9 Project Constraints, Risks & Contingencies**

### **6. DIAGRAMS, ATTACHMENTS AND ANNEXES.**

## **PART 3 - CONTRACT**

## Section VIII. General Conditions of Contract

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## Section VIII. General Conditions of Contract

### A. Contract and Interpretation

#### 1. Definitions

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

- (a) “Acceptance” means the Purchaser’s written certification that the System (or a subset thereof) is confirmed to have met the functional and performance requirements and passed the inspections and Acceptance tests specified in GCC Clause 12 and the Technical Specifications.
- (b) “Contract” means the agreement entered into between the Purchaser and the Supplier, as recorded in the Contract Form signed by the parties, including all Contract Documents, all attachments and appendices thereto, and all documents incorporated by reference therein.
- (c) “Contract Documents” means the documents specified in GCC Clause 2.
- (d) “The Contract Price” means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract. Maintenance Costs for Products and Services to be provided during the Maintenance Period and which are the subject of Supplemental Agreements are not included in the Contract Price.
- (e) “Country of Origin” or “Origin” means the place where the products are produced or from where the Related Services are supplied. Products are produced when, through manufacturing, processing, software development or substantial and major assembly or integration of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components. The origin of products and services is distinct from the nationality of the Tenderer and may be different.
- (f) “Coverage Period” means the time periods during which the maintenance, operational and technical support services required by the Contract must be available, which, unless

otherwise specified in **SCC**, shall be 8:00 AM to 5:00 PM local time at the Project Site, Monday through Friday, exclusive of official national holidays.

- (g) “Day” means calendar day of the Gregorian Calendar.
- (h) “Delivery” means the transfer of the Products from the Supplier to the Purchaser in accordance with the applicable Incoterm under the terms and conditions of the Contract.
- (i) “Eligible Countries” means the countries and territories listed as eligible in Section V.
- (j) “GCC” means the General Conditions of Contract.
- (k) “Implementation Period” means the period from the Start Date until all the Products and the entire System have achieved full and complete Acceptance by the Purchaser and all Project Implementation Services have been delivered.
- (l) “Implementation Schedule” is the part of the Supplier’s tender (provided in response to the Purchaser’s requirements therefor specified in the Schedule of Supply) specifying the committed schedule for arrival and Installation of Batches of Products and delivery of related Services at the Project Sites, including any agreed amendments thereto. The Implementation Schedule defines the major milestones and timetable for the detailed Project Plan and is used for managing the Supplier’s performance under the Contract, including for the assessment of liquidated damages pursuant to GCC Clause 22.
- (m) “Information System,” also called “System,” means the complete set of Products and Related Services that the Supplier is required to provide under the Contract.
- (n) “Installation” means the Supplier’s written notification that a specific set of Products and associated Services identified as an “Installation Batch” in the Schedule of Supply have been delivered, unpacked, set up, connected, configured and tested, and are ready for Acceptance testing and subsequent production use by the Purchaser in accordance with Contract requirements.
- (o) “Intellectual Property Rights” means any and all copyright, moral rights, trademark, patent, and other intellectual and proprietary rights, title and interests, world-wide, whether

vested, contingent or future, including without limitation all economic rights and all exclusive rights to reproduce, fix, adapt, modify, translate, create derivative works from, extract or re-utilize data from, manufacture, introduce into circulation, publish, distribute, sell, license, sub-license, transfer, rent, lease, transmit or provide access electronically, broadcast, display, enter into computer memory, or otherwise use any portion or copy, in whole or in part, in any form, directly or indirectly, or to authorize or assign others to do so.

- (p) “Maintenance Period” means the remainder of the Useful Life Period following the expiration of the Warranty Period for each Installation Batch of the Products during which the Supplier is obligated to provide recurrent supply of Products, Software Releases and License renewals as specified in the Supply Requirements, and also specific Maintenance, Support and other Services for the System in accordance with GCC Clause 8, for costs not exceeding those specified in the Maintenance Costs Schedule.
- (q) “Products” or “Goods,” means all equipment and Software, Licenses, documentation, and any other materials, supplies and tangible items that the Supplier is required to supply under the Contract.
- (r) “Project Manager” means the person named in **SCC** and appointed by the Purchaser to manage the project and represent the interests of the Purchaser.
- (t) “Project Plan” is the part of the Supplier’s Technical Proposal providing detailed information about the timetable, duration, sequence, dependencies and required resources for all activities needed to complete the Contract. The Project Plan shall conform to the timelines specified in the Contract Implementation Schedule and shall include a complete description of each activity, resource and project milestone. The Project Plan shall clearly indicate the requirements, timetable and resource loading for all activities and resources that are the responsibility of the Purchaser to perform, provide or otherwise arrange for. The Project Plan shall also meet the requirements specified therefor in the Technical Specifications.
- (t) “Project Site(s)” or simply “Site” means the place(s) specified in the Supply Requirements for Installation of the Products and delivery of the Services.

- (u) “Purchaser” means the entity purchasing the Products and Related Services, as specified in the SCC.
- (v) “Purchaser’s Country” is the country named in the SCC.
- (w) “Related Services,” also called “Services,” means all technical, logistical, managerial, fiduciary, training, maintenance, new software release supply and any other activities and obligations incidental to the supply of the Products that must be carried out by the Supplier under the Contract.
- (x) “SCC” means the Special Conditions of Contract.
- (y) “Software” means the set of executable instructions and any related control and reference data and procedures that cause computer systems to perform specific business or technical operations. Contract terminology for classification or identifications of forms of Software is as follows:
  - (i) “Application Software” means Software that performs or facilitates key business, governmental and/or technical functions for end-users of the System or for equipment being monitored or controlled by the System, including Software for general purpose data processing such as word processing, spreadsheet, electronic mail, database management, etc.
  - (ii) “Custom Software” means Software developed by the Supplier at the Purchaser’s expense under the Contract, including customizations made to Off-the-shelf Software.
  - (iii) “Off-the-shelf Software” means Software that is provided as a pre-packaged Product for multiple clients.
  - (iv) “Source Code” means the program source files, database structures, dictionaries, definitions, scripts, libraries and procedures for compiling and linking all source elements into the executable code, design and user documentation, including precise identification of all prerequisite Software (compilers, libraries, System Software, linkers, software tools, etc.) and versions, and any other files, documents, keys or symbolic representations necessary for the generation, compilation, execution, verification testing and subsequent maintenance of the Software.

- (v) “Surreptitious Code” means any virus, Trojan horse, worm, or other routine or component designed to permit unauthorized access to the System, or to disable, erase, or otherwise harm any component of the System, or any back door, time bomb, drop dead device, or other routine designed to disable Software automatically with the passage of time or under the positive control of a party other than the Purchaser, or to perform any other such malicious, mischievous or disruptive actions. Surreptitious Code excludes routines designed to allow remote maintenance, upgrades or technical support under the positive control of the Purchaser.
- (vi) “System Software” means Software that provides the operating, management and control instructions for the hardware, or protocol and middle-ware support for communications functions. System Software includes but is not limited to firmware, micro-code, operating system, network protocol, system and network management, file system, backup, clustering, disaster recovery, security, system integration middle-ware, compilers, linkers, virtual machines and system utility Software.
- (aa) “Software License” means the Purchaser’s right to install and use the Software and related documentation under the terms and conditions of a Software License Agreement pursuant to GCC Clause 24, which can be classified according to the scope of authorized usage, as follows:
- (i) “Computer-Based Software License” means a Software License that is granted for use on a specific computer or set of computers and which may also include some User-Based Licensing restrictions.
- (ii) “Perpetual Use License” means a Software License that is fully paid for, irrevocable, and granted in perpetuity for all or specified versions of the Software.
- (iii) “Renewable License” means an irrevocable and fully paid for Software License for all or specified version(s) of the Software that is valid only for a specified amount of time and which will be renewed at specified intervals requiring the payment of additional License fees as shall be indicated in the Maintenance Costs Form in the Supplier’s tender.

- (iv) “Site or Enterprise License” means a Software License authorizing simultaneous use of the Software by all or a specified set of the Purchaser’s users on all or a specified set of computers at all or a specified set of the Purchaser’s Project Sites.
- (v) “User-Based Software License” means a Software License which is granted for a specified maximum number of registered (authorized) or concurrent (simultaneously active) users of the Software.
- (bb) “Software Producer” means the legal entity that owns the Intellectual Property Rights in the Software and the Source Code therefor.
- (cc) “Software Release” means a licensed copy of a particular version of the Software, which may be a complete new version, or only an incremental update to a prior Release. Contract terminology for Software Releases is as follows:
  - (i) “Maintenance Release” means an incremental Release of the Software which primarily fixes problems in the current version and which may also include some functional enhancements.
  - (ii) “Media” (also called the “Distribution Media”) means the physical media or the files comprising an electronic distribution that tangibly embodies a Software Release, often including associated on-line documentation.
  - (iii) “Version Release” means a complete Release of the Software that incorporates significant additional functionality over previous Releases, which may not be fully compatible with previous versions and should therefore generally be evaluated for potential system, business and user training impact and then be thoroughly tested by the Purchaser prior to deployment. Version Releases generally change the primary Software version identifier, such as the integer part of a version number, or the entire Product name.
- (dd) “Start Date” means the date following contract signing that the Implementation Schedule commences, as defined in **GCC Clause 3**.
- (ee) “Subcontractor” means any natural person, private or government entity, or a combination of the above, including

its legal successors or permitted assigns, to whom any part of the Products to be supplied or execution of any part of the Related Services is directly or indirectly subcontracted by the Supplier.

