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KHOLONGCHHU HYDRO ENERGY LIMITED

A Joint Venture of Druk Green (Bhutan) & SJVN (India)

Incorporated under the Companies Act of Kingdom of Bhutan, 2000

KHOLONGCHHU HYDROELECTRIC PROJECT (600 MW)



BIDDING DOCUMENT

FOR

CONSTRUCTION OF BHU BUILDING and AUXILIARY

WORKS AT DOKSUM/KHITSHANG

TRASHIYANGTSE

TENDER NO.: INFRA – 2022-1

NIT No. 04/KHEL/P&C/NIT/BNHU/2022/6728 dated JANUARY 31, 2022

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SECTION I - NOTICE INVITING TENDER





ABRIDGED NOTICE INVITING TENDER
**KHOLONGCHHU HYDRO ENERGY
LIMITED TRASHIYANGTSE BHUTAN**
(Domestic Competitive Bidding)

04/KHEL/P&C/NIT/BHU/2022/6728


January 31, 2022

Kholongchhu Hydro Energy Limited (KHEL) Invites sealed bids from eligible and qualified Bhutanese Contractors having valid **“Large Class / W3 (Large) Category”** for civil work and at least **“Medium Class/W4 category”** for power and telecommunication, CDB construction license and trade license for the following work:

| Tender No. | Name of work | Bid Security (Nu.) | Completion period | Cost of Bidding Document (Nu.) |
|--------------|---|--------------------|-------------------|--------------------------------|
| Infra 2022-1 | Construction of BHU Building and Auxiliary Works at Doksum, Trashiyangtse | 1,883,000.00 | 24 Months | 5,000.00 |

The Bidding Document shall be on sale from January 31, 2022 up to March 1, 2022. Bids shall be received up to 10.30 AM BST on or before March 2, 2022 and shall be opened on the same day at 11.00 AM BST. Interested Bidders may obtain the complete set of Bidding Document upon payment of non-refundable fee of Nu. 5,000.00 (Ngultrum Five Thousand only) from the Procurement and Contracts Division, KHEL, Trashiyangtse or download from KHEL website (www.khepbhutan.com), in which case, the bidders should register themselves by intimating the Procurement and Contracts Division, KHEL before the deadline for submission of the bid and submit the cost of the Bidding Document at the time of submitting the bid. The bid security arranged in the form of Bank Guarantee shall be as per the format attached in the bidding document failing which bids shall be liable for rejection.

For further information, kindly contact this office at Tele No.04-781158/781169/781167 during office hours.


Chief (Procurement & Contracts)





DETAILED NOTICE INVITING TENDER
KHOLONGCHHU HYDRO ENERGY LIMITED

A Joint Venture of Druk Green (Bhutan) & SJVN (India) Incorporated under the Companies Act of the Kingdom of Bhutan, 2000

Kholongchhu Hydroelectric Project (600 MW)
(Domestic Competitive Bidding)

04/KHEL/P&C/NIT/BHU/2022/6728

January 31, 2022

1. Kholongchhu Hydro Energy Limited (KHEL) invites sealed bids from eligible and qualified Bhutanese Contractor having valid **"Large Class / W3 (Large) Category and at least Medium Class W4 Category"** CDB construction license and trade license for Construction of BHU Building and Auxiliary Works at Doksum, Trashiyangtse

2. SCOPE OF WORK

The scope of work under this Contract Package comprise of the following along the various locations of Kholongchhu Hydro-Electric Project, Trashiyangtse:

- i. Construction of BHU at Doksum/Khitshang, Trashiyangtse.

3. Detailed specifications, scope of work and terms and conditions are given in the Bidding Documents, which are available for sale at the address given below as per the following schedule:

| | |
|---|---|
| Tender No. | Infra – 2022-1 |
| Estimated Cost | Nu. 94,141,398.78 |
| Name of Work | Construction of BHU Building and Auxiliary Works at Doksum/Khitshang, Trashiyangtse |
| Contact Period | 24 Months |
| Sale of Bidding Documents | January 31, 2022 to March 1, 2022 |
| Last Date of receipt of Bid | March 2, 2022 up to 10.30 AM BST |
| Pre-bid meeting (if any) | Not required |
| Bid opening date & time | March 2, 2022 at 11.00 AM BST in the Conference Hall, KHEL, Trashiyangtse |
| Cost of Bidding Document | Nu. 5,000.00 |
| Address for purchase and submission of Bidding Documents shall be | Chief (Procurement & Contracts) Kholongchhu Hydro Energy Limited (KHEL), Post Box No. 23 Trashiyangtse, Bhutan |

4. A complete set of Bidding Document may be purchased by any interested bidder upon payment of non-refundable fee/cost of the Bidding Document as mentioned above.
5. The Bidding Document can also be downloaded from Kholongchhu Hydro Energy Limited website www.khepbhutan.com. However, submission of bid shall be accompanied by



tender cost. No request for sending the Bidding Documents by post or by courier service shall be entertained. Bidding Documents are not transferrable.

6. Issuance of Bidding Document shall not automatically construe that the bidder fulfils the qualifying requirements which shall be determined during bid evaluation based on data / documents submitted by the bidder. Bids shall be submitted at the address given above and shall be opened in the presence of bidder's representatives who choose to attend.
7. All Bids must be accompanied by bid security for an amount of **Nu. 1,883,000.00 (Ngultrum One Million Eight Hundred Eighty Three Thousand Only)** in the form of Demand Draft / Cash Warrant / Banker's Cheque / Bank Guarantee issued by any banks / Financial Institutions in Bhutan, which shall remain valid till date so specified in the Bidding Document. Bids not accompanied with an acceptable bid security as specified in Bidding Document, in a separate cover or bids accompanied with bid security of inadequate value and validity shall be rejected by KHEL and in such cases, bids shall be returned to the bidders unopened.
8. Qualification requirement for bidders shall be as specified in the Bid DataSheet.
9. Bidders must submit the copies of:
 - (i) Latest Tax Clearance Certificate and Valid Trade License;
 - (ii) Valid CDB Registration Certificate;
 - (iii) Signed Integrity Pact statement as per the format provided in the Bidding Documents along with their Bid.
10. KHEL reserves the right to accept or reject any bid partly or fully or cancel the bidding process without assigning any reasons thereof and in such case no bidder / intending bidder shall have any claim arising out of such action of KHEL.



SECTION II – INSTRUCTIONS TO BIDDERS



A. Introduction

- ITB 1 Definitions and Interpretations
- ITB 1.1 Unless otherwise stated, throughout this Bidding Document, definitions and interpretations shall be as prescribed in the General Conditions of Contract.
- ITB 2 Source of Funds
- ITB 2.1 Kholongchhu Hydro Energy Limited (KHEL) intends to finance the Works covered under this Bidding Document from the source(s) as mentioned in BDS.
- ITB 3 Scope of Works
- ITB 3.1 The scope of Works shall be as specified in Section VI, Technical Specification. The name and identification number of the Contract is provided in the NIT.
- ITB 3.2 The successful Bidder will be mandatorily required to complete the Works by the Time for Completion specified in the SCC.
- ITB 4 Fraud and Corruption
- ITB 4.1 KHEL requires that the Bidders, Contractors and their Subcontractors and their respective employees, consultants & agents, shall observe the highest standards of ethics during the bidding process and execution of contracts. In pursuance of this policy, the terms “Corrupt practice”, “Fraudulent practice”, “Collusive practice”, “Coercive practice” and “Obstructive practice” shall be as per definition in GCC 4;
- ITB 4.2 KHEL will reject a Bid for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the Contract in question;
- ITB 4.3 KHEL will declare the Bidder ineligible, either indefinitely or for a stated period of time for award of any Contract, if at any time it determines that the Bidder has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a Contract;
- ITB 4.4 KHEL requires that Bidders, as a condition of admission to eligibility, execute and attach to their Bids an Integrity Pact Statement as per Form: 3 of Section VIIA. Failure to provide a duly executed Integrity Pact Statement may result in rejection of the Bid; and
- ITB 4.5 KHEL will report any case of corrupt, fraudulent, collusive, coercive or obstructive practice to the relevant agencies, including but not limited to the Anti-corruption Commission (ACC) of the Kingdom of Bhutan, for necessary action in accordance with the statutes and provisions of the relevant agency.
- ITB 4.6 KHEL shall have the discretion to take any or all of the actions specified under ITB 4.2, ITB 4.3, ITB 4.4 and ITB 4.5.
- ITB 4.7 Furthermore, the Bidders shall make themselves fully aware of the provisions stated in GCC 45.2.1.c with regard to Fraud and Corruption.
- ITB 5 Eligibility of Bidders
- ITB 5.1 A Bidder shall be an incorporated legal entity or a Joint Venture of such entities



under an existing agreement. A Bidder, and all parties constituting the Bidder, shall be registered with the existing relevant Authority mandated by the RGOB for registration of Contractors and Consultants.

- ITB 5.2 A Bidder shall not have conflict of interest. Any Bidder, found to have a conflict of interest, shall be disqualified. Bidders may be considered to have a conflict of interest with one or more parties in the same bidding process if they:
- a) or any of their affiliates are associated, or have been associated in the past, to provide consulting services for the preparation of the design, specifications and / or other documents to be used for the procurement of the Works to be executed pursuant to this Bidding Document, or in any other way provided the consulting services in any aspect of the preparatory stages leading up to the issue of these Bidding Document or hired / proposed to be hired by KHEL as EIC for the Contract implementation.
 - b) submit more than one Bid in this bidding process either individually or as a partner in the Joint Venture, except for alternative offers permitted under ITB 16. Participation by a Bidder in more than one Bid shall result in rejection of all Bids in which the Bidder has participated. However, this does not limit the participation of a Bidder as a Subcontractor in another Bid or more than one Bid, or
 - c) employ or otherwise engage, either directly or through any of their affiliates, a KHEL employee, spouse, children or any of the dependent parent of a KHEL employee, or
 - d) have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of KHEL regarding this bidding process, or
 - e) have the same legal authorized representative for purposes of this Bid.
- ITB 5.3 A company formed by the merger of two or more companies or divisions of such companies engaged in execution of Works as specified in the Bidding Document can also participate provided the constituent companies or divisions before merger individually or jointly meet the stipulated qualification requirements fully.
- ITB 5.4 The Bidder shall provide such evidence of their continued eligibility satisfactory to KHEL as KHEL shall reasonably request.
- ITB 6 Exclusion of Bidders
- ITB 6.1 A Bidder shall be ineligible for participating in this bidding process under the following circumstances:
- a) The Bidders is insolvent or is in receivership or is a bankrupt or is in the process of being wound up; or has entered into an arrangement with the creditors; or
 - b) The Bidders' affairs are being administered by a court, judicial officer or appointed liquidator; or
 - c) The Bidder has suspended business or is in any analogous situation arising from similar procedures under the laws and regulations of his country of establishment; or



- d) The Bidder has been found guilty of professional misconduct by any competent authority as per law or any professional body; or
- e) The Bidder has not fulfilled his obligations with regard to the payment of taxes, social security or other payments due in accordance with the laws of the country in which he is established or of the Kingdom of Bhutan; or
- f) The Bidder has been declared by KHEL to be ineligible for participation in tenders on account of any fraud and / or corruption in competing or executing a Contract; or
- g) The Bidder has been debarred from participation in public procurement by any competent authority as per law.
- h) The Bidder has not fulfilled its contractual obligations with KHEL in the past.