(ff) “Supplier” means the natural person, private or government entity, or a combination of the above, whose tender to perform the Contract has been accepted by the Purchaser and is named as such in the Contract Form, and includes the legal successors or permitted assigns of the Supplier.

(gg) “Useful Life Period” means the time that the Products are required to be in production use, which is five (5) years from the date of Acceptance of the Products, unless otherwise specified in SCC. The Useful Life Period equals the Warranty Period plus the Maintenance Period. If the Implementation Schedule specifies multiple Installation Batches with Installation and Acceptance of the Products staggered over time, then the Warranty, Maintenance and Useful Life Periods shall be calculated separately for each Installation Batch.

(hh) “Warranty Period” means the period following Acceptance of the Products during which the Supplier’s warranty obligations in respect of the Products are in force in accordance with GCC Clause 26. The duration of the Warranty Period shall be:

- 1 year for Software;
- 1 year for servers and communications equipment; and
- 1 year for workstations, printers and all other Products.

unless otherwise specified in SCC.

(ii) “In writing” means communicated in written form with proof of receipt.

## 2. Contract Documents

2.1 The documents listed below shall constitute the Contract between the Purchaser and the Supplier. In the event of ambiguity or conflict between the documents, the order of precedence shall be the order in which they are listed below. Subject to this order of

precedence, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory.

- (a) Contract Form furnished in Section X, Contract Forms
- (b) Section IX, Special Conditions of Contract
- (c) Section VIII, General Conditions of Contract
- (d) Section VI, Schedule of Supply
- (e) Section VII, Technical Specifications
- (f) The Supplier's tender, including the Price Schedules and the project Implementation Schedule
- (g) Any other documents identified in the Contract Form.

### 3. Start Date

3.1 The beginning of the Implementation Period of the Contract and the effective commencement date for the Implementation Schedule and the Project Plan shall be the date, hereinafter called the "Start Date," when all of the following conditions have been fulfilled, generally in the order specified herein:

- (a) The Contract Form has been duly executed for and on behalf of the Purchaser and the Supplier;
- (b) All necessary Supplemental Agreements for the required Maintenance Period Products and Services have been duly executed for and on behalf of all the parties thereto in accordance with GCC Clause 8;
- (c) The Supplier has submitted the performance and advance payment securities to the Purchaser in accordance with GCC Clause 21;
- (d) The Purchaser has paid the Supplier the advance payment, in accordance with GCC Clause 19; and
- (e) Any other conditions specified in the SCC.

### 4. Language and Interpretation

4.1 **Language**—The Contract and all related correspondence and documents exchanged by the Supplier and the Purchaser, shall be written in the language specified in the SCC and shall be construed and interpreted in accordance with that language. Supporting documents and printed literature that are part of the Contract may be in another language provided they are

accompanied by an accurate translation of the relevant passages in the language specified in the **SCC**, in which case, for purposes of interpretation of the Contract, this translation shall govern. The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

- 4.2 **Incoterms**—Unless inconsistent with any provision of the Contract, the meaning of any trade term (EXW, CIP, etc.) and the rights and obligations of parties thereunder shall be as prescribed by Incoterms 2000. “Incoterms 2000” means the international rules for interpreting trade terms published by the International Chamber of Commerce, 38 Cours Albert 1er, 75008 Paris, France.
- 4.3 **Entire Agreement**—The Contract constitutes the entire agreement between the Purchaser and Supplier with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect to the subject matter of the Contract made prior to the date of Contract signing.
- 4.4 **Amendment**—No variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.
- 4.5 **Independent Supplier**—The Supplier shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Supplier in connection with the performance of the Contract shall be under the complete control of the Supplier and shall not be deemed to be employees of the Purchaser.
- 4.6 **Joint Venture, Consortium or Association**—If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association, and to incur liabilities and receive instructions for and on behalf of all the parties. The entire execution of the Contract, including payment, shall be done exclusively with the leader. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.

## 5. Notices

- 5.1 Any notice given by one party to the other pursuant to this Contract shall be sent to the other party in writing and confirmed in writing to the other party’s address specified in **SCC**, within two days.

- 5.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later. Any notice sent by airmail post or special courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after proper dispatch.

**6. Governing Law**

6.1 The Contract shall be governed by and interpreted in accordance with the laws of the Purchaser's country, unless otherwise specified in the **SCC**.

**7. Resolution of Disputes**

7.1 If any dispute or difference of any kind whatsoever shall arise between the Purchaser and the Supplier in connection with or arising out of the Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

7.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.

(a) Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after Installation of the Products under the Contract.

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

7.3 Notwithstanding any reference to arbitration herein, the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree, and the Purchaser shall pay the Supplier any monies due the Supplier.

**8. Supplementary Agreements**

8.1 The following services required under the Contract shall be the subject of supplemental agreements (hereinafter the "Supplemental Agreements") covering the entire Maintenance Period and, where appropriate, the Warranty Period, for the affected Installation Batches of the Products:

(a) Any Software Maintenance and Technical Support Services contracts required pursuant to GCC Clause 16,

(b) Any Hardware and Maintenance and Operational Support Services contracts required pursuant to GCC Clause 17, and

- (c) Any Source Code Escrow agreements required pursuant to GCC Clause 24.7
- 8.2 The Supplementary Agreements shall include prices no higher than those specified in the Maintenance Costs Schedule, and terms and conditions substantially equivalent to those specified in the Contract and offered in the Supplier's tender, including the clauses for Force Majeure, Termination for Default, Termination for the Purchaser's Convenience, and any additional provisions designated in the **SCC**, which shall also be substantially equivalent to those contained in the Contract. If there is any conflict between the Contract and any Supplemental Agreement, the provisions of the Contract shall prevail.
- 8.3 Should the Purchaser terminate a Supplemental Agreement or cause it to be terminated during the Maintenance Period, then the Maintenance Period for the affected Product or Service shall terminate on the date that the corresponding Supplemental Agreement is terminated

## **B. Subject Matter of Contract**

### **9. Scope of the Contract**

- 9.1 As further elaborated throughout the Contract, the Supplier shall deliver, Install and obtain the Purchaser's Acceptance of all the Products specified in the Supply Requirements and deliver the Related Services indicated in GCC Clause 9.2 below in accordance with the Implementation Schedule, the Project Plan and GCC Clauses 10 and 13. The Supplier shall also fulfill all Warranty obligations pursuant to GCC Clause 26 and shall execute the Supplemental Agreements for the Maintenance Period in accordance with GCC Clause 8.
- 9.2 The Related Services which the Supplier shall provide under the Contract are as follows, even if not clearly identified and separately priced in the Related Services Price Schedule, in which case their price shall be deemed to be included in the Contract Price in accordance with GCC Clause 18.4:
- (a) The Project Implementation Services specified in GCC Clause 15.2;
  - (b) The Software Maintenance and Technical Support Services specified in GCC Clause 16.2; and
  - (c) The Hardware and Maintenance and Operational Support Services specified in GCC Clause 17.4.

**10. Upgrades and Cost Reductions**

- 10.1 For Products and Services not yet delivered, the Supplier shall offer the Purchaser any cost reductions, promotional programs, ancillary or extended services or warranties, or other options offered to the Supplier's clients in the Purchaser's country.
- 10.2 The Supplier shall offer to the Purchaser to replace Products not yet delivered during Project Implementation by new or upgraded models, new Software Releases and replacement Products of the latest technology and equal or better performance or functionality, which the Supplier offers its clients in the Purchaser's country at the same or lower relative prices.
- 10.3 Changes to the Contract necessitated by the Purchaser's acceptance of an offer made in accordance with GCC Clause 10.1 or 10.2 shall be implemented by a Change Order pursuant to GCC Clause 33

**11. Transport and Delivery**

- 11.1 The Supplier shall provide such packing of the Products as is required to prevent their damage or deterioration during shipment. The Supplier shall promptly repair or replace any Products that are damaged in transit due to inadequate packing or related causes, where such damage is not otherwise fully covered by insurance. The packing, marking, and documentation within and outside the packages shall also comply strictly with the Purchaser's instructions to the Supplier.
- 11.2 Transportation of the Products, including insurance and storage, to the named place of destination in the Purchaser's country, as specified in the Implementation Schedule, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price in accordance with GCC Clause 18. The Supplier shall be free to use transportation through carriers registered in any eligible country and to obtain insurance from any eligible source country.
- 11.3 Transportation of any Products from their original delivery destination to a different Project Site for final Installation shall be the responsibility of the Purchaser, unless otherwise specified in the SCC.
- 11.4 Early or partial deliveries require the explicit written consent of the Purchaser, which consent shall not be unreasonably withheld.