ITB 7 Joint Venture Bids

ITB 7.1 If so permitted in the BDS, Bids submitted by a Joint Venture of number of legal entities as specified in the BDS subject to the condition that the total number of legal entities shall not exceed three (3) entities, shall comply with the following requirements:

- a. The Bid shall be signed by the authorized signatory of the member, who have been authorized by all the other members of the Joint Venture, so that the Bid is legally binding on all members.
- b. One of the members shall be designated as leader who shall have the authority to conduct all business for and on behalf of any and all members of the Joint Venture; this authorization shall be evidenced by submitting with the Bid a power of attorney signed by legally authorized signatories of the other members.
- c. The lead member shall be authorized to receive instructions for and on behalf of any and all members of the Joint Venture and the entire execution of the Contract, including payment, shall be done exclusively with the lead member.
- d. All members of the Joint Venture shall be liable jointly and severally for the execution of the Contract in accordance with its terms.
- e. A copy of the agreement entered into by the Joint Venture members shall be submitted with the Bid as per Form 15 of Section VII.
- f. The lead member does not anticipate a change in ownership during the proposed period of execution of Works (if such a change is anticipated, the scope and effect thereof shall be defined).

ITB 7.2 In order for Joint Venture to qualify, the lead member must meet the technical qualification requirements listed for an individual Bidder. The financial qualification requirements however may be met jointly by the members of the Joint Venture subject to the condition that each member meets at least the minimum financial qualification requirements as specified in the BDS. Failure to comply with this requirement will result in rejection of the Joint Venture's Bid.

ITB 7.3 A firm can be a member in only one Joint Venture; Bids submitted by Joint Ventures including the same firm as member in more than one JV in the same



bidding process will be rejected.

ITB 8 Responsibility of Bidders

ITB 8.1 KHEL will not assume any responsibility regarding information gathered, interpretations or conclusions made by the Bidder or regarding information, interpretations or deductions the Bidder may derive from the data or any report furnished by KHEL. Verbal communication or conversation with any officer, employee of KHEL either before or after the submission of Bid shall not affect or modify any of the terms or obligations contained herein.

ITB 8.2 It shall be the sole responsibility of Bidders to determine and to satisfy themselves by such means as they consider necessary or desirable as to all matters pertaining to this bidding process including in particular all factors that may affect the performance of the Contract in the event of award.

B. The Bidding Document

ITB 9 Contents of the Bidding Document

ITB 9.1 The scope of Work, bidding procedures, Contract terms and conditions and technical specifications are prescribed in the Bidding Document. The set of Bidding Document issued for the purpose of bidding includes the sections stated below together with any addendum / amendment to be issued in accordance with ITB 13.

| | | |
|--------------|--------|--|
| Section I | : | Notice Inviting Tender |
| Section II | : | Instructions to Bidders |
| Section III | : | Bid Data Sheet (BDS) |
| Section IV | : | General Conditions of Contract (GCC) |
| Section V | : | Special Conditions of Contract (SCC) |
| Section VI | : | Technical Specifications and Drawings |
| Section VII | : | Forms |
| Section VIIA | : | Bidding Forms |
| | 1. | Bid Security Forms |
| | 2& 2A. | Technical Bid Submission Form Financial Bid Submission Form |
| | 3. | Integrity Pact Statement |
| | 4. | Bidder's information Form |
| | 5. | Power of Attorney |
| | 6. | Information for meeting qualification requirement |
| | 6A. | Experience Details of Bidder |
| | 6A-2 | Financial Details of Bidder: Line of Credit |
| | 6B. | Details of Financial Capacity Status |



| | | | |
|--|--------------|-----|--|
| | | 6C. | Present Order Book Position |
| | | 6D. | Past Performance Data |
| | | 6E. | Data regarding Key Construction Personnel |
| | | 6F. | Brief write up regarding Project Management and organizational set-up and construction methodology |
| | | 6G. | Data regarding available Equipment / Machinery |
| | | 7. | Details of proposed Subcontractors |
| | | 8. | Quality assurance program |
| | | 9. | Financial Bid Submission Form |
| | Section VIIB | : | Contract Forms |
| | | 10. | Letter of Award |
| | | 11. | Contract Agreement |
| | | 12. | Performance Security (Bank Guarantee) |
| | | 13. | Bank Guarantee Form for Advance Payment |
| | | 14. | Completion Certificate |
| | | 15. | Form of Joint Venture Agreement. |
| | Section VIII | : | Bill of Quantities |

ITB 9.2 KHEL is not responsible for the completeness of the Bidding Document and their addenda, if any, if these were not obtained directly from KHEL. Downloading the document from the website will not be regarded as obtaining the Bidding Document directly from KHEL. Bidders downloading the documents from the website should register themselves by intimating the nodal officer of KHEL, before the deadline for submission of Bid, its intention to submit the Bid on the basis of downloaded documents. In the event of failure to register as mentioned above, the Bid if submitted shall not be opened and returned unopened to the Bidder.

ITB 9.3 The Bidder is expected to examine all instructions, forms, terms, conditions, specifications and other information in the Bidding Document and shall be deemed to have carefully examined the Bidding Document and also to have satisfied himself as to the nature, character and scope of work to be executed. Failure to furnish all information and documents required as per the Bidding Document or submission of a Bid not substantially responsive to the Bidding Document in every respect will be at the Bidder's risk and may result in rejection of his Bid.

ITB 10 Clarifications on the Bidding Document

ITB 10.1 The Bidder shall examine the Bidding Document thoroughly in all respects and if any conflict, discrepancy, error or omission is observed, Bidder may request clarification promptly. A prospective Bidder requiring any clarification on Bidding Document may notify KHEL in writing by post or fax or e-mail, to the address mentioned in BDS, not later than the date and time specified in BDS.



- ITB 10.2 KHEL will issue clarification(s) as it may think fit in writing by post or fax or e-mail not later than fifteen (15) days prior to the deadline/extended deadline for submission of Bids prescribed by KHEL. All such clarifications shall form part of the Bidding Document and shall accompany the Bidder's Proposal. Copies of KHEL's response (including an explanation of the query but without identifying its source) will be sent to all prospective Bidders who have purchased the Bidding Document.
- ITB 10.3 For the information of Bidders, the clarifications shall also be uploaded on the website. The Bidders are advised to visit the website of the company from time to time in their own interest.
- Bidders shall not be allowed to seek any clarification of the Bidding Document in person or by telephone or other verbal means. Any queries sent by the Bidders after the date and time notified as per BDS or extended date, if any, shall not be entertained.
- ITB 10.4 Should KHEL deem it necessary to amend the Bidding Document as a result of a clarification, it shall do so following the procedure under ITB 13.
- ITB 10.5 Any failure by the Bidder to comply with the aforesaid requirement shall not excuse the Bidder for performing the Works in accordance with the Contract, in case of award.
- ITB 11 Site Visit and Familiarization with Local Laws
- ITB 11.1 The Bidder is advised to visit and examine the Site and its surroundings where the Works are to be executed and obtain for itself on its own responsibility and risk, all information that may be necessary for preparing the Bid and entering into a Contract for execution of the Works. The costs of visiting the Site shall be borne by the Bidder fully. KHEL shall facilitate the Site visit without any expenditure on this account and Bidder is required to furnish advance intimation of his Site visit.
- ITB 11.2 The Bidder shall acquaint himself with the adequacy of local conditions and requirements including the approach roads to the Site, adequacy of existing culverts, bridges and roads for the expected traffic, water and power supply, nature of ground and sub-soil conditions, water table level, river regime, river water levels and other details, geological and climatic conditions, local terrain, availability of labor and construction material, communication facilities, utility and labor conditions and shall not claim at any time after submission of the Bid or during the execution of the Contract that there was any lack of understanding with regard to the conditions imposed in the Contract or prevailing at the Site.
- ITB 11.3 In their own interest, the Bidders are required to familiarize themselves with the Income Tax Act, prevailing labor laws including laws and regulations governing engagement of labor for employment and deployment at Site & other related Acts and Laws prevalent in the Kingdom of Bhutan. Further, the Bidders are required to comply with these Acts / Laws and other relevant provisions particularly with reference to the execution of the Works.
- ITB 11.4 The Bidder and any of its personnel or agents will be granted permission by KHEL to enter upon its premises and lands for the purpose of such inspection, but only upon the express condition that the Bidder, its personnel and agents shall release and indemnify KHEL and its personnel and agents from and against all liability in respect thereof and shall be responsible for death or personal injury (whether



fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses howsoever caused and incurred as a result of the inspection.

ITB 12 Pre-Bid Meeting

ITB 12.1 A pre-bid meeting shall be conducted if necessary to clarify doubts and concerns of the Bidders prior to submission of Bids. The Bidders who have purchased the Bidding Document shall be invited to attend Prebid meeting to be held on the date, time and location specified in BDS.

ITB 12.2 Non-attendance at the pre-bid meeting will not be a cause for disqualification of Bidders but at the same time shall not entitle them to raise any query at a later date.

ITB 12.3 The Bidders are requested to submit their questions and queries in writing to reach KHEL not later than three (3) days before the meeting. Minutes of the pre-bid meeting, including the text of the questions raised without identifying the source, and the responses given together with any responses prepared after the meeting, shall be circulated to all Bidders that have purchased the Bidding Document

ITB 12.4 Any modification to the Bidding Document that may become necessary as a result of the Prebid meeting shall be made by KHEL through the issue of an addendum pursuant to ITB 13 and not through the minutes of pre-bid meeting.

ITB 13 Amendment of the Bidding Document

ITB 13.1 At any time after the NIT issue date, but not later than fifteen (15) days prior to the deadline for submission of Bids, KHEL may amend the Bidding Document by issuing an addendum / amendment. This may be done either on KHEL's own initiative or in response to clarification requests from any prospective Bidder who have purchased the Bid Documents provided such request is received by the date specified in the BDS.

ITB 13.2 The addendum / amendment / corrigendum will be sent in writing either by registered post / speed post / fax / e-mail to all prospective Bidders who have purchased the Bidding Document at the address contained in the letter of request sent by the Bidder for issue of Bidding Document. KHEL shall in no way be responsible for any ignorance of the Bidder about the amendment to the Bidding Document.

ITB 13.3 Such addendum / amendment / corrigendum shall be part of the Bidding Document and binding on the prospective Bidders. KHEL shall assume that the information contained therein have been taken into account by the Bidder in its Bid and shall bear no responsibility or liability arising out of non-receipt of the same in time or otherwise by the Bidder.

ITB 13.4 KHEL may, at its discretion, extend the deadline for submission of Bids pursuant to ITB 26.2 to allow prospective Bidders reasonable time to take the addendum into account in preparation of their Bids.



C. Preparation of Bids

- ITB 14 Cost of bidding
- ITB 14.1 The Bidder shall bear all costs, direct or indirect associated with the preparation and submission of his Bid (including Site visits and attending pre-bid meetings) and KHEL in no case shall be responsible or liable for these costs, regardless of the conduct or outcome of the bidding process.
- ITB 15 Language of the Bid and Units of Measure
- ITB 15.1 The Bid, and all correspondence and documents related to the Bid shall be in English. Supporting documents and printed literature provided by the Bidder related to the Bid shall also be in English and if in any other language, should be translated to English. The English translation shall prevail on the interpretation.
- ITB 15.2 The units of measurement shall be metric system of measures unless otherwise specified.
- ITB 16 Alternative Bids
- ITB 16.1 Alternatives shall not be considered, unless specifically allowed in the BDS. If so allowed, ITB 16.1 and ITB 16.2 shall govern, and the BDS shall specify which of the following options shall be allowed:
- a) Option One: A Bidder may submit alternative Bids with the base Bid and KHEL shall only consider the alternative Bids offered by the Bidder whose Bid for the base case was determined to be the lowest-evaluated Bid, or
 - b) Option Two: A Bidder may submit an alternative Bid with or without a Bid for the base case. All Bids received for the base case, as well as alternative Bids meeting the Technical Specifications pursuant to Section VI, shall be evaluated on their own merits.
- ITB 16.2 Alternative Bids shall provide all information necessary for a complete evaluation of the alternative by KHEL, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details.
- ITB 16.3 In case of multiple alternative Bids, KHEL shall evaluate, compare and rank the alternative Bids subject to technical conformance suitability & acceptability in accordance with ITB 33.1. In case of single alternative Bid, subject to technical conformance suitability & acceptability and price reasonability, the Bid may be accepted.
- ITB 17 Documents Constituting the Bid
- ITB 17.1 The Bid to be prepared and submitted by the Bidder shall consist of the following documents:
- ITB 17.1.1 **Envelope I** shall contain (applicable for both single stage - single envelope and single stage - two envelope Bids):
- a. **Bid Security** in accordance with ITB 23 and Form: 1 of Section VIIA in case of a Bank Guarantee. Bids not accompanied by the requisite bid security in a



separate sealed envelope. Bids accompanied by bid security of inadequate value and validity shall not be entertained.

- b. **Cost of Bidding Document** (If Bidding Document downloaded from website). Bids not accompanied by the above documents shall be rejected by KHEL and Envelop-II and III of such Bids shall be returned un-opened.

ITB 17.1.2 **Envelope II** shall contain:

- a. **Bid Submission Form** in accordance with Form: 2 of Section VIIA.
 b. **Integrity Pact Statement**, as per Form: 3 of Section VIIA.
 c. Self-attested latest **Tax Clearance Certificate** & valid **Trade License**.
 d. **A Power of Attorney**, in original, as per Form: 5 of Section VIIA authorizing that the person(s) signing the Bid has / have the authority to sign the Bid and to make the Bid binding upon the Bidder during the full period of its validity in accordance with ITB 22.

Bids not accompanied by the above listed documents from a) to d) shall be declared as non-responsive.

- e. **Bidder's Information Form**, in accordance with Form: 4 of Section VIIA including Certificate of Incorporation in case of companies or any other certificate as an evidence of a legal entity.

- f. **Bidder's Qualification**

In the absence of pre-qualification process, documentary evidence establishing that the Bidder is qualified to perform the Contract, if its Bid is accepted, shall be furnished. The documentary evidence of the Bidder's qualifications to perform the Contract, if its Bid is accepted, shall establish to KHEL's satisfaction that the Bidder has the capacities and capabilities necessary to perform the Contract and meets the experience and other criteria outlined in ITB 33.

Particulars for meeting the prescribed qualification requirement as per BDS and details for assessment of capacity and capability of Bidder to perform the Contract shall be required as per Form: 6A to Form: 6G of Section VIIA.

- g. **Subcontractors proposed by the Bidder**

The Bidder shall furnish the names and nationalities of each Subcontractor along with the broad scope of Works for each of the sub-contracting Works as per Form: 7 of Section VIIA. The ceiling and type of Works for Subcontractors' participation is stated in the BDS.

The Bidder shall be responsible for ensuring that any services to be provided by the Subcontractor comply with the qualification requirements prescribed, if any, for such Works/services.

KHEL reserves the right to delete any proposed Subcontractor/Vendor from the list prior to award of Contract.

- h. Bids submitted by a **Joint Venture**, if so permitted in the BDS, shall furnish a copy of the agreement entered into by the joint venture members as per the Form 15 of Section VII.



i. Alternative Bids

Bidders wishing to offer technical alternatives to the requirements of the Bidding Document must first prefer KHEL's design of the Works as described in the Bidding Document, and shall further provide all information necessary for a complete evaluation of the alternatives by KHEL, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction method and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by KHEL.

j. Construction Methodology as per the requirements specified in Section VI, Technical Specification.

k. Quality Assurance Program

Details regarding the overall quality management & procedures which the Bidder proposes to follow during various phases of execution of the Contract as per Form: 8 of Section VIIA.

l. Any other additional information/ document which the Bidder wishes to provide in his Bid.

m. The complete set duly signed and stamped Bidding Document issued by KHEL Envelope III shall contain:

ITB 17.1.3

- a. Financial Bid Submission Form in accordance with Form: 9 of Section VIIA.
- b. Priced Bill of Quantities, in accordance with Section VIII.
- c. Alternative Price Bids, if applicable, as per ITB 16.

ITB 17.1.4

In case where Bids are invited under Single Stage Single Envelope mode, the documents (b & c) contained in Envelope III shall be kept in Envelope II.

ITB 17.2

The attention of the Bidders is drawn to the provisions of ITB 32, regarding the rejection of Bids that are not substantially responsive to the requirements of the Bidding Document.

ITB 17.2.1

Bidders may further note that the Bid shall be deemed to comply with all the requirements in the Bidding Document and the Bidders shall be required to comply with all terms, conditions and specifications of the Bidding Document without any extra cost to KHEL irrespective of any mention to the contrary anywhere else in the Bid, failing which the Bid security of the Bidder may be forfeited.

ITB 18

Bid Submission Form and Bill of Quantities

ITB 18.1

The Bidder shall submit the Bid Submission Form using the form furnished in Form: 2 of Section VIIA. This form must be completed without any alterations to its text, and no substitutes shall be accepted. The Bid Submission form shall be signed and submitted with all blank spaces filled in with the information requested.

ITB 18.2

The Bidder shall submit a duly signed Priced Bill of Quantities using the schedule furnished in Section VIII.

ITB 18.3

The Bid Form and Priced Bill of Quantities shall be signed as per ITB 24.



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| ITB 19 | Bid Prices and Discounts |
| ITB 19.1 | The Bidder shall fill in unit rates/ prices for all items of the Works described in the Bill of Quantities in figures and in words. The unit rates/ prices quoted in the Bill of Quantities shall also be deemed to include any incidentals not shown or specified but reasonably implied or necessary for the proper completion and functioning of the whole specified item of the Works in accordance with the Bidding Document and shall also be deemed to include the cost of construction of infrastructural facilities required for execution of the Contract and not included in the Works. The Contract shall be for the whole Works based on the unit rates and prices in the Priced Bill of Quantities submitted by the Bidder. |
| ITB 19.2 | The unit rates / prices quoted in the Bill of Quantities shall be inclusive of all taxes, duties, levies & charges payable in the Kingdom of Bhutan (including those levied on the construction material quarried from land owned by KHEL or otherwise), as of thirty (30) days prior to the deadline for submission of Bids. |
| ITB 19.3 | The total price at the bottom of the Priced Bill of Quantities shall be indicated both in figures and words. |
| ITB 19.4 | If rebate / discount is offered, the overall discount in percentage shall be brought out in the Priced Bill of Quantities. Conditional rebates / discount, if any, offered by any Bidder shall not be considered during Bid evaluation. |
| ITB 19.5 | The prices and discounts quoted by the Bidder in the Bid Submission Form and in the Priced Bill of Quantities shall conform to the requirements specified in ITB 19.6. |
| ITB 19.6 | Items for which no rate or price is entered by the Bidder in the Priced Bill of Quantities shall not be paid by KHEL when executed and shall be deemed covered by the other rates and prices mentioned in the Priced Bill of Quantities. |
| ITB 20 | Price Variation |
| ITB 20.1 | Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract or subject to variation, as specified in the BDS. A Bid submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected pursuant to ITB 32 unless adjustable price quotations are permitted. |
| ITB 20.2 | If, in accordance with the BDS, prices quoted by the Bidder are subject to adjustment during the performance of the Contract: |
| ITB 20.2.1 | The prices quoted by the Bidder shall be adjusted as per the formula specified in GCC 43.3. |
| ITB 20.2.2 | A Bid submitted with a fixed price quotation when Bids have been invited with price variation, will not be rejected, but the price adjustment will be treated as zero. |
| ITB 20.2.3 | The estimated effect of the price adjustment provision applied over the period of execution of the Contract shall not be taken into consideration in Bid evaluation. |
| ITB 21 | Currencies of Bid |
| ITB 21.1 | The unit rates and prices shall be quoted by the Bidder in Ngultrum only and payment shall also be made in Ngultrum. |



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| ITB 22 | Period of Validity of Bids |
| ITB 22.1 | Bids shall remain valid till the date specified in the BDS. A Bid valid for a shorter period shall be liable for rejection by KHEL as non-responsive. |
| ITB 22.2 | In exceptional circumstances, prior to expiry of the Bid validity period, KHEL may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing to all the participating Bidders. A Bidder may refuse the request to extend the validity of its Bid without forfeiting its Bid Security. In such a case, the Bid of the Bidder, refusing to extend the validity of its Bid, shall not be considered for evaluation and award. A Bidder granting the request will be required to extend the validity of their Bid securities correspondingly but shall not be required or permitted to modify its Bid, except as provided in ITB 28. |
| ITB 22.3 | The provisions of ITB 23 regarding discharge and forfeiture of Bid Security shall continue to apply during the extended period of Bid validity. |
| ITB 22.4 | In the case of Contracts in which the Contract Price is fixed (not subject to price variation), if the period of Bid validity is extended beyond 60 days, the amounts payable to the Bidder selected for award shall be adjusted as specified in the request for extension, if the contract duration is more than (eighteen) 18 months. Bid evaluation shall be based on the Bid Price without taking the above correction into consideration. |
| ITB 23 | Bid Security |
| ITB 23.1 | The Bidder shall furnish, as part of its Bid, a Bid Security in original form, denominated in the currency and in the amount specified in the BDS. |
| ITB 23.2 | The Bid Security shall: <ul style="list-style-type: none"> a) at the Bidder's option, be in any of the following forms: <ul style="list-style-type: none"> i. an unconditional and irrevocable Bank Guarantee; or ii. a Banker's Cheque / Cash Warrant; or iii. a Demand Draft; or b) be issued by Scheduled Bank in Bhutan; c) in the case of a bank guarantee, be in accordance with the form of Bid Security included in Form: 1 of Section VIIA and valid up to the date mentioned in BDS. d) in case of Banker's Cheque / Cash Warrant/Demand Draft it shall be acceptable even if the validity is inadequate but KHEL shall en-cash the same from the Banks before the expiry of the validity; e) be promptly payable upon written demand by KHEL in case any of the conditions listed in ITB 23.7 are invoked; |
| ITB 23.3 | The Bid Security of a JV must be in the name of the lead partner. |
| ITB 23.4 | The Bid Security is to be submitted as a part of the Bid in a separate sealed envelope. Any Bid not accompanied by adequate value and validity of Bid Security shall be rejected by KHEL. |
| ITB 23.5 | No interest shall be paid by KHEL on the Bid Security. |
| ITB 23.6 | Return of Bid Security |