- 11.5 For Products supplied from abroad (CIP Terms): Upon shipment, the Supplier shall notify the Purchaser and the Insurance Company by cable with the full details of the shipment. The Supplier shall promptly send the following documents to the Purchaser by mail or courier, as appropriate, with a copy to the Insurance Company:
- (a) two copies of the Supplier's invoice showing the Products' description, quantity, unit price, and total amount;
  - (b) usual transportation documents;
  - (c) insurance certificate for CIP only; and
  - (d) certificate(s) of origin.
- 11.6 For Products supplied from within the Purchaser's country (EXW Terms): Upon shipment, the Supplier shall notify the Purchaser and shall promptly send the following documents to the Purchaser by mail or courier, as appropriate:
- (a) two copies of the Supplier's invoice showing the Products' description, quantity, unit price, and total amount
  - (b) delivery note, railway receipt, or truck receipt; and
  - (c) certificate(s) of origin.
- 11.7 The documents listed in GCC Clauses 11.5 and 11.6 shall be received by the Purchaser at least one week before arrival of the Products and, if not received on time, the Supplier will be responsible for any resulting additional expenses.
- 11.8 At the request of the Purchaser, the Supplier will make available a representative or agent during the process of customs clearance in the Purchaser's country for Products supplied from abroad. In the event of delays in customs clearance that are not the fault of the Supplier, the Contract Price shall be adjusted in accordance with GCC Clause 33 to compensate for any additional storage charges that the Supplier may incur as a result of the delay.
- 12.1 The Purchaser or its representative shall have the right to inspect and test the Products to confirm their conformity to the

## **12. Inspection and Tests**

Supply Requirements at the Project Sites or another location specified in the **SCC** at no extra cost to the Purchaser.

- 12.2 The Purchaser or its authorized representative shall conduct Acceptance Tests, in the presence and with the support of the Supplier, in accordance with the test procedures set out in the **SCC** and Project Plan.
- 12.3 When the Products have successfully passed the Acceptance Tests, the Purchaser shall notify the Supplier in writing within 21 days of the completion of the tests, certifying that the Products supplied and Installed under the Contract are Accepted.
- 12.4 Should any Product fail to conform to the Supply Requirements or to pass the Acceptance tests, the Purchaser shall notify the Supplier in writing, indicating the nature of the failure or nonconformity, and the Supplier shall promptly either replace the rejected Products or make the necessary repairs or corrections as required for Acceptance at no additional cost to the Purchaser and in accordance with the procedures and response times specified in the **SCC**.
- 12.1 12.5 Nothing in GCC Clause 12 shall in any way release the Supplier from any warranty or other obligations under this Contract or limit the Purchaser's ability to seek other remedies as specified in the Contract.

### **13. Supplier's Obligations**

- 13.1 The Supplier shall complete delivery and Installation of the Products and Related Services, obtain the Purchaser's Acceptance therefor, and shall manage and perform all its other obligations under the Contract in accordance with the following and any additional requirements specified in the **SCC**.
- 13.2 The Supplier shall appoint an experienced Representative to manage its performance of the Contract. The Representative shall be authorized to accept orders and notices on behalf of the Supplier, and to generate notices and commit the Supplier to specific courses of action within the scope of the Contract. The Representative may be replaced only with the prior written consent of the Purchaser.
- 13.3 Supply, Installation, Acceptance, Warranty and Maintenance of the Products shall include provision of the following, at each Project Site where appropriate:

- (a) any special or proprietary tools required for assembly, use or maintenance of the Products;
- (b) detailed operations, maintenance and usage manuals for each appropriate unit of the Products; and
- (c) original Media, license certificates and, where necessary, license authorization key codes for all Software Releases.

13.4 The Supplier and all Subcontractors will abide by the job safety, insurance, customs and immigration measures prevalent and laws in force in the Purchaser's country, and will indemnify the Purchaser from all demands or responsibilities arising from accidents or loss of life, the cause of which is the Supplier's negligence. The Supplier will pay all indemnities arising from such incidents and will not hold the Purchaser responsible or obligated.

13.5 The Supplier is responsible for, and obligated to conduct all contracted activities with due care and diligence, in accordance with the Contract and using state-of-the-art methods and economic principles, and exercising all reasonable means to achieve the performance specified in the Contract.

13.6 The Supplier shall permit the Public Procurement Authority to inspect the Supplier's accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the Authority, if so required by the Authority.

#### **14. Purchaser's Obligations**

14.1 The Purchaser will appoint a Project Manager with the authority to accept or reject all deliverables and to be the primary contact for the Supplier's Representative.

14.2 The Purchaser shall be responsible for timely provision of all resources, facilities, information, equipment access, and other deliverables necessary for project implementation, as identified in the Project Plan. Pursuant to GCC Clause 34, delay by the Purchaser shall result in an extension of the Implementation Schedule. The Purchaser shall also be responsible for any additional obligations specified in the SCC.

14.3 The Purchaser will designate appropriate staff for any training to be imparted by the Supplier and shall make all appropriate

logistical arrangements therefor in accordance with the Project Plan.

## **15. Project Implementation Services**

- 15.1 The specific Installation, Acceptance Testing and other services that the Supplier shall provide during the Implementation Period are specified in GCC Clause 15.2, subject to the following service definitions and any requirements therefor specified in the SCC:
- (a) “Installation Service” includes all unpacking, assembling, wiring, installation, cabling between equipment units and components, connections to power supplies and networks, Software Installation and system configuration and integration of all the Products comprising each Installation Batch at the Project Site for no less than one full day per Batch and sufficient to ensure that all Products are Installed as required to fulfill the Supply Requirements, and suitably configured and tested to ensure readiness for Acceptance testing.
  - (b) “Operational Orientation Service” consists of instructing the Purchaser’s technical staff at the Project Site in the proper operation, management, routine care and maintenance of the Products.
  - (c) “Acceptance Test Support Service” includes provision by the Supplier of on-site technical and operational support for each Installation Batch at each Project Site for the time periods specified in the Supply Requirements, with at least one expert systems engineer knowledgeable in the overall systems design and the major Products comprising the Systems, with backup support and expertise available off-site and/or at other Project Sites as necessary to provide coverage for the full suite of Products included in the Installation Batches being tested together, as specified in the Supply Requirements.
- 15.2 Except as otherwise specified in the SCC, the Supplier shall provide the following Project Implementation Services in accordance with the service definitions specified in GCC Clause 15.1
- (a) Installation and Orientation Services for all Installation Batches at all Project Sites;

- (b) Provision of all project and technical documents and diagrams specified in the Supply Requirements;
- (c) Acceptance Test Support Services for all the Purchaser's Acceptance Testing activities as indicated in GCC Clause 12 and the Project Plan;
- (d) Technical and end-user training for the Purchaser's staff, as specified in the Supply Requirements;
- (e) Any additional Project Implementation Services specified in the Supply Requirements.

**16. Software  
Maintenance  
and Technical  
Support  
Services**

16.1 The specific Software Maintenance and Technical Support Services that the Supplier shall provide under the Contract and which may be the subject of Supplemental Agreements pursuant to GCC Clause 8 are specified in GCC Clause 16.2, subject to the following service definitions and any requirements therefor specified in the SCC:

- (a) "Software Maintenance Service" is a subscription service whereby the Purchaser automatically receives or is granted Internet access to the Media and associated documentation for all Maintenance Releases of the Software, and is also provided with access to a (preferably Internet) knowledge-base of information and/or a periodic publication about known problems with the Software and solutions therefor.
- (b) "Version Upgrade Service" is a subscription service whereby the Purchaser automatically receives or is granted Internet access to the Media and associated documentation for all new Version Releases of the Software.
- (c) "End-User Help Desk Support" is a service whereby the Purchaser's end-users of the system may report problems and submit questions related to the use of the Software (or the entire System) during the specified Coverage Period and promptly receive courteous, helpful, solution-oriented replies from technical experts in the subject matter of the service. The forms of communication and the required response times and any necessary escalation procedures are specified in the SCC.
- (d) "Remote Technical Support" is a service whereby designated members of the Purchaser's technical staff may report system problems and submit technical questions

related to the use, operation and proper maintenance of the Systems or specific Products during the specified Coverage Period and promptly receive courteous, helpful, solution-oriented replies from technical experts in the subject matter of the service. The forms of communication and the required response times and any necessary escalation procedures, e.g. to On-Call Technical Support, are specified in the **SCC**.

- (e) “On-Call Technical Support” is a service for either a fixed, periodic fee or a usage-based fee structure whereby during the Coverage Period designated members of the Purchaser’s technical staff may request and receive on-site technical assistance within a reasonable response time with the diagnosis, repair, operation, modification or proper maintenance of the Systems, the network or specific Products, including with the installation and testing of new Software Releases. The methods of communication, the required response times, service levels and escalation procedures are specified in the **SCC**.
- (f) “On-Site Technical Support” is a service whereby the Supplier employs a specified number of systems engineers to work full time during the Coverage Period at designated Project Sites to provide technical support services identical to those provided under the On-Call Technical Support service, but with a more immediate response time from dedicated, on-site experts. The management procedures, required service levels and escalation procedures are specified in the **SCC**.

16.2 Except as otherwise specified in the **SCC**, the Supplier shall provide the following Services for all Software provided under the Contract in accordance with the service definitions specified in GCC Clause 16.1, provided that provision of these Services shall not relieve the Supplier of any warranty or other obligations under this Contract:

- (a) Software Maintenance Services for all Software for the entire Useful Life Period;
- (b) On-Call Technical Support during Acceptance testing for all Project Sites, Products and Acceptance tests;

- (c) Remote Technical Support Services for the System and individual Products from the date of Installation through Acceptance testing and the Warranty Period;
- (d) Version Upgrade Services for all Software for the Implementation Period; and
- (e) Any additional Services specified in the SCC.

16.3 Unless otherwise specified in SCC, all End-user Help Desk and Technical Support Services that the Supplier is required to provide under the Contract shall conform to the following:

- (a) The means of communicating questions, problems and responses between the Supplier and the Purchaser shall include telephone, facsimile and electronic mail, and the Purchaser shall receive responses within one business day;
- (b) The Supplemental Agreement shall include provisions for escalation to more senior experts within 24 hours and, if so specified in the Supply Requirements, On-site Technical Support within two (2) business days, for persistent problems affecting the Purchaser's production operations.

16.4 Unless otherwise specified in the SCC, all Software Maintenance Release and Version Upgrade Services required under the Contract shall include to the following provisions:

- (a) All new Releases of the Software and associated documentation to be provided under the Contract shall be delivered to the Purchaser within 30 days of their availability in the Purchaser's country, and no later than 12 months after they are released in the Country of Origin of the Software.
- (b) If the License for the Software is version-restricted, the Purchaser's License is upgraded automatically to include new versions upon receipt thereof by the Purchaser.

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**17. Hardware and Maintenance and Operational Support Services**

- 17.1 The specific Hardware and Maintenance and Operational Support Services which the Supplier shall provide under the Contract and which may be the subject of Supplemental Agreements pursuant to GCC Clause 8 are specified in GCC Clause 17.4, subject to the service definitions contained in GCC Clauses 17.2 and 17.3.
- 17.2 Except as otherwise or as further specified in the **SCC**, the following fixed price services should include provision of all labor, spare parts, supplies, diagnostic equipment, escalation procedures, continuous effort until repair and periodic preventative maintenance activities, for fixed maximum prices indicated in the Maintenance Costs Form, sufficient to ensure that all equipment operates without defects or interruption for at least 99.5% of the Coverage Period (exclusive of scheduled down-time), and if any critical component is out of service for more than 48 hours, the Supplier shall either immediately replace the defective component or the entire unit at its own cost:
- (a) “On-site System Maintenance Service,” whereby the Supplier shall provide a specified number of full-time resident engineers on site for the Coverage Period at designated Project Sites.
  - (b) “On-Call System Maintenance Service,” whereby the Supplier shall provide local equipment maintenance services during the Coverage Period for all or specific Products at designated Project Sites, whereby an engineer shall arrive on site within 4 hours from the time the Purchaser logs a service call.
  - (c) “Return-to-Service-Depot Maintenance” is a service suitable for smaller and less critical items (such as workstations, printers and peripheral equipment) that is made available for specific Products by the Supplier on a carry-in or send-in basis during the Coverage Period. Equipment returned for service shall be repaired or replaced within five (5) days. The Purchaser shall be responsible for all shipping and insurance charges to the Service Depot and the Supplier shall be responsible for return shipping and insurance charges. If so specified in the **SCC**, the Return-to-Service-Depot may also be priced as an on-demand service under the provisions of GCC Clause 17.3.

- 17.3 Except as otherwise or as further specified in the **SCC**, the following on-demand or other special services should be available on a time-and-materials fee basis in accordance with Contract prices for both spare parts and labor indicated on the Maintenance Costs Form:
- (a) “Per-Call Hardware Maintenance Service,” whereby the Supplier shall have an engineer on site within 4 hours from when the Purchaser logs a service call during the Coverage Period. This service includes provision for continuous effort until repair, escalation procedures, a local inventory of essential spare parts, maintenance supplies and diagnostic equipment. If specified in the **SCC**, the Per-Call service may provide backup for a self-maintenance program and/or offer additional coverage outside the regular Coverage Period by defining an “Extended Coverage Period.”
  - (b) “Self-Maintenance” is a service whereby the Supplier shall provide spare parts, diagnostic equipment and software, and technical support as necessary to facilitate the diagnosis, maintenance and repair of the Products by the Purchaser’s technical staff, as specified in the **SCC**.
- 17.4 Except as otherwise specified in the **SCC**, the Supplier shall provide the following Services for the Products provided under the Contract in accordance with the service definitions specified in GCC Clause 17.1, provided that provision of these Services shall not relieve the Supplier of any warranty or other obligations under this Contract:
- (a) Unless otherwise and as may be further specified in the Supply Requirements, the Supplier shall provide On-call System Maintenance Services for the Useful Life Period for all Products and Project Sites;

### **C. Payment**

- 18. Contract Price**
- 18.1 The Contract Price shall be the amount specified in the Contract Form.
- 18.2 Except for Maintenance Costs (which are quoted as maximum costs with appropriate price escalation factored in and which may vary downwards from the prices quoted in the Maintenance Costs Schedule under Supplemental Agreements in accordance with GCC Clause 8), the Contract Price shall be a firm lump sum not subject to any alteration, except as a result of a Change

Order pursuant to GCC Clause 33, or in accordance with any price adjustment formula specified in the **SCC**.

- 18.3 The Contract Prices of individual Products and Services are as listed in the Price Schedules, as may be amended during Contract execution, and adhere to the following terms:
- (a) Products supplied from outside the Purchaser's country are priced on a CIP (named place of destination) basis to the Project Site for the Installation Batch specified in the Implementation Schedule, unless otherwise specified in the **SCC**. Requirements for the contract of carriage are as specified in the **SCC**.
  - (b) Products supplied from within the Purchaser's country, unless otherwise specified in the **SCC**, are priced on an EXW (ex factory, ex works, ex warehouse, ex showroom or off-the-shelf, as applicable) basis, including all customs duties and sales and other taxes already paid or payable on the components and materials used in the production of the Products, or on the previously imported Products, but excluding sales or other taxes assessed on the Products in the Purchaser's country. Transportation, insurance and other local costs incidental to delivery of EXW Products to the Project Site shall be priced separately as a Service.
  - (c) Prices for Services required by the Contract are quoted inclusive of all expenses and incidental costs associated with the provision thereof, and include all taxes, duties, levies and fees paid or payable by the Tenderer, its Subcontractors, or their employees on account of the Services in any country.
  - (d) Taxes and duties associated with the supply of Products and Services under the Contract are treated in accordance with GCC Clause 20.

18.4 The Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

## **19. Payment**

19.1 The method and conditions of payment to be made to the Supplier under this Contract shall be specified in the **SCC**. The Supplier's requests for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the

Products Installed or Accepted and Services delivered, and by documents submitted pursuant to GCC Clauses 11.5 and 11.6, and upon fulfillment of other obligations stipulated in the Contract.

19.2 Payments shall be made promptly by the Purchaser, but in no case later than sixty (60) days after submission of an invoice or claim by the Supplier.

19.3 Unless otherwise specified in the SCC, all payments shall be made in the currency specified in the applicable Price Schedules. If both the specified currency and, because of a membership in the European Monetary Union (EMU), the Euro are valid in the country of the specified currency, payments may also be made in Euro. In case the specified currency has ceased to be valid in because of the country's membership in the EMU, payments shall be made in the corresponding amount of the Euro. The conversion of the amount of the specified currency into Euro shall in both cases be made in accordance with the statutory rate of conversion applicable in the country of the specified currency.

19.4 Payment of the foreign currency portion of the Contract Price for imported Products and Services shall be made to the Supplier through an irrevocable letter of credit opened by an authorized bank in the Supplier's country, and will be payable on presentation to it of the appropriate documents. It is agreed that the letter of credit will be subject to Article 10 of the last revision of *Uniform Customs and Practice for Documentary Credits*, published by the International Chamber of Commerce, Paris

19.5 No payment made by the Purchaser herein shall be deemed to constitute Acceptance of the Products or any part thereof by the Purchaser.

## **20. Taxes and Duties**

20.1 Except as otherwise specifically provided in the Contract, the Supplier shall bear and pay all taxes, duties, levies, and charges assessed on the Supplier, its Subcontractors, or their employees by all municipal, state, or national government authorities, both within and outside the Purchaser's Country, in connection with the Products and Services supplied under the Contract.