- ITB 23.6.1 The Bid security shall be returned to successful and unsuccessful Bidders as promptly as possible upon receipt of Performance Security from successful Bidder in accordance with ITB 40 and signing of Contract.
- ITB 23.6.2 In case of single stage – two envelope mode of tendering, Bid Security of non-responsive Bids shall be returned immediately after technical evaluation.
- ITB 23.7 The Bid Security shall be forfeited:
- a) if a Bidder withdraws its Bid as a whole or in part during the period of Bid validity specified by the Bidder on the Bid Form, except as provided in ITB 22.2; or if the bidder has been found practicing corrupt or fraudulent or collusive or coercive practices during bidding process
 - b) if the successful Bidder fails to:
 - i. accept the correction of its Bid Price pursuant to ITB 34.1;
 - ii. sign the Contract in accordance with ITB 39;
 - iii. Furnish a Performance Security in accordance with ITB 40;
- ITB 24 Signing of Bids
- ITB 24.1 The Bidder shall prepare one (1) original and copies (number as specified in BDS) of the complete set of documents constituting the Bid as described in ITB 17, and clearly marked each as "Original Bid" and 'Copy No: 1', 'Copy No: 2', etc. In the event of any discrepancy between the copies and original Bid, the original shall prevail.
- ITB 24.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person / person duly authorized by the Bidder with official seal as per Form: 5 of Section VIIA. However, all pages where entries or amendments have been made and any published document submitted along with the Bid shall be signed by the authorized signatory (ies) at least on the first page and last page of such document.
- ITB 24.3 A Bid submitted by a JV shall be signed by the authorized signatory of the lead member so as to be legally binding on all members.
- ITB 24.4 Any interlineations, erasures, overwriting, cutting or alteration shall only be valid if they are initialed by the authorized signatory (ies) to the Bid.

D. Submission of Bids

- ITB 25 Submission of Bids
- ITB 25.1 Each Bidder, including its Affiliate, shall be permitted to submit only one Bid against any Package. In case, a Bidder and its Affiliate has submitted separate Bids, against the same Package, all such Bids shall be rejected.
- ITB 25.2 Bids shall be delivered by hand, courier or registered post so as to reach KHEL at the address specified in BDS on or before the date and time mentioned in BDS. Bids submitted by telex / telegram / fax / e-mail shall not be considered under any circumstances. KHEL shall not be responsible for any delay in receipt of the Bid where sent by post or courier.



- ITB 25.3 In case of hand delivery, Bids shall be handed over to the Nodal officer at the address as specified in BDS.
- ITB 25.4 Bids shall be submitted in the manner specified in the BDS as under:
Bids are to be submitted in a single closed cover envelope containing - Envelope I, Envelope II and Envelope III, with superscription on each envelope as specified in BDS.
- ITB 25.4.1 All envelopes shall be sealed with adhesive or other sealant to prevent reopening and be signed across their seals by the person authorized to sign the Bid on behalf of the Bidder.
- ITB 25.4.2 If the envelopes are not sealed and marked as above, KHEL shall assume no responsibility for the misplacement or premature opening of the Bid.
- ITB 25.5 When so specified in the BDS, Bidders shall have the option of submitting their Bids electronically. Bidders submitting Bids electronically shall follow the procedures specified in the BDS.
- ITB 26 **Deadline for Submission of Bids**
- ITB 26.1 Bids must be received by KHEL in accordance with ITB 25. In the event of the specified date for submission of Bids being declared a holiday for KHEL, the Bids will be received up to the specified time on the next working day. Such postponement of date will not have any impact on the other dates specified in the Bidding Document (i.e. Bid validity and validity of Bid Security).
- ITB 26.2 KHEL may, at its discretion, extend the deadline for the submission of Bids/ opening of Bids by issuing an addendum in which case all rights and obligations of KHEL and the Bidders previously subject to the original deadline shall thereafter be subject to the deadline as extended.
- ITB 26.3 In the event, the deadline for submission of Bid is extended by KHEL, the Bidders who have already submitted their Bids within the original deadline of submission shall have the option to submit their revised Bid in substitution either in full or in part of earlier Bid. In the absence of a revised Bid, the original Bid shall be considered for opening and subsequent evaluation if otherwise in order. Wherever, the Bidder has submitted the revised Bid in modification of earlier Bid, the earlier Bid shall be returned unopened to the Bidder.
- ITB 27 **Late Bids**
- ITB 27.1 Any Bid received by KHEL after the Bid submission deadline as per ITB 26 will be declared late, rejected and returned unopened to the Bidder.
- ITB 28 **Withdrawal, Substitution or Modification of Bids**
- ITB 28.1 A Bidder may withdraw, substitute or modify its Bid after it has been submitted by sending a written withdrawal / substitution/ modification notice prior to the deadline for submission of Bids, duly signed by an authorized representative, including a copy of the authorization as per Form: 5 of Section VIIA. The Bid requested to be withdrawn shall be returned unopened to the Bidder.
- ITB 28.2 The withdrawal, substitution or modification of the Bid must accompany the respective written notice and must be:



- a) Submitted in accordance with ITB 25 and, in addition, the respective cover envelopes shall be clearly marked "WITHDRAWAL" "SUBSTITUTION" or "MODIFICATION;" and
- b) received by KHEL prior to the deadline prescribed for submission of Bids, in accordance with ITB 26.
- ITB 28.3 No Bid may be withdrawn, substituted or modified in the interval between the deadline for submission of Bids and the expiry of the period of Bid validity specified by KHEL in ITB 22.1 or any extension thereof pursuant to ITB 22.2.
- ITB 28.4 Withdrawal, substitution or modification of a Bid between the deadline for submission of Bids and expiration of the period of Bid validity (or any extension thereto) shall result in the forfeiture of the Bid Security pursuant to ITB 23.7.

A. Bid Opening, Evaluation and Comparison

- ITB 29 **Bid Opening**
- ITB 29.1 KHEL shall conduct the Bid opening at the address, date and time specified in the BDS. Any specific electronic Bid Opening procedures required only if electronic bidding process is permitted as per the BDS.
- ITB 29.2 Bidders or their authorized representatives (not more than two) who have submitted the Bids shall be allowed to attend the Bid opening. Bidders who chose to attend shall sign the attendance sheet provided in the record of Bid opening with their name designation, firm name and phone number or any other particulars as may be required. Bidders who chose to attend the opening shall not be allowed to speak on matters related to the Bid until and unless required by the committee members or by seeking permission from the Chairperson by raising hand. Bidders who have any complain with regard to the Bid opening shall write in the complaint sheet and duly sign the sheet.
- ITB 29.3 The written withdrawal notices duly signed by an authorized representative of the Bidder for withdrawal of Bids, if any, shall be opened first and read out and such Bids shall be returned to the Bidder unopened.
- ITB 29.4 Written substitution/ modification notice duly signed by an authorized representative of the Bidder in accordance with ITB 28.1 shall be opened and read out and corresponding cover envelopes marked "SUBSTITUTION"/ "MODIFICATION" shall be opened. Substituted Bids shall be exchanged with the corresponding Bid being substituted, which shall not be opened, but returned to the Bidder.
- ITB 29.5 Cover envelopes of all other Bids shall be opened one at a time. Bids not accompanied by requisite Bid Security, or non-submission of Integrity Pact Statement will be rejected and returned to the Bidder.
- ITB 29.6 The following information shall be publicly announced during the Bid opening for the Bidders to note:
- a. The name of the Bidder;
 - b. The presence or absence of Bid security and its amount;



- c. The total price offered (applicable for Single Stage Single Envelope mode);
- d. Discounts offered, (applicable for Single Stage Single Envelope mode);
- e. Alternative Bids, if any;
- f. Such other details as KHEL may consider appropriate.
- ITB 29.7 KHEL shall prepare a record of the Bid Opening, which shall include the information disclosed to those present. The record of the Bid Opening shall include, as a minimum:
- a) the NIT title and reference number;
- b) the Bid submission deadline date and time;
- c) the date, time and place of Bid opening;
- d) Bid prices, offered by the Bidders, including any discounts and alternative offers in case of Single Stage Single Envelope mode;
- e) the presence or absence of Bid Security and, if present, its amount;
- f) the name and nationality of each Bidder;
- g) the names and signature of attendees at the Bid opening, and name of the Bidders they represent (if any);
- h) details of any complaints or other comments made by attendees/representatives attending the Bid opening, including the names and signatures of the attendees/representatives making the complaint(s) and/or comment(s); and
- i) the names, designations and signatures of the members of the Bid Opening Committee.
- ITB 29.8 The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's representatives' signature on the record shall not invalidate the contents and effect of the record.
- ITB 29.9 In the case of Single Stage Two Envelope Bids, on the deadline for submission of Bid only the Techno-Commercial Bid shall be opened. The date for opening of the Price Bid shall be intimated at the appropriate time to the Bidder whose Bid is found responsive in the techno-commercial evaluation. The Bid shall be opened on the date and time so specified in the presence of representatives of the Bidder. During the Price Bid opening the following information shall be publicly announced for the Bidders to note:
- a. The name of the Bidder;
- b. The total price offered;
- c. Discounts offered;
- d. Alternative Bids, if any;
- e. Such other details as KHEL may consider appropriate.
- ITB 30 **Confidentiality**
- ITB 30.1 Except as may be required by law, information relating to the examination, clarification, evaluation, comparison and post-qualification of Bids, and



- recommendation of Contract Award, or any other matter concerning the Bid shall not be disclosed to Bidders or any other persons not officially concerned with such process after the public opening of the Bids until issuance of the Letter of Award.
- ITB 30.2 Subject to ITB 31, no Bidder shall contact KHEL on any matter related to its Bid from the time of the opening of the Bid to the time the Contract is awarded. Any attempt by a Bidder to influence KHEL in the examination, evaluation, comparison and post-qualification of the Bids or Contract award decisions may result in the rejection of its Bid.
- ITB 30.3 Notwithstanding ITB 30.2, from the time of Bid opening to the time of Contract award, if any Bidder wishes to contact KHEL on any matter related to the bidding process, it should do so in through posts or e-mail.
- ITB 30.4 The Bidder shall not communicate or use in advertising, publicity or in any other medium, photographs of the Works under this Contract, or description of the Site, dimension, quantity, quality or other information, concerning the Works unless prior written permission has been obtained from KHEL.
- ITB 30.5 All documents, correspondence, decisions and other matters concerning the Contract shall be considered of confidential and restricted nature by the Bidder and he shall not divulge or allow access thereto by any unauthorized persons.
- ITB 31 Clarification of Bids**
- ITB 31.1 To assist in the examination, evaluation, comparison and post-qualification of the Bids, KHEL may, at its discretion, ask any Bidder for a clarification on its Bid including justification and breakup of the rates and prices quoted. Any clarification submitted by a Bidder that is not in response to a request by KHEL shall not be considered. KHEL's request for clarification and the response thereto shall be in writing and shall be delivered by registered post / speed post/ courier/ hand delivery under acknowledgement.
- ITB 31.2 No change in the prices or substance of the Bid shall be sought, offered or permitted, except to confirm the correction of arithmetic errors discovered by KHEL in the evaluation of the Bids, in accordance with ITB 34.1.
- ITB 31.3 In case Bidder(s) is/are not able to provide the clarifications sought by KHEL, their bid shall be evaluated on the basis of available data.
- ITB 32 Examination of Bids and Determination of Responsiveness of Bids**
- ITB 32.1 For the purpose of this clause, a substantially responsive Bid is one which conforms to all the terms, conditions and specifications of the Bidding Document without material deviation, reservation, conditionality or omission.
- ITB 32.2 KHEL shall examine the Bid to confirm that (i) the bidder meet the eligibility requirement defined in ITB 5; (ii) the bid has been properly signed; (iii) the bid is accompanied by the required securities and (iv) the bid is substantially responsive to all the terms and conditions specified in the Bidding Document without any material deviation, reservation, conditionality or omission. KHEL's determination of a Bid's responsiveness shall be based on the contents of the Bid itself without recourse to extrinsic evidence.
- ITB 32.3 A material deviation, reservation, objection, conditionality or omission is one that:



- a) affects in any substantial way the scope, quality or performance of Contract; or
- b) limits in any substantial way or is inconsistent with the Bidding Document, KHEL's rights or the Bidder's obligations under the proposed Contract; or
- c) if rectified would affect unfairly the competitive position of other Bidders presenting responsive Bids;
- d) is incomplete or does not include all the scope of Work covered in the technical specifications.

ITB 32.4 If a Bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by KHEL and the same may not subsequently be made responsive by correction of the material deviation, reservation, conditionality or omission.

ITB 32.5 KHEL may waive any minor infirmity, non-conformity or irregularity in a Bid that does not constitute a material deviation, reservation or omission, whether or not identified by the Bidder in its Bid and that does not prejudice or affect the relative ranking of any Bidder, as a result of the technical and commercial evaluation pursuant to ITB 33 and ITB 35. KHEL may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify non-material deviations or omissions in the Bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of the Bid.

ITB 33 Technical Evaluation

ITB 33.1 KHEL will carry out a detailed technical evaluation of the Bids previously determined to be substantially responsive as per ITB 32 in order to determine whether the technical aspects are in accordance with the requirements set forth in the BDS. In order to reach such a determination, KHEL will examine and compare the technical aspects of the bids on the basis of the information supplied by the Bidders, taking into account the following factors:

- a) Overall completeness and compliance with the Technical Specifications and Drawings as specified in Section VI, Technical Specification; suitability of the Works/ services offered in relation to the environmental and climatic conditions prevailing at the Site. The Bid that does not meet minimum acceptable standards of completeness, consistency and detail will be rejected for non-responsiveness;
- b) Where alternative Bid have been allowed in accordance with ITB 16, and offered by the Bidder, KHEL will make a similar evaluation of the alternatives. Where alternatives have not been allowed but have been offered, they shall be ignored.

ITB 33.2 Furthermore, the bids shall be evaluated using the information supplied by the Bidders in the Forms 6A to 6G to confirm that the following minimum requirements are met by each Bidder. If so required by the BDS, to qualify for award of the Contract, each Bidder must meet the following requirements:



- (a) A minimum average annual turnover of the value specified in the BDS for the last 5 years from Construction business should be added based on the audited / certified by the Chartered Accountancy /tax return figures enclosed;
- (b) Satisfactory completion of similar works of the value and number specified in BDS;
- (c) Availability of the key construction equipment of the number specified in BDS;
- (d) Availability of the key construction personnel specified in the BDS;
- (e) Liquid assets and /or credit facilities available for this contract, of not less than the amount specified in the BDS;
- (f) Where subcontracting is allowed, the minimum requirement specified in the BDS;
- (g) Any other requirements specified in the BDS.

ITB 34 Correction of Arithmetical Errors in Price Bid

ITB 34.1 Arithmetical errors will be corrected at the time of evaluation of Price Bid and the corrected figure will be considered for the purpose of evaluated Bid price. The corrections in the Bid price shall be done as per the provisions of this clause and shall be binding on the Bidder. If the Bidder does not accept the correction of errors as per the provisions of this clause, the Bid will be rejected and the Bid security will be forfeited.

ITB 34.2 If there is a discrepancy between the product of unit price and quantity for any item, and the total price for such item, the product of unit price and quantity will prevail and the total price shall be corrected unless in the opinion of KHEL, there is an obviously gross misplacement of decimal point in the unit rate, in which case, the total of line item as quoted will govern and unit rate will be corrected accordingly.

ITB 34.3 If there is discrepancy between summation of subtotals and total price, the summation of subtotal price shall prevail, and the total price shall be corrected.

ITB 34.4 If there is a discrepancy between words and figure, wherever the Bid document requires the figures to be written in both words and figures, the amount in word will prevail unless the amount expressed in figures has an arithmetic error.

ITB 34.5 In case the Bidder has not filled up unit price against any item, KHEL shall treat the price of unfilled items as zero for the purpose of evaluation & comparison and award (if such Bidder emerges as the lowest evaluated Bidder), with the assumption that the cost has been absorbed elsewhere in the Price Bid.

ITB 34.6 In case prices for some items are given by a Bidder as lump sum where unit rates are required, KHEL reserves the right to arrive at unit rate on the basis of dividing the entered lump sum amount by the specified quantity.

ITB 35 Evaluation and Comparison of Bids

ITB 35.1 KHEL shall evaluate each Bid, which has been determined, to be substantially responsive in accordance with ITB 32. The evaluation of bids shall be done based on the factors, methodologies and criteria defined in this ITB 35.

ITB 35.2 To evaluate and compare Bids, KHEL shall consider the following:



- a) the final Bid Price, as quoted in accordance with ITB 19 in the priced Bill of Quantities;
- b) price adjustment for correction of arithmetic errors in accordance with ITB 34;
- c) price adjustment due to discounts offered in accordance with ITB 19.4.
- ITB 35.3 KHEL's evaluation of a bid shall exclude and not take into account any allowance for price adjustment during the period of execution of the Contract, if provided in the Bid.
- ITB 35.4 The evaluation shall be based on the evaluated cost of fulfilling the Contract in compliance with all commercial, contractual and technical obligations under the Bidding Document.
- ITB 35.5 The total comparison price shall be calculated based on ITB 35.2. KHEL shall compare the total comparison price of all substantially responsive Bids of qualified Bidders to determine the lowest evaluated Bid.
- ITB 35.6 If the Bid price of the lowest evaluated Bid appears abnormally low and/or seriously unbalanced, KHEL may require the Bidder to produce written explanations of, justifications and detailed price analyses for any or all items of the Bill of Quantities to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. Abnormally low Bid may or may not be accepted. If KHEL decides to accept the abnormally low Bid after considering the above, the Bidder shall be required to provide additional differential security equivalent to the difference between the prices offered by the lowest evaluated Bid and the average price quoted by all the other Bidders, and in case of single response, the additional security shall be for the difference between the evaluated Bid price and the estimated cost as may be determined by KHEL to protect KHEL against any financial loss in the event of default of the successful Bidder under the Contract.
- ITB 35.7 The Bid capacity of the prospective Bidder shall be assessed at the Technical Bid Evaluation stage only. The available Bid capacity shall be calculated as follows:
Assessed available Bid capacity= $(A*N*2.5 - B)$, where,
A = Maximum total value of all works executed in any one year out of the last five (5) years (updated to the current price level by adding 5% per year)
N = No. of years prescribed for completion of current Contract (specify duration in years. N may be considered as one for contract duration less than one year)
B = Value of existing commitments and on-going works to be completed in next "N" Years.
- ITB 35.8 The assessed available Bid Capacity should be equal to or more than 80% of the estimated cost.
- ITB 35.9 The basic consideration and the essence of the Contract shall be the strict adherence to the time schedule specified in the SCC after the Effective Date of the Contract as incorporated in the Contract Agreement for completion of Works. Bidders are required to base their prices on the time schedule given in Section VI, Technical Specifications. No credit will be given for earlier completion for the purpose of evaluation.



ITB 35.10 KHEL reserves the right to accept or reject any variation, deviation or alternative offer. Variations, deviations and alternative offers and other factors which are in excess of the requirements of the Bidding Document or otherwise result in unsolicited benefits for KHEL shall not be taken into account in Bid evaluation.

ITB 36 **KHEL's Right to Accept Any Bid, and to reject any or All Bids**

ITB 36.1 KHEL reserves the right to accept or reject any Bid, and to annul the bidding process and reject all Bids at any time prior to Contract award, without thereby incurring any liability to Bidders or any obligation to inform the affected Bidders of the grounds for such action of KHEL.

B. Award of Contract

ITB 37 **Award Criteria**

ITB 37.1 Subject to ITB 36, KHEL will award the Contract to the successful Bidder whose Bid has been determined to be substantially responsive and to be the lowest evaluated Bid, further provided that the Bidder is determined to be (a) eligible in accordance with the provisions of ITB 5, and (b) qualified in accordance with the provisions of ITB 35.

ITB 38 **Letter of Award**

ITB 38.1 Prior to expiry of the period of Bid validity, KHEL will notify the successful Bidder, by a Letter of Award (LoA) as per Form: 10 of Section VIIB or in the form of letter of intent (LoI), in writing, by registered letter, email, or by fax, that its Bid has been accepted indicating the award price.

ITB 38.2 Until a formal Contract is prepared and executed, the Letter of Award shall constitute a binding Contract between the successful Bidder and KHEL.

ITB 38.3 Upon the successful Bidder's furnishing of the performance security pursuant to ITB 40 and signing of Contract, KHEL will promptly notify each unsuccessful Bidder and will return its Bid Security.

ITB 39 **Signing of Contract Agreement**

ITB 39.1.1 Within fifteen (15) days of issue of the letter of award the Contractor shall report to KHEL office for signing of the Contract Agreement as per Form 11 of Section VIIB with Performance Security as mentioned in LoA.

ITB 40 **Performance Security**

ITB 40.1 Prior to signing of the Contract, the successful Bidder shall submit the performance security equal to ten percent (10%) of the Contract Price with initial validity up to thirty (30) days beyond the scheduled completion period of Contract in accordance with GCC 20.3.1. KHEL reserves the right to verify independently the genuineness of the Performance security from the issuing bank or a correspondent with initial validity of such issuing bank in the Kingdom of Bhutan. However, in case of delay in completion period, the validity of the Contract performance security shall be extended by the Contractor for such period of delay.



- ITB 40.2 The performance security shall be submitted as an unconditional irrevocable bank guarantee issued by any Scheduled Bank in Bhutan and acceptable to KHEL in the Form 12 of section VIIB.
- ITB 40.3 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid security. In that event KHEL may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by KHEL to be qualified to perform the Contract satisfactorily or call for fresh bids.