20.2 Notwithstanding GCC Clause 20.1 above and unless otherwise specified in the SCC, the Purchaser shall bear and promptly pay all customs duties, import taxes, sales or other indirect taxes imposed by law in the Purchaser's Country on Products supplied from outside the Purchaser's country under the Contract.

- 20.3 If any tax exemptions, reductions, allowances, or privileges may be available to the Supplier in the Purchaser's Country, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.
- 20.4 For the purpose of the Contract, it is agreed that Contract Prices are based on the taxes, duties, levies and charges prevailing on the date twenty-eight (28) days prior to the date of tender submission in the Purchaser's country (hereinafter called "Tax" in this GCC Clause 20.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Supplier, Subcontractors, or their employees in connection with performance of the Contract, an equitable adjustment to the affected Contract Prices shall be made to fully take into account any such change.

## 21. Securities

- 21.1 **Advance Payment Security:** Within twenty-eight (28) days of notification of Contract Award the Supplier shall provide a security in the currency and in an amount equal to that of the advance payment to be received under the Contract.
- 21.2 The Advance Payment Security shall be in the form provided in the Tendering Documents or in another form acceptable to the Purchaser. The amount of the security shall be reduced in proportion to the value of payments becoming due to the Supplier, and shall automatically become null and void and shall be immediately returned to the Supplier when the full amount of the advance payment has been recovered in kind by the Purchaser.
- 21.3 **Performance Security:** Within twenty-eight (28) days of the notification of Contract award the Supplier shall provide a security denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Purchaser, and in the amount specified in the SCC for the due performance of the Contract.
- 21.4 The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract. The Performance Security shall be in one of the following forms:

- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank acceptable to the Purchaser located in the Purchaser's country or abroad, in the form provided in the tendering documents or another form acceptable to the Purchaser; or
  - (b) a cashier's or certified check.
- 21.5 Unless otherwise specified in the SCC, the Performance Security shall be reduced by half six (6) months after completion of the Implementation Period, when the Supplier has demonstrated the ability to fulfill its Warranty obligations.
- 21.6 Unless otherwise specified in the SCC, the Performance Security shall be discharged in full by the Purchaser and returned to the Supplier not later than thirty (30) days following expiration of the Warranty Period for all the Products, provided, however, that if the Supplier has obligations for the Maintenance Period under Supplemental Agreements pursuant to GCC Clause 8, the following conditions must also be met:
  - (a) the Supplier shall have fulfilled Maintenance Period obligations for six (6) months and shall not be in default on any of the Supplemental Agreements; and
  - (b) the quoted annual Maintenance Costs are not lower than 2.5% of the total supply cost of the Products (indicating performance risk with costs substantially below a reasonable industry average percentage);
  - (c) there shall be no operating or usage restrictions or Supplier or Producer controls present in any key Software Products that would introduce a business continuity risk for the Purchaser, e.g., by means of Supplier-controlled passwords, keys or codes or other Supplier-controlled mechanisms of any kind.
- 21.7 Unless otherwise specified in the SCC, if any of the conditions specified in GCC Clauses 21.6(a), 21.6(b) or 21.6(c) are not met, the Performance Security shall remain in force for the entire Maintenance Period and decreased from its amount at the end of the Warranty Period by a prorated percentage the end of each year in the Maintenance Period (equal to one divided by the number of years in the Maintenance Period).

**22. Liquidated Damages**

22.1 Subject to the provisions of GCC Clauses 31 and 34, if the Supplier fails to install the Products or to perform the Related Services within the period(s) specified in the Implementation Schedule, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in **SCC** of the price of the delayed Products or unperformed Services for each week or part thereof of delay until actual Installation or performance, up to a maximum deduction of the percentage specified in **SCC**. Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to GCC Clause 35.

## D. Intellectual Property

**23. Copyright**

23.1 The Intellectual Property Rights in all Off-the-shelf Software and associated documentation shall remain vested in the owner of such rights.

23.2 The Purchaser agrees to use, copy, assign, install and duplicate Off-the-shelf Software and its documentation in accordance with the associated Software License Agreement, pursuant to GCC Clause 24. However, the Purchaser may make additional copies of documentation for use within the scope of the Project in the event that the Supplier is unable to deliver new copies within 30 days from receipt of an order.

**24. Software License Agreements**

24.1 The Supplier hereby grants to the Purchaser a non-exclusive License to install, configure, use and integrate the Software and related documentation provided under the Contract, including all inventions, designs, and marks embodied in the Software. All Software Licenses are granted subject to the provisions and for the purposes specified in the Contract and, except where otherwise specified in the Contract for a particular Software Product, are Perpetual Use Licenses. The term of the Licenses provided under the Contract shall commence no later than the date of Installation of the Software. In the event of a conflict between the Contract and any licensing terms or conditions supplied with or as part of the Software (hereinafter called an “End User License Agreement” or “EULA”), the provisions of the Contract shall prevail.

24.2 All Software Maintenance and Licensing costs necessary to fulfill the requirements of the Contract, to keep the System operating

normally for the Useful Life Period in accordance with the Supply Requirements, and to maintain compliance with any Supplemental Agreements, whether payable to the Supplier or to a third party or subcontractor, that are not specifically indicated in the Price Schedules shall be deemed to be included in the Contract Price in accordance with GCC Clause 18.4 and shall be paid promptly by the Supplier when due.

24.3 Renewable Software Licenses provided under the Contract are subject to the following provisions, except as otherwise specified in the SCC:

- (a) Renewable Licenses shall be renewed automatically on an annual basis, and, for Licenses restricted to particular Software version(s), renewal automatically upgrades the License to include the latest version of the Software available on the renewal date, and also any subsequent Maintenance Releases therefor.
- (b) The Purchaser may terminate a Renewable License at any time upon 30 days prior written notice, and shall promptly receive a full refund of any unused portion of the License fee from the Supplier.
- (c) The Supplier may revoke a Renewable Software License in the event of non-payment of the Renewable License fee indicated in the Maintenance Costs Form no less than thirty (30) days after receipt by the Purchaser of an invoice therefor and no less than sixty (60) days from the date of expiration of the term of the Renewable License.
- (d) Upon termination or expiration of a Renewable Software License, all use of the Software by the Purchaser shall cease within thirty (30) days from the effective date of such termination or expiration.

24.4 All Software Licenses provided under the Contract are subject to the following provisions, as may be modified or added to (for all or specific Software) in the SCC:

- (a) The geographic scope of the Licenses extends to the Purchaser's country and all of its territories, except for any Software, which the Supply Requirements specify is for use on portable computers or to be accessed over the Internet, the geographic scope of which shall be worldwide.

- (b) The Purchaser may configure, customize, adapt, integrate or combine the Software Product with other Software, provided that derivative Software incorporating any substantial part of a supplied Software Product shall be subject to same restrictions as are set forth in this Contract therefor.
- (c) The Purchaser may make a reasonable number of backup copies of the Software Media for safekeeping only.
- (d) The Purchaser may transfer the Software License to a replacement computer without charge and at its own discretion, provided that, if the Contract restricts the License to a specific type of computer, the replacement computer is of the specified type. Use of the Software on the original and replacement computers may be simultaneous during a reasonable transitional period of no more than 60 days.
- (e) With the exception of operating system and special purpose disaster recovery Software, the Purchaser may install the Software on a designated backup computer for purposes of providing disaster recovery preparedness without charge, as long as the Software is only used on the backup computer in the event that the primary computer for which the Software License was purchased, or its replacement, is inoperative; during a reasonable transitional period when use is being transferred between primary and backup, or for reasonable test periods for verifying the state of preparedness.
- (f) The Purchaser may install and test the operation of the Software, in the event of receipt of a new Release of the Software or of underlying or prerequisite System Software, on a development or test machine for up to 30 days, at no additional charge and at its own discretion.
- (g) The Supplier shall promptly supply any license keys or authorization codes necessary to facilitate installation, testing and use of the Software on the Purchaser's replacement, backup or test computers as described in GCC Clauses 24.4(d), 24.4(e) and 24.4(f), respectively.
- (h) The Supplier may not revoke a Software License, except as provided under GCC Clause 24.3©, nor disable or otherwise impair the operation of the Software without the Purchaser's prior written consent.

- (i) The Supplier warrants that each copy of the Software Distribution Media that it provides to the Purchaser under the Contract shall be free from physical defects and will promptly replace any defective Media at its own expense.
- (j) The Supplier warrants that for the Useful Life Period no copy of the Software contains or will contain any Surreptitious Code.
- (k) The Purchaser's usage of the Software Products identified in the **SCC** shall be subject to audit by the Supplier to verify compliance with the terms of the Software License Agreement, at the Supplier's expense and no more frequently than once per calendar year, to be scheduled at mutually convenient times and under mutually agreeable procedures, subject to the audit provisions specified in the **SCC**. For such audit provisions to be effective, appropriate software enabling the Purchaser to track and manage Software License quantities, types and Maintenance agreements purchased, and to automatically monitor software usage and version releases against those licenses and agreements must be included in the tender and installed and configured by the Supplier prior to the expiration of the Warranty Period for the relevant Software Product.