SECTION III – BID DATA SHEET



BID DATA SHEET

The following Bid specific data for the Works to be procured shall amend and/or supplement the clauses in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in the ITB.

| BDS Item No | ITB Clause Ref., if any | Data |
|--------------------------------|-------------------------|---|
| A. INTRODUCTION | | |
| 1. | ITB 2.1 | KHEL intends to finance this Procurement through: Internal sources |
| 2. | ITB 7.1 ITB 7.2 | <ol style="list-style-type: none"> 1. Joint Venture Bids are permitted: From Bhutan and India. Lead Partner of JV shall be a Bhutanese Bidder. Joint Venture Partners to sign and submit Joint Venture Agreement-Form 15 under Section VIIB of the Bidding Document. 2. The number of legal entities forming the Joint Venture shall be not more than 2. 3. Unless otherwise specified herein below, each member of JV Partner is required to meet at least the minimum 40% of the financial qualifying requirement specified in the Bidding Documents. Total sum of financial qualifying requirements of JV partners should be equal to 100% to qualify as Joint Venture's Bid for this work. Failure to comply with these financial qualifying requirements will result in rejection of the Joint Venture's Bid. 4. The Bid capacity requirement shall be satisfied by Lead Partner of Joint Venture's Bid or in proportion to their share of works in Joint Venture's Bid. 5. The requisite criterion of similar work experience can be satisfied by any member of the JV. |
| 3. | ITB 9.2 | Last sentence of this Subclause is not applicable. |
| B. THE BIDDING DOCUMENT | | |
| 4. | ITB 10.1, 10.2 and 10.4 | <p>Clarifications on the Bidding Document may be obtained from:</p> <p>Chief (Procurement & Contract) Kholongchhu Hydro Energy Limited (KHEL) Post Box No. 23 Trashiyangtse, Bhutan</p> <p>E-mail: chief.pnc@khepbhutan.com Phone: +975 4 781145/69</p> <p>Date & Time up to which clarification requests will be received: February 14, 2022 up to 5.30 PM BST</p> |



| | | |
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| 5. | ITB 11.1 | Site Visit: The prospective bidders in their own interest should inspect and examine sites and its surroundings, site conditions, etc. and satisfy themselves before submitting its bids. |
| 6. | ITB 12.1 | Pre-bid Meeting: Not Applicable |
| 7. | ITB 13.1 | Issue amendment to the Bidding Document: Last Date: 16/2/2022 |
| C. PREPARATION OF BIDS | | |
| 8. | ITB 16.1 | Alternative Bids shall not be permitted. |
| 9. | ITB 17.1.2 (c), 17.1.2(d) and ITB 17.1.2(g) | <p>(i) Non-submission of copies of valid Trade and CDB Licenses and latest Tax Clearance Certificate shall not be rejected. Bidders shall be asked to furnish them within a given deadline failing which the bid shall be rejected.</p> <p>(ii) Power of Attorney, in original shall be: (a) As per Form 5 of Section VIIA along with a copy of the resolution of the Board of Directors for the specific appointment for incorporated Bidders or (b) As per Form of Section VIIA along with a copy of the authorization letter issued by the Chief Executive Officer /License Holder for unincorporated Bidders.</p> <p>The bids not accompanied by duly signed Bid Submission Form, Integrity Pact Statement and Power of Attorney, in original, Bid shall be rejected outrightly by KHEL.</p> <p>(iii) The part of Works than can be proposed by the Bidder for subcontracting Works as per Form 7 of Section VIIA and its qualifying requirement for the selection of Subcontractor to perform such part is:</p> <p>For work of design, engineering, supply, erection, testing and commissioning of Unitized Substation. The bidder shall quote for five reputed brands namely ABB, Schneider, Alstom, Crompton Greaves and Kirloskar Electric only. The Bidder shall try to get the equipment directly from the above manufacturers or authorized dealers. The successful bidder should ensure that required warranty certificate and commitment to provide after sales support from the manufacturer or authorized dealer are provided at the time of installation and commissioning of the equipment. All the drawings including the lay out for the above equipment should be submitted for approval of the Client within 5 months from the date of signing of Contract.</p> |
| 10. | ITB 20.1 and 20.2 | The prices quoted by the Bidder shall be adjustable as per GCC 43. |



| | | |
|------------------------------|-----------------------|--|
| 11. | ITB 22.1 | The Bid shall be valid till: 90 days from the bid's submission deadline, i.e up to May 31,2022. A bid valid for a shorter period shall be rejected by KHEL as non-responsive. |
| 12. | ITB 23.1 | The amount and currency of the Bid Security shall be: Nu. 1,883,000.00 (One Million Eight Hundred Eighty-Three Thousand only). |
| 13. | ITB 23.2 | The Bid Security shall be valid till: 120 days from the bid submission deadline, i.e up to June 30, 2022. Any bid not accompanied by adequate value and validity of bid security shall be rejected by KHEL as non-responsive. |
| 14. | ITB 24.1 | In addition to the original of the Bid, the number of copies of the bid required shall be: One (1). Bid not accompanied by requisite copy of bidding document shall be asked to submit the same within the stipulated timeline failing which the bid shall be rejected by KHEL as non-responsive. |
| D. SUBMISSION OF BIDS | | |
| 15. | ITB 25.2 and ITB 25.3 | Bids shall be addressed to and submitted to: Chief (Procurement & Contracts) Kholongchhu Hydro Energy Limited (KHEL) Post Box No. 23 Trashiyangtse, Bhutan E-mail: chief.pnc@khepbhutan.com Date & Time (Bhutan Standard Time) up to which Bids will be received: Date: March 2, 2022 Time: 10:30 AM BST |
| 16. | ITB 25.4 | The Mode of tendering is: Single Stage Two Envelope Basis. |



| | | |
|---|-----------------|--|
| <p>17.</p> | <p>ITB 25.4</p> | <p>1. Single Stage Two Envelope</p> <p>Superscript of Cover Envelope: “CONFIDENTIAL”</p> <p><i>Bid for [Insert name of the Works] bearing [NIT No. & Date].....</i></p> <p><i>Name and address of bidder:</i></p> <p><i>Not to be Opened Before Due Date for Opening on: [date & time]</i></p> <p><i>..... [Insert Name, Designation and Address of the authorised representative of KHEL]</i></p> <p>Superscript of Envelope I:</p> <p>(a) <i>“Bid Security for [NIT No. & Date]”</i> (b) <i>“Cost of bidding document or proof of having paid such cost to KHEL, if downloaded from the website shall be enclosed along with the bid”</i></p> <p><i>Name of Bidder:</i></p> <p>Superscript of Envelope II: Technical Bid</p> <p><i>Bid for [Insert name of the Works] bearing [NIT No. & Date]</i></p> <p><i>Name and address of Bidder:</i></p> <p><i>Not to be Opened Before Due Date for Opening on: [date & time]</i></p> <p>Superscript of Envelope III:</p> <p>Financial Bid</p> <p><i>Bid for [Insert name of the Work] bearing [NIT No. & Date]</i> <i>Name and address of Bidder:</i></p> |
| <p>18.</p> | <p>ITB 25.5</p> | <p>Bidders: shall not have the option of submitting their bids electronically.</p> |
| <p>E. BID OPENING, EVALUATION AND COMPARISON</p> | | |
| <p>19.</p> | <p>ITB 29.1</p> | <p>Bid Opening Venue: Conference Hall Kholongchhu Hydro Energy Limited Trashiyangtse; Bhutan Date: March 2, 2022 Time (Bhutan Standard Time): 11:00 AM BST</p> |



| 20. | ITB 32 | <p>Examination of Bid and Determination of Responsiveness of Bid:</p> <p><i>Employer shall examine the bid to confirm that the bidder meets the eligibility requirements as per ITB 32.2</i></p> | | | | | | | | | | | | | | | | | | |
|---------|--------------------------|--|---------|--------------------------|-----------------|---|-----------|---|---|-----------------|---|---|----------------|---|---|-------------------|---|---|-------------|---|
| 22. | ITB 33.2 | <p>Technical Evaluation</p> <p>Each Bidder must meet the following minimum qualifying requirements:</p> <p>(a) For Unitized/Packaged Substation, the bidder should quote for five brands namely ABB, Schneider, Alstom, Crompton Greaves and Kirloskar Electric only. They shall try to get the equipment directly from the above Original Equipment manufacturers (OEM) or authorized dealers. The successful bidder should ensure that the required warranty certificate and commitment to provide after sales support from the manufacturers or authorized dealers are provided at the time of installation / commissioning of the equipment. All the drawing including the layout for the above equipment should be submitted for approval of the Client within 5 months from the date of signing of Contract.</p> <p>(b) Minimum average annual turnover shall be 75.31 million during last five financial years (2016-2020) from construction license. The same shall be based on audited accounts/ certified Chartered Accountancy / BIT return figures duly certified by RRCO and enclosed by the Bidder.</p> <p>If the above information is not supplied by the Bidder, Bidder shall be asked to submit the same within the given deadline failing which bid shall be liable for rejection.</p> <p>(c) Experience of similar works- Experience of having successfully completed similar works during the last five years should be: One similar completed civil works.</p> <p>Copy of completion certificate issued by client indicating completion cost, date of commencement and date of completion to be submitted.</p> <p>If the above information is not supplied by the Bidder, Bidder shall be asked to submit the same within the given deadline failing which bid shall be rejected.</p> <p>(d) The minimum essential key construction equipment to be made available for the Contract by the Bidder shall be:</p> <table border="1" data-bbox="579 1610 1382 2022"> <thead> <tr> <th>Sr. No.</th> <th>Description of Equipment</th> <th>Number Required</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Excavator</td> <td>1</td> </tr> <tr> <td>2</td> <td>Tripper / Truck</td> <td>1</td> </tr> <tr> <td>3</td> <td>Concrete mixer</td> <td>2</td> </tr> <tr> <td>4</td> <td>Concrete vibrator</td> <td>2</td> </tr> <tr> <td>5</td> <td>Long ladder</td> <td>2</td> </tr> </tbody> </table> | Sr. No. | Description of Equipment | Number Required | 1 | Excavator | 1 | 2 | Tripper / Truck | 1 | 3 | Concrete mixer | 2 | 4 | Concrete vibrator | 2 | 5 | Long ladder | 2 |
| Sr. No. | Description of Equipment | Number Required | | | | | | | | | | | | | | | | | | |
| 1 | Excavator | 1 | | | | | | | | | | | | | | | | | | |
| 2 | Tripper / Truck | 1 | | | | | | | | | | | | | | | | | | |
| 3 | Concrete mixer | 2 | | | | | | | | | | | | | | | | | | |
| 4 | Concrete vibrator | 2 | | | | | | | | | | | | | | | | | | |
| 5 | Long ladder | 2 | | | | | | | | | | | | | | | | | | |



| | | |
|---|-------------------------|--------|
| 6 | Gas welding set | 1 set |
| 7 | Lux meter | 1 |
| 8 | Hydraulic jack and axle | 2 sets |

The proposed equipment can be either owned or hired. Submission of missing required documents, KHEL shall verify availability of a list of equipment registered with Construction Development Board in the name of License holder for both equipment that requires mandatory registration of ownership and that do not for the purpose of evaluation. For equipment that does not require registration of ownership, copies of purchased invoices are required to be submitted. For equipment to be hired from Others, the bidder has to produce Hire Deed Document along with ownership document stating that the equipment will be made available at the Construction Site, if the bidder is awarded the Contract.