24.5 Unless otherwise specified in **SCC** for a specific Software Product, User-Based Licenses for personal computer Software shall permit its installation and use on more than one computer normally used by the same user at different times, provided that the Software will not be used simultaneously on more than one computer system.

24.6 Except as otherwise specified in the **SCC**, Software Licenses provided under the Contract shall permit the Software to be disclosed to and reproduced for use by service providers and their subcontractors exclusively in performance of their obligations under the Contract or any Supplemental Agreements associated therewith, subject in all cases to the same restrictions as are set forth in this Contract.

24.7 Subject to a supplementary Source Code Escrow Agreement for the Application Software identified in the **SCC** as being critical to the Purchaser's operations, which shall be entered into with a reputable escrow agent of the Supplier's choosing and acceptable to the Purchaser prior to the Start Date per GCC Clause 3.1, the Supplier and/or the Software Producer shall maintain current and verifiably complete Source Code on deposit with the escrow agent

throughout the entire Useful Life Period, with provisions for the following

- (a) The events triggering prompt release of the Source Code to the Purchaser shall include insolvency or bankruptcy of the Software Producer, its cessation of or notice of intent to cease fulfilling its obligations under any Maintenance Agreement for the Software to which it is party, or its default under the Escrow Agreement.
- (b) In the event that any of the trigger events occur, the Purchaser shall promptly receive and have the right to access, modify, retain and use the Source Code to enable its continued use of the Software in accordance with the License Agreement for the rest of the Useful Life Period.
- (c) The Source Code shall be released in favor of the owner thereof at the end of the Useful Life Period, or in the event of normal or Purchaser-initiated termination of the License and Supplemental Agreements for Maintenance Services for the Software, whichever comes first.
- (d) Inclusion of any additional provisions specified in the SCC.

## **25. Confidential Information**

- 25.1 The Supplier shall not, without the Purchaser's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, schedule, design, or information furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 25.2 The Supplier shall not, without the Purchaser's prior written consent, make use of any document or information enumerated in GCC Clause 25.1 except for purposes of performing the Contract.
- 25.3 Any document, other than the Contract itself, enumerated in GCC Clause 25.1, or the development of which under the Contract is paid for by the Purchaser shall remain the property of the Purchaser and shall be returned (all copies) to the Purchaser on completion of the Supplier's performance under the Contract, if so required by the Purchaser.

25.4 Each party shall keep confidential and use only for the purposes of the contract any information identified by the other in the **SCC** as being of a confidential nature, except that either party may disclose under confidence to subcontractors or financiers confidential information necessary to perform the Contract

## **E. Guarantees and Liabilities**

### **26. Warranty**

26.1 The warranty provisions in this GCC Clause 26 shall remain valid for the Warranty Period specified in GCC Clause 1.1(hh), except where otherwise specified in the specific sub-clause. Provisions of the Supplier's or Producer's standard commercial warranty for the Products shall also apply to the extent that they do not conflict with the provisions of the Contract.

26.2 The Supplier warrants that the Products supplied under the Contract are new, unused, the most recent or current models, and that they incorporate all recent improvements in design and components, unless provided otherwise in the Contract. The Supplier also warrants that all Products form part of the Producers' current product lines, have been previously released to the market, and that all Off-the-shelf Software has been in production use for at least three months. The Supplier also warrants that the Products comply with the Supply Requirements and the Supplier's tender.

26.3 The Supplier further warrants that equipment supplied under this Contract shall have no defect arising from design, materials, or workmanship during Acceptance testing and for the duration of the Warranty Period that prevent the Products or the entire System from fulfilling the Supply Requirements, or that limit in a material fashion the performance, reliability or extensibility of the Product or System. This warranty excludes defects attributable to external factors beyond the Supplier's control, including power supply fluctuations, or the Purchaser's alterations, misuse or negligence in proper maintenance of the equipment.

26.4 The Supplier warrants for the Useful Life Period that the Products being supplied under this Contract are designed to be used prior to, during, and after the calendar year 2000 AD ("Year 2000"), including correct treatment of the year 2000 as a leap year, and that the System will operate during each such time period without error relating to date data, specifically including any error relating to, or the product of, date data that represents or references different centuries or more than one century. Without limiting the generality of the foregoing, the Supplier further represents and

warrants that, for the Useful Life Period, the Products will not abnormally terminate or provide invalid or incorrect results as a result of date data, specifically including date data that represents or references different centuries or more than one century; have been designed to ensure Year 2000 compatibility, including, but not limited to, date data century recognition, calculations that accommodate same-century and multi-century formulas and date values, and date data interface values that reflect the century; and will manage and manipulate data involving dates, including single-century formulas and multi-century formulas, and will not terminate abnormally or generate incorrect data.

26.5 The Supplier hereby represents and warrants that all Software provided under the Contract does not and will not infringe any Intellectual Property Rights held by any third party and that the Supplier has all necessary rights, or at his sole expense shall have secured in writing all transfers of rights and other consents necessary to License for use and warrant the Software per the terms of this Contract for the Useful Life Period.

26.6 Unless otherwise specified in the SCC, the Supplier hereby represents and warrants that, during the Implementation and Warranty Periods, Software provided under the Contract will operate in accordance with the associated documentation and with the claims related thereto included in the Supplier's tender, which is hereinafter referred to as the "As-Documented Warranty." Instances of noncompliance with the As-Documented Warranty shall be reported to the Supplier in writing prior to the expiration of the Warranty Period. Upon receipt of notice of such noncompliance, the Supplier will promptly implement corrective measures for the defect in accordance with the provisions of GCC Clause 26.7 and any applicable Supplemental Agreement for Software Maintenance and/or Support Services.

26.7 The Supplier shall effect repair or replacement of Products not meeting these performance guarantees and warranties promptly upon receipt of notice thereof at its own cost and expense and with all reasonable speed within such times and under such procedures, as are specified in the SCC. The Supplier shall not be relieved of his obligations stated herein until the Purchaser is satisfied that the repaired and replaced Products are performing in accordance with the performance guarantees specified in the Contract. When he Supplier fails to remedy the defect(s) within the times specified in the SCC, the Purchaser may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and

without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

26.8 Replacement equipment shall be covered under warranty for a three month period, or the time remaining in the Warranty Period for the item replaced, whichever is greater. The Warranty Period for replacement Software shall be identical to the initial warranty period for the defective Software. Replaced Products shall be the property of the Supplier.

**27. Intellectual  
Property Rights  
Indemnification**

27.1 The Supplier shall indemnify and defend the Purchaser against all third party claims of infringement of Intellectual Property Rights of any kind arising from the supply or use by the Purchaser of the Products or any part thereof.

27.2 The Supplier shall expeditiously extinguish any such claims and shall have full rights to defend itself therefrom. If the Purchaser is required to pay compensation to a third party resulting from such infringement, the Supplier shall be fully responsible therefor, including all expenses and court and legal fees. If such a claim is made or appears likely to be made, the Purchaser agrees to permit the Supplier to enable the Purchaser at the Supplier's expense, to continue to use the Supplier Product or to modify or replace it with a Supplier Product which has published specifications equal or superior to the Supplier product being replaced. If none of the alternatives is available, the Supplier, at its own expense, will secure for the Purchaser the use of an equivalent product and bear all related conversion, installation, and training costs.

27.3 The Purchaser will give notice to the Supplier of any such claim without delay, shall provide reasonable assistance to the Supplier in disposing of the claim, and shall at no time admit to any liability for or express any intent to settle the claim.

27.4 Indemnities shall not apply if any claim of infringement or misappropriation is asserted by a parent, subsidiary or affiliate of the Purchaser's organization, if it is a direct result of a design mandated by the Purchaser's Technical Specifications and the possibility of such infringement was duly noted in the Supplier's Tender, or if it results from the Purchaser's alteration of the Products in a manner not prescribed in the Contract.

28.1 Except in cases of criminal negligence or willful misconduct or in the case of IPR infringement pursuant to GCC Clause 27:

**28. Limitation of Liability**

- (a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and
- (b) the aggregate liability of the Supplier to the Purchaser under the Contract shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective Products, or to the obligation of the Supplier to indemnify the Purchaser pursuant to GCC Clause 27.

## **F. Distribution of Risk**

**29. Property Damage, Accident or Injury Indemnities**

- 29.1 Each party, whether the Purchaser or the Supplier, shall indemnify and hold harmless the other party and its employees and officers from and against any and all losses, liabilities and costs (including losses liabilities and costs incurred in defending a claim alleging such a liability) which the other party or its employees or officers may suffer as a result of the death or injury of any person or loss of or damage to any property, arising in connection with the activities under the Contract and by reason of the negligence of the first party or its Subcontractors, or their employees, officers or agents.

**30. Insurance**

- 30.1 The Supplier shall arrange and pay or otherwise provide for and maintain in effect the insurance set forth below, unless otherwise specified in the **SCC**. The identity of the insurers and the form of the policies shall be subject to the approval of the Purchaser, which approval shall not be unreasonably withheld.

- (a) **Cargo Insurance During Transport.** The Products supplied under the Contract shall be fully insured to 110% of their price in a freely convertible currency, covering the Products against loss or damage during shipment through receipt at the Project Site. The policy shall name the Purchaser as the beneficiary.
- (b) **Third Party Liability Insurance** covering bodily injury or death suffered by third parties (including the Purchaser's personnel) and loss of or damage to property (including the Purchaser's property and any Products that have been delivered or Installed by the

Supplier) arising out of the Supplier's execution of the Contract.

- (c) Workers' Compensation and Employer's Liability Insurance in accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.
- (d) Additional insurance as specified in the SCC.

30.2 The Supplier shall provide coverage or otherwise ensure that its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, including Workers' Compensation and Employer's Liability Insurance in accordance with applicable statutory requirements.

30.3 Unless otherwise provided in the Contract, the Supplier shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 30, and all monies payable by any insurers shall be paid to the Supplier. The Purchaser shall give to the Supplier all such reasonable assistance as may be required by the Supplier in connection with any claim under the relevant insurance policies. With respect to insurance claims in which the Purchaser's interest is involved, the Supplier shall not give any release or make any compromise with the insurer without the prior written consent of the Purchaser. With respect to insurance claims in which the Supplier's interest is involved, the Purchaser shall not give any release or make any compromise with the insurer without the prior written consent of the Supplier.

### **31. Force Majeure**

31.1 Notwithstanding the provisions of GCC Clauses 22, 34 and 35, the Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

31.2 For purposes of this clause, "Force Majeure" means an event beyond the control of the Supplier and not involving the Supplier's fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

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

## **G. Contract Administration**

### **32. Implementation Schedule and Project Plan**

- 32.1 Unless otherwise specified in the SCC, the Contract Implementation Schedule and the accompanying, detailed Project Plan included in the Supplier's tender, and any amendments thereto shall conform to the Purchaser's requirements specified in the Supply Requirements. Any modifications to the Implementation Schedule shall be ratified by a written amendment to the Contract. The parties will use the Implementation Schedule to assess and manage the Supplier's performance under the Contract, including but not limited to the assessment of liquidated damages in accordance with GCC Clause 22.

### **33. Change Orders**

- 33.1 The Purchaser may at any time, by Notice given to the Supplier pursuant to GCC Clause 5, make changes within the general scope of the Contract in any one or more of the following:

- (a) technical specifications of the Products
- (b) the method of shipment or packing
- (c) the place and schedule for Installation and Acceptance
- (d) the Services to be provided by the Supplier
- (e) the obligations of either party under the Contract.

- 33.2 If any such change causes an change in the cost of, or the time required for the Supplier's performance of the Contract, an equitable adjustment shall be made in the Contract Price or Implementation Schedule, or both, and the Contract shall be amended accordingly. Any claims by the Supplier for adjustment under this clause must be asserted within thirty (30) days from the date of the Supplier's receipt of the Purchaser's change order.

33.3 The Supplier may at any time request a change to the same Contract elements listed in Clause 33.1, by means of written Notice to the Purchaser stating the cause for the request and the adjustments to Contract Price and Implementation Schedule that would result from the change. Within 15 days of receipt of the Notice, the Purchaser will make a determination as to whether to accept the change request and amend the Contract accordingly, or to reject the change, and shall promptly inform the Supplier.

**34. Extensions of the Implementation Schedule**

34.1 If at any time during performance of the Contract, the Supplier should encounter conditions impeding timely delivery or Installation of the Products or Services, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause(s).

34.2 As provided under GCC Clause 31, or in the event of a delay in the Implementation Schedule resulting from failure of the Purchaser to provide necessary resources or timely completion of prerequisite tasks for Installation clearly identified in the Implementation Schedule or Project Plan as being the Purchaser's responsibility, or in the event of a delayed Installation that is a result of a delay in customs clearance that is not the fault of the Supplier, the Supplier shall be entitled to an extension in the Implementation Schedule without the assessment of liquidated damages

34.3 As soon as practicable after receipt of the Supplier's notice of a delay, the Purchaser shall evaluate the situation and may extend the Supplier's time for performance, with or without liquidated damages pursuant to GCC Clauses 22 and 34.2. Extensions to the Implementation Schedule shall be ratified by the parties by a written amendment to the Contract.

**35. Termination for Default**

35.1 The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate this Contract in whole or in part:

- (a) if the Supplier fails to deliver any or all of the Products within the period(s) specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 34; or
- (b) if the Supplier fails to perform any other obligation(s) under the Contract.

- (c) if the Supplier, in the judgment of the Purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract. For the purposes of this Clause:

“corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Purchaser, and includes collusive practices among Tenderers (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Purchaser of the benefits of free and open competition.

### **36. Termination for Convenience**

- 36.1 The Purchaser, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser’s convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- 36.2 The Products or Services that are complete and ready for shipment or delivery within thirty (30) days after the Supplier’s receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Products and Services, the Purchaser may elect:
- (a) to have any portion completed and delivered at the Contract terms and prices; and/or
  - (b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Products and Services and for materials and parts previously procured by the Supplier.
- 36.3 The Purchaser shall pay to the Supplier the cost of satisfying all other obligations, commitments and claims that the Supplier may in good faith have undertaken with third parties in connection with the contract.

- 37. Termination for Insolvency** 37.1 The Purchaser may at any time terminate the Contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.
- 38. Assignment** 38.1 Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party. Such consent shall not relieve the Supplier from any of its obligations, duties, or responsibilities under the Contract.

## Section IX. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC. The Corresponding clause number of the GCC is indicated in the left hand column.

<b>GCC 1.1(g)</b>	The Coverage Period is: _____
<b>GCC 1.1 (v)</b>	The Purchaser is: _____
<b>GCC 1.1 (s)</b>	The Purchaser's Project Manager is: _____
<b>GCC 1.1 (hh)</b>	The Warranty Period shall be as follows:  (a) _____ for Software;  (b) _____ for servers and communications equipment; and  (c) _____ for workstations, printers and all other Products.
<b>GCC 1.1</b>	The following additional provisions apply to the definitions provided:  _____ _____
<b>GCC 3.1 (e)</b>	The following additional conditions must be met prior to the Start Date:  _____
<b>GCC 4.1</b>	The Contract language shall be English.

<b>GCC 5.1</b>	For <b><u>notices</u></b> , the Purchaser's address shall be: Attention: _____ Street Address: _____ Floor/ Room number: _____ City: _____ Region: _____ Country: _____ Telephone: _____ Facsimile number: _____ Electronic mail address: _____
<b>GCC 5.1</b>	For <b><u>notices</u></b> , the Supplier's address shall be: Attention: _____ Street Address: _____ Floor/ Room number: _____ City: _____ Region: _____ Country: _____ Telephone: _____ Facsimile number: _____ Electronic mail address: _____
<b>GCC 6</b>	The Contract shall be governed by the laws of Ghana

<b>GCC 7.2(b)</b>	<p>The formal mechanism for the resolution of disputes shall be as follows:</p> <p><i>(a). For contracts entered into with Foreign Suppliers:</i></p> <p>In case of a dispute between the Purchaser and the supplier, the dispute shall be settled by arbitration in accordance with the provisions of the United Nations Commission on International Trade Law (UNCITRAL) arbitration Rules.</p> <p><i>(b). For contracts entered into with suppliers from Ghana</i></p> <p>In the case of a dispute between the Purchaser and a Supplier from Ghana, the dispute shall be referred to adjudication or arbitration in accordance with the laws of Ghana.</p>
<b>GCC 8.2</b>	<p>The Supplemental Agreements shall also include provisions substantially equivalent to the following:</p> <p>_____</p> <p>_____</p>
<b>GCC 11.3</b>	<p>Any transportation costs required after initial delivery to the designated Project Site will be the responsibility of the Purchaser.</p>
<b>GCC 12</b>	<p>Acceptance test procedures and success criteria are specified in the Technical Specifications and the Project Plan. Acceptance test support Services required from the Supplier are specified in GCC Clause 15.</p> <p>The procedures for responding to and correcting any reported Acceptance testing failures are as follows: _____</p> <p>_____</p>
<b>GCC 13.1</b>	<p>The Supplier's obligations shall include the following additional requirements: _____</p>
<b>GCC 14.1</b>	<p>The Purchaser's obligations shall include the following additional requirements: _____</p>
<b>GCC 15.1</b>	<p>The following additional or modified Project Implementation Services shall be provided by the Supplier:</p> <p>_____</p> <p>_____</p>

<b>GCC 16</b>	The following additional or modified Software Maintenance and Technical Support Services shall be provided by the Supplier:  _____  _____
<b>GCC 17</b>	The following additional or modified Hardware and Maintenance and Operational Support Services shall be provided by the Supplier:  _____  _____
<b>GCC 18.2</b>	There is no applicable price adjustment formula.
<b>GCC 18.3(a)</b>	The contract of carriage for CIP Products shall include payment by the Supplier of the cost of any customs formalities, duties, taxes or other charges payable on the Products for or during their transit through any country other than Ghana, and shall exclude the cost of customs formalities, duties, taxes or other charges payable on the Products upon import into Ghana.
<b>GCC 18.3(b)</b>	No changes to Contract provisions for Products supplied from within Ghana.