- (e) The minimum skilled and experienced key construction personnel required for timely and quality execution of the works to be made available for the Contract by the Bidder shall be:

| Sr. No. | Qualification & Experience | Number required |
|---------|---|-----------------|
| 1 | Project Manager with at least 4 years' working experience in the relevant field | 1 |
| 2 | Project Engineer (Civil)- Degree holder with at least 3 years' working experience or a Diploma holder with at least 5 years' working experience | 1 |
| 3 | Electrical Engineer -Degree holder with at least 3 years' working experience or a Diploma holder with at least 5 years' working experience | 1 |
| 4 | Site Supervisor (Civil) – VTI Certificate /Equivalent Certificate Holder with at least 3 years' of working experience. | 1 |
| 5 | Site Supervisor (Electrical) - VTI Certificate/Equivalent Certificate holder with at least 3 years' of working experience. | 1 |
| 6 | OHS Officer / First Aider at least holder of Class 12 Pass certificate. | 1 |

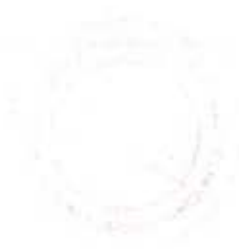
The CVs of key construction personnel along with educational qualification certificates and Work Experience Certificates from the Employers to be submitted along with the Bid. In the absence of the same, number of such skilled and experienced key construction personnel registered with Construction Development Board in the name of the License Holder shall be referred to and accordingly considered for bid evaluation purpose.



| | | |
|-----|----------|---|
| | | <p>(f) The Bid capacity</p> <p>Bid capacity of the Bidder shall be assessed as per the prescribed formula under ITB 35.7.</p> <p>Non-submission of the same, Bidder shall be asked to provide missing documents within the stipulated time line failing which Bid shall be rejected by KHEL.</p> |
| 23. | ITB 35 | <p>Evaluation and Comparison of Bids</p> <p>Bids evaluated as substantially responsive shall be notified for opening of Financial Bid based on the mode of tendering adopted.</p> <p>Further evaluation and comparison of priced Bids shall be done as per ITB 34 and ITB 35 respectively</p> |
| 24. | ITB 35.6 | <p>Lowest evaluated Bid:</p> <p>If the Bid price of the lowest evaluated bidder is beyond (+/-) 15% of the estimated Amount, the same shall be considered as an abnormally low bid and/ or seriously unbalanced bid. If Employer accepts such bid, the bidder is required to furnish an additional differential security equivalent to the difference between the prices offered by the lowest evaluated bid and the average price quoted by all the other bidders.</p> |
| 25. | ITB 37 | <p>Award Criteria</p> <p>Award Contract to the successful bidder whose Bid has been determined substantially responsive and is the lowest evaluated Bid.</p> |



SECTION IV – GENERAL CONDITIONS OF CONTRACT



A. Contract and Interpretation

GCC 1

Definitions

GCC 1.1

The following words and expressions shall have the meaning hereby assigned to them except where the context otherwise requires.

- (i) "Bid" means an offer to execute the Works submitted by the Bidder to KHEL in accordance with the terms and conditions set out in the Bidding Document inviting such offers. The term "Tender" is synonymous with the term "Bid";
- (ii) "BDS" means the Bid Data Sheet;
- (iii) "Bidder" means an eligible legal entity or Joint Venture that participates in a competitive bidding process governed by the Bidding Document; the terms "Bidder" and "Tenderer" are synonymous.
- (iv) "Bill of Quantities" means the priced and completed Bill of Quantities forming part of the Bid.
- (v) "Bidding Document" means the set of documents sold or issued by KHEL to potential Bidders in which the specifications, terms and conditions of the proposed procurement are prescribed. The terms "Bidding Document", "Tender Documents" and "Bid Documents" are synonymous;
- (vi) "Contract" means formal agreement(s) in writing entered into simultaneously between KHEL and the Contractor on mutually agreed terms and conditions including the Contract Documents referred therein and amendments thereto pursuant to the Letter of Award issued by KHEL and accepted by the Contractor and which are in compliance with all the relevant provisions of the Governing Law of the Contract as per GCC 8;
- (vii) "Contract Document" means the documents referred in Contract Agreement and shall, in particular, consist of documents specified in GCC 2.2 including any amendments thereto;
- (viii) "Contract Price" means the aggregate price payable to the Contractor as specified in the Contract, subject to such additions and adjustments thereto or deductions there from as may be made pursuant to the provisions of the Contract;
- (ix) "Contractor" means the Bidder whose Bid to perform the Contract has been accepted by KHEL and is named as such in the Contract Agreement, and includes the legal successors or permitted assigns of the Contractor.
- (x) "Contractor's Representative" means any person nominated or appointed by the Contractor from time to time and approved by KHEL in the manner provided in GCC 24.2 hereof to perform the duties assigned by the Contractor.
- (xi) "Contractor's Equipment" means all facilities, equipment, machinery, tools, apparatus, appliances, vehicles or things of every kind required for erection, completion and maintenance of Works that are to be provided by the Contractor, but does not include plant, equipment, materials or



- other things intended to form or forming part of the Works and KHEL's Equipment, if any.
- (xii) "Day" means calendar day of the Gregorian calendar. However, "Working day" as used herein means all calendar days excluding Sundays and Government holidays in the Kingdom of Bhutan;
- (xiii) "KHEL" means KHOLONGCHHU HYDRO ENERGY LIMITED.
- (xiv) "Drawings" means the drawings of the Goods, Works, Plant, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) KHEL in accordance with the Contract.
- (xv) "Defect Liability Period" means the period of validity of the warranties given by the Contractor commencing at completion of the Works or a part thereof, if separate completion of the Works for such part has been provided in the Contract, during which the Contractor is responsible for defects with respect to the Works (or the relevant part thereof) as provided in GCC 34.1 hereof.
- (xvi) "Domestic Bidder" shall mean any Bidder having nationality of Bhutan.
- (xvii) "Effective Date" means the date of Letter of Award, or any other date as specified in the Contract Agreement, from which the Time for Completion shall be determined as stated in Article 3 of the Contract Agreement.
- (xviii) "Foreign Bidder" shall mean any Bidder having nationality of any country other than Bhutan.
- (xix) "GCC" means General Conditions of Contract;
- (xx) "ITB" means Instructions to Bidders;
- (xxi) "Joint Venture (JV)" means an association of not more than three (3) legal entities that pool their resources and skills to undertake a large or complex Contract in the role as a Contractor, with all legal entities (members in the JV) being legally liable, jointly and severally, through a joint venture agreement between the members of the JV for the execution of the Contract in the event of a member's withdrawal;
- (xxii) "Letter of Award" (LoA) means the letter issued by KHEL conveying the acceptance of the Bid of the successful Bidder subject to such terms and conditions as may have been stated therein.
- (xxiii) "Month" means calendar month of the Gregorian calendar.
- (xxiv) "Party" means KHEL or the Contractor, as the context requires, and "Parties" means both of them.
- (xxv) "Engineer In-Charge/Project Manager" means the person appointed by KHEL from time to time in the manner provided in GCC 24.1.1 hereof and named as such in the SCC to perform the duties delegated by KHEL inter alia to direct, supervise and be in-charge of the Works for the purposes of the Contract and shall also include the duly authorized representative.
- (xxvi) "RGoB" means the Royal Government of Bhutan;
- (xxvii) "SCC" means the Special Conditions of Contract;



- (xxviii) "Site" means the land and other places where the Works are to be executed, and to which plant and materials are to be delivered and such other land or places as may be specified in the Contract as forming part of the Site.
- (xxix) "Subcontractor" means any person to whom execution of any part of the Works, including preparation of any design or supply of any plant, equipment or materials, is sub-contracted directly or indirectly by the Contractor with the consent of KHEL, and includes its legal successors or permitted assigns.;
- (xxx) "Time for Completion" means the time within which completion of the Works as a whole (or of a part of the Works where a separate Time for Completion of such part has been prescribed) is to be attained in accordance with the stipulations in the SCC and the relevant provisions of the Contract.
- (xxxi) "Technical Specifications" means specifications of the Works incorporated in the Bidding Document and forming part of the Contract and includes any modification or amendment thereto or any addition thereto or any deduction therefrom, as may be made with the mutual agreement of KHEL and Contractor.
- (xxxii) "Works" shall mean the total work to be executed in accordance with the Contract or part(s) thereof, as the case may be, and shall include all extra or additional, altered or substituted works or temporary/enabling works and urgent works as required for performance of the Contract.

GCC 2. Contract Documents

GCC 2.1 Subject to the order of precedence set forth in the Contract, all documents forming part of the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory of one another. The Contract shall be read as a whole. The Contract Agreement will be signed as provided in the Letter of Award in two (2) originals and the Contractor shall be provided with one signed original and the other original will be retained by KHEL. The cost of stamp duties and similar charges (if any) imposed by law in connection with the Contract Agreement shall be borne by KHEL.

GCC 2.2 The Contract Document shall consist of all the engineering data, drawings and descriptive materials submitted with the Bid, complete set of Bid and Bidding Document, copies of all the correspondence with KHEL, and any other documents as may be specified by KHEL.

GCC 2.3 The Contractor shall not, without KHEL's prior written consent, disclose the Contract, or any provision thereof, or any specification, drawing, pattern, sample or information furnished by or on behalf of KHEL in connection therewith, to any person other than a person employed by the Contractor in the performance of the Contract. Disclosure to any such employed person or any entity shall be made in confidence and shall extend only as far as necessary for purposes of such performance.

GCC 2.4 The Contractor shall not, without KHEL's prior written consent, make use of any document or information specified in GCC 2.2 above except for the purpose of performing the Contract.



- GCC 3 Interpretation**
- GCC 3.1** In the Contract, except where the context requires otherwise:
- a. words indicating one gender include all genders;
 - b. words indicating the singular also include the plural and words indicating the plural also include the singular;
 - c. provisions including the word “agree,” “agreed,” or “agreement” require the agreement to be recorded in writing; and
 - d. “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record.
- The headings and sub-headings to these GCC shall not be deemed to form part thereof or be taken into consideration in the interpretation of these conditions.
- GCC 3.2** “Month” and “Year” and all dates shall be reckoned according to the Gregorian calendar.
- GCC 3.3** A “law” shall be construed as a reference to such law including its amendments or re-enactments from time to time.
- GCC 3.4** A “person” shall be construed as a reference to any person, firm, company, corporation, society, trust, government, or agency of a government or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests.
- GCC 3.5** The words “hereof” or “herein” if and when used in the Contract Documents shall mean a reference to the Contract Documents of this Contract.
- GCC 3.6 Amendment**
- No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by duly authorized representatives of KHEL and the Contractor.
- GCC 3.7 Non-waiver**
- a. Subject to GCC.3.7(b)below, no relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other shall prejudice, affect or restrict the rights of that Party under the Contract, nor shall any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract;
 - b. Any waiver of a Party’s rights, powers or remedies under the Contract must be in writing, dated and signed by an authorized representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.
- GCC 3.8 Severability**
- If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.
- GCC 3.9 Effect**



The Contract shall be deemed to have come into full force and effect from the date of Letter of Award or any other date as specified in the Contract Agreement. This date shall be considered as the Effective Date of the Contract. The Time for Completion shall be reckoned from the Effective Date.

GCC 3.10 Entire Agreement

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

GCC 3.11 Responsibility

The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the Parties hereto. Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, Sub-contractors and representatives, engaged by the Contractor in connection with the performance of the Contract, shall be under the complete control of the Contractor and shall not be deemed to be employees of KHEL, and nothing contained in the Contract, or in any sub- contract awarded by the Contractor, shall be construed to create any contractual relationship between any such employees, representatives, or Sub contractors and KHEL.

GCC 4 Fraud and Corruption

GCC 4.1 If KHEL determines that the Contractor and/or any of its personnel, or its agents, or its Subcontractors, and/or their employees has engaged in corrupt, fraudulent, collusive coercive, or obstructive practices, in competing for or in executing the Contract, then KHEL may, after giving fourteen (14) days' notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of GCC 45.2.2 shall apply as if such expulsion had been made under GCC 45.2.1.c.

GCC 4.2 For the purposes of this sub-clause,

- a. "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- b. "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- c. "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- d. "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- e. "obstructive practice" is
 - i. deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false



statements to investigators in order to materially impede any investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

- ii. acts intended materially to impede the exercise of the inspection rights of KHEL or any organization or person appointed by KHEL.

GCC 5 Language

GCC 5.1 The Contract, as well as all correspondence and documents relating to the Contract exchanged between the Contractor and KHEL, shall be written in English. 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 English, in which case, for purposes of interpretation of the Contract, the translation shall govern.

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

GCC 6 Joint Venture

GCC 6.1 If the Contractor is a Joint Venture, all such parties shall be deemed to be jointly and severally liable to KHEL for the fulfilment of the obligations under the Contract and shall designate one of such Party to act as a leader with authority to bind the Joint Venture. The composition or the constitution of the Joint Venture shall not be altered without the prior consent of KHEL.

GCC 7 Notices

GCC 7.1 Notices shall be deemed to include any approvals, consents, instructions, orders, determinations and certificates to be given under the Contract.

GCC 7.2 Unless otherwise stated in the Contract, all notices to be given under the Contract shall be in writing, and shall be sent by personal delivery, or courier, or post, or fax, or electronic mail, to the address specified in the Contract.

GCC 7.3 Any notice sent by post or courier shall be deemed (in the absence of evidence of earlier receipt) to have been delivered ten (10) days after dispatch. In proving the fact of dispatch, it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and conveyed to the postal authorities or courier service for transmission by airmail or special courier.

GCC 7.4 Any notice delivered personally or sent by fax or electronic mail shall be deemed to have been delivered on date of its dispatch.

GCC 7.5 Either Party may change its address at which notices are to be received by giving ten (10) days' notice to other Party in writing.

GCC 8 Governing Law

GCC 8.1 The Contract shall be governed by and interpreted in accordance with the laws of the Kingdom of Bhutan. The courts of Trashiyangtse shall have exclusive



- jurisdiction in all matters arising out of the Contract unless otherwise stated in the SCC.
- GCC 8.2 The Contractor shall, in all matters arising in the performance of the Contract, obtain all permits, licenses and approvals as required by law, give all notices and pay all taxes, duties and fees required by the provisions of any statute, ordinance or other law or any regulation or by-law of any duly constituted authority of the Kingdom of Bhutan in relation to the design, execution and completion of Works and the remedying of any defects.
- GCC 8.3 The Contractor shall indemnify and hold harmless KHEL from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel including its Sub-contractors and their employees.
- GCC 9 Disputes
- GCC 9.1 Contractor's Claims
- GCC 9.1.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any clause of GCC or otherwise in connection with the contract, the Contractor shall give notice to KHEL, describing the event or circumstances giving rise to the claim. The notice shall be given as soon as practicable, and not later than twenty eight (28) days after the Contractor became aware, or should have become aware, of the event or circumstance.
- GCC 9.1.2 If the Contractor fails to give notice of a claim within such period of twenty eight (28) days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and KHEL shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub- Clause shall apply.
- GCC 9.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, as relevant to such event or Circumstances.
- GCC 9.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager/EIC. Without admitting KHEL's liability, the Project Manager/EIC may, after receiving any notice under this sub-clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager/EIC to inspect all these records, and shall (if instructed) submit copies to the Project Manager/EIC.
- GCC 9.1.5 Within twenty-eight (28) days after the Contractor became aware (or should have become aware) of the event or circumstances giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager/EIC, the Contractor shall send to the Project Manager/EIC a fully detailed claim which includes full supporting particulars of the basis of the claim for the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:
- a. this fully detailed claim shall be considered as interim;
 - b. the Contractor shall send further interim claims at monthly intervals, giving



- the accumulated delay and/or amount claimed, and such further particulars as the Project Manager/EIC may reasonably require; and
- c. the Contractor shall send a final claim thirty (30) days after the end of the effects resulting from the event or circumstances, or within such other period as may be proposed by the Contractor and approved by the Project Manager/EIC.
- GCC 9.1.6 Within forty-five (45) days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager / EIC and approved by the Contractor, the Project Manager/EIC shall respond with approval, or with disapproval and detailed comments. The Project Manager/EIC may also request any necessary further particulars, but shall nevertheless give a response on the principals of the claim within such time.
- GCC 9.1.7 Each payment certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claims that has been substantiated.
- GCC 9.1.8 The Project Manager/EIC shall proceed to determine (i) the extension (if any) of the Time for Completion (before or after its expiry), and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.
- GCC 9.1.9 The requirements of this sub-clause are in addition to those of any other sub-clause, which may apply to a claim. If the Contractor fails to comply with this or any other sub-clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this sub-clause.
- GCC 10 Settlement of Disputes
- GCC 10.1 Amicable Settlement
- The Parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of the Contract and the success of the assignment. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation. If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days after receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, GCC 10.2 below shall apply.
- GCC 10.2 Dispute Resolution
- Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within twenty eight (28) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement by arbitration in accordance with the provisions specified in the SCC.



B. Subject Matter of Contract

- GCC 11 Time for Commencement and Completion**
- GCC 11.1 The execution of the Works shall commence from the day of signing of the Contract, unless otherwise stated elsewhere in the Contract.
- GCC 11.2 Before the actual commencement of Works, the Contractor shall submit an execution schedule of work clearly showing the materials, men and equipment to be mobilized by him to execute the Works. The schedule should contain the planned monthly progress of the Works for the approval of the Project Manager/EIC who will have the authority to make additions, alternations and substitutions to such schedule in consultation with the Contractor.
- GCC 11.3 The entire scope of Works or any part of the Works (where such part is envisaged to be taken-over separately) covered under this Contract shall be completed within the time stated in the SCC or within such extended time granted to the Contractor by KHEL under GCC 42.1. The time allowed for execution of the Works as specified in the SCC or the extended time in accordance with these conditions shall be the essence of the Contract.
- GCC 12 Contractor's Responsibilities**
- GCC 12.1 The Contractor shall design, execute and complete the Works in accordance with the Contract and with the Project Manager/EIC's instructions, and shall remedy any defects in the Works.
- GCC 12.2 The Contractor shall provide the plant and Contractor's documents specified in the Contract, and all Contractor's Personnel, Goods, Consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.
- GCC 12.3 The Contractor shall be responsible for the adequacy, stability, and safety of all Site operations and of all methods of construction. The Contractor (i) shall be responsible for all Contractor's documents, temporary works and such design of each item of plant, equipment or materials as is required for the item to be in accordance with the Contract and (ii) shall not otherwise be responsible for the design or specification of the permanent Works.
- GCC 12.4 The Contractor shall, whenever required by the Project Manager/EIC, submit details of the arrangements and methods which the Contractor purposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously being notified to the Project Manager/EIC.
- GCC 12.5 If the Contract specifies that the Contractor shall design any part of the permanent Works, then unless otherwise stated:
- a. the Contractor shall submit to the Project Manager/EIC the Contractor's documents for this part in accordance with the procedures specified in the Contract;
 - b. these Contractor's documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in GCC 5, and shall include additional



information required by the Project Manager/EIC to add to the drawings for co-ordination of each party's designs;

- c. the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and
- d. prior to the commencement of the tests on completion, the Contractor shall submit to the Project Manager/EIC the "as- built" documents and operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Project Manager/EIC to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works as specified in SCC. Such part shall not be considered to be completed for the purpose of taking-over under GCC 32 until these documents and manuals have been submitted to the Project Manager.

GCC 13 KHEL's Responsibilities

GCC 13.1 KHEL shall ensure the accuracy of all information and / or data to be supplied by KHEL as described in the Contract Agreement, except when otherwise expressly stated in the Contract.

GCC 13.2 KHEL shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the Contract Agreement. KHEL shall give full possession of and an accord all rights of access thereto on or before the date(s).

GCC 13.3 KHEL shall acquire and pay for all clearances, approvals and/or licenses from all government authorities or public service undertakings in the Kingdom of Bhutan, which such authorities or undertakings require KHEL to obtain in KHEL's name for the execution of the Contract (they include those required for the performance by both the Contractor and KHEL of their respective obligations under the Contract), including those specified in the Contract Agreement.

GCC 13.4 If requested by the Contractor, use its best endeavors to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be.

C. Payment

GCC 14 Contract Price

GCC 14.1 Subject to GCC 35, the Contractor shall be deemed to:

- a. have satisfied himself as to the correctness and sufficiency of the Contract Price, and
- b. have based the Contract Price on the data, interpretations necessary, information, inspections, examinations and satisfaction as to all matters relevant to the Site.



- GCC 14.2 Unless otherwise stated in the Contract, the Contract Price covers all the Contractor's obligations under the Contract and all things necessary for the proper execution and completion of the Works and the remedying of any defects.
- GCC 14.3 The Contract Price shall be as specified in Article 2 of the Contract Agreement.
- GCC 15 Terms of Payment**
- GCC 15.1 The Contractor shall submit to the Project Manager/EIC monthly statements of the value of the work executed, based on the Contractor's records, less the cumulative amount certified previously.
- GCC 15.2 The Project Manager/EIC shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- GCC 15.3 The value of work executed shall be determined by the Project Manager/EIC.
- GCC 15.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed and measurement thereof shall be carried out jointly by the Project Manager/EIC, or his Representative, and the Contractor. The Project Manager/EIC, or his Representative, shall record the value of the work executed in a measurement book for the purposes of verifying the Contractor's monthly statements. The measurement book shall be signed by the Project Manager/EIC or his Representative, and countersigned by the Contractor.
- GCC 15.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- GCC 15.6 The Project Manager/EIC may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.
- GCC 15.7 Payments shall be adjusted for deductions for advance payments, taxes, retention money and any other dues. KHEL shall pay the Contractor within 30 working days from the date of receipt of correct and verified bills/invoices in complete form by the Finance Section. If the bill is incomplete it has to be returned.
- GCC 15.8 Items of the Works for which no rate or price has been entered in shall not be paid for by KHEL and shall be deemed covered by other rates and prices in the Contract.
- GCC 16 Advance Payment**
- GCC 16.1 "An interest free advance of ten percent (10%)" shall be paid to the contractor against an unconditional bank guarantee acceptable to KHEL. The bank guarantee should be in the prescribed format enclosed as Form 13 of Section VII B valid till thirty (30) days after scheduled date of completion of work. The advance payment will be kept outside the purview of Price variation Clause and will be adjusted as per the Contract Agreement. This Bank Guarantee shall be returned to the Contractor after full adjustment of advance and against request by the contractor. The validity of Bank Guarantee would require to be extended by the contractor, if so required by KHEL.
- GCC 16.2 The advance shall