<b>GCC 19.1</b>	<p>The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <ul style="list-style-type: none"> <li>• <input type="checkbox"/> <b>Advance Payment:</b> Ten (10) percent of the Contract Price, exclusive of any Maintenance Costs, shall be paid within thirty (30) days of signing of the Contract, and upon submission of claim and a bank guarantee for equivalent amount valid until the Products are delivered and in the form provided in the tendering documents or another form acceptable to the Purchaser.</li> <li>• <input type="checkbox"/> <b>Payment for Products</b> shall be made in the currency specified for the Product in the applicable Price Schedule in the following manner:       <ol style="list-style-type: none"> <li>(i) <b>On Shipment:</b> Sixty (60) percent of the Contract Price of the Products shipped shall be paid through irrevocable confirmed letter of credit opened in favor of the Supplier in a bank in its country, upon submission of documents specified in GCC Clause 11.</li> <li>(ii) <b>On Installation:</b> Fifteen (15) percent of the Contract Price of Products installed shall be paid within thirty (30) days upon submission of claim supported by the Installation certificate issued by the Supplier.</li> </ol> </li> <li>• <input type="checkbox"/> <input type="checkbox"/> <b>Payment for Related Services</b> (except Maintenance Costs) shall be made in the currency specified for the Service in the Related Services Price Schedule, as follows:       <ol style="list-style-type: none"> <li>(i) <b>On Delivery:</b> Seventy-five (75) percent of the Contract Price of Services shall be paid monthly in arrears on receipt of the Services and upon submission of claim and Purchaser's approval thereof.           <ul style="list-style-type: none"> <li><input type="checkbox"/> <input type="checkbox"/> <b>Acceptance:</b> The remaining fifteen (15) percent of the Contract Price for Products and Services shall be paid to the Supplier within thirty (30) days from the date of Acceptance and upon submission of claim supported by the Acceptance certificate issued by the Purchaser. For the purposes of payment, Acceptance of Services shall be considered to be included in the Acceptance of Products for which the Services were provided, except as otherwise specified in SCC Clause 12.</li> </ul> </li> </ol> </li> <li>• <input type="checkbox"/> <b>Maintenance Period Services from the Maintenance Costs Schedule</b> shall be paid one hundred (100) percent, monthly in arrears upon submission of claim and Purchaser's approval thereof</li> </ul>
<b>GCC 21.3</b>	The Performance Security shall be for an amount equal to ___ (__) percent of the Contract Price in _____ currency.
<b>GCC 21.5</b>	No changes to GCC provisions regarding reduction of performance security.

<b>GCC 22</b>	Liquidated damages for late Installations shall be assessed at ___ percent per week. The maximum liquidated damages are ____ percentage of the Contract Price.
<b>GCC 24.3</b>	Renewable Software Licenses provided under the Contract are subject to the following additional provisions: _____
<b>GCC 24.4</b>	Software Licenses provided under the Contract are subject to the following additional provisions: _____
<b>GCC 24.4 (k)</b>	The following Software shall be subject to license audits as specified below: Software: _____ Audit Provisions: _____
<b>GCC 24.5</b>	The following restrictions shall apply to User-Based Licenses for the particular personal computer Software indicated below: Software: _____ Restriction: _____
<b>GCC 24.6</b>	No additional stipulations shall apply regarding the Purchaser's right to disclose or provide access to the Software to contracted service providers.
<b>GCC 24.7</b>	No Application Source Code Escrow arrangements are required.
<b>GCC 25.1</b>	For the purposes of the confidentiality agreement between the Parties the following special documents are identified as being of a confidential nature: By the Purchaser: _____ By the Supplier: _____
<b>GCC 26.6</b>	Exceptions, limitations or additional performance standards for the Documented Warranty for Software are as follows: _____ _____
<b>GCC 26.7</b>	The Supplier shall effect Warranty repair or replacement within the following time periods and under the following procedures: _____ _____
<b>GCC 30.1</b>	No modifications to GCC provisions regarding Insurance.
<b>GCC 30.1(d)</b>	No additional insurance is required
	No modifications to GCC Implementation Schedule provisions.



## **Section X. Contract Forms**

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## **INSTRUCTIONS FOR THE CONTRACT FORMS**

1. The Purchaser or the successful Tenderer, as appropriate, shall fill in and complete the Contract Forms in accordance with these instructions, the Instructions to Tenderers and the Contract. Tenderers shall not submit these forms with their tenders.
2. The **Contract Form** shall be completed by the Purchaser and then sent to the successful Tenderer for signature. Instructions on how to complete this form are included in the User's Guide.
3. The successful Tenderer shall fill in and complete the **Performance Security** form in accordance with ITT Clause 46 and the annotated version of the form provided in the User's Guide. Tenderers shall not submit this form with their tenders.
4. The successful Tenderer shall fill in and complete the **Bank Guarantee for Advance Payment** form in accordance with GCC Clause 21.1 and the annotated version of the form provided in the User's Guide. Tenderers shall not submit this form with their tenders.
5. Specify currencies in accordance with ITT Clause 14 using ISO (standard 4217) currency codes.
6. Specify countries using official ISO (standard 3166) country codes..

# CONTRACT FORM

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ of \_\_\_\_\_ (hereinafter “the Purchaser”), of the one part, and \_\_\_\_\_ of \_\_\_\_\_ (hereinafter “the Supplier”), of the other part:

WHEREAS the Purchaser invited tenders for certain Products and Related Services, viz., \_\_\_\_\_ and has accepted a Tender by the Supplier for the supply of those Products and Related Services in the sum of \_\_\_\_\_ (hereinafter “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:
  - (a) this Contract Form;
  - (b) the Special Conditions of Contract;
  - (c) the General Conditions of Contract;
  - (d) the Schedule of Supply;
  - (e) the Technical Specifications;
  - (f) the Tender and the Price Schedules submitted by the Supplier;
  - (g) the Purchaser’s Notification to the Supplier of award of Contract; and
  - (h) \_\_\_\_\_.
3. In consideration of the payments to be made by the Purchaser to the Supplier as indicated in this Agreement, the Supplier hereby covenants with the Purchaser to provide the Products and Related Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Products and Related Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Ghana on the day, month and year indicated above.

Signed by \_\_\_\_\_ (for the Purchaser)

Signed by \_\_\_\_\_ (for the Supplier)

# PERFORMANCE SECURITY

Date: \_\_\_\_\_

ICT No.: \_\_\_\_\_

Invitation for Tender No.: \_\_\_\_\_

Tender & Lot Nos.: \_\_\_\_\_

To: \_\_\_\_\_

WHEREAS \_\_\_\_\_ (hereinafter "the Supplier") has undertaken, pursuant to Contract No. \_\_\_\_\_ dated \_\_\_\_\_, \_\_\_\_\_ to supply \_\_\_\_\_ (hereinafter "the Contract").

AND WHEREAS it has been stipulated by you in the aforementioned Contract that the Supplier shall furnish you with a security \_\_\_\_\_ issued by a reputable guarantor for the sum specified therein as security for compliance with the Supplier's performance obligations in accordance with the Contract.

AND WHEREAS the undersigned \_\_\_\_\_, legally domiciled in \_\_\_\_\_, (hereinafter "the Guarantor"), have agreed to give the Supplier a security:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total of \_\_\_\_\_ and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract, without cavil or argument, any sum or sums within the limits of \_\_\_\_\_ as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signed \_\_\_\_\_ in the capacity of \_\_\_\_\_

Name \_\_\_\_\_

Duly authorized to sign the authorization for and on behalf of \_\_\_\_\_

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

# Bank Guarantee for Advance Payment

Date: \_\_\_\_\_

ICT No.: \_\_\_\_\_

Invitation for Tender No.: \_\_\_\_\_

Tender & Lot Nos.: \_\_\_\_\_

To: \_\_\_\_\_

In accordance with the payment provision included in the Contract, relation to advance payment, \_\_\_\_\_ (hereinafter called "the Supplier") shall deposit with the Purchaser a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in the amount of \_\_\_\_\_.

We, the undersigned \_\_\_\_\_, as instructed by the Supplier, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Purchaser on its first demand without whatsoever right of objection on our part and without its first claim to the Supplier, in the amount not exceeding \_\_\_\_\_.

This guarantee shall remain valid and in full effect from the date of the advance payment received by the Supplier under the Contract until \_\_\_\_\_, \_\_\_\_\_.

Name \_\_\_\_\_ In the capacity of \_\_\_\_\_

Signed \_\_\_\_\_

Duly authorized to sign for and on behalf of \_\_\_\_\_

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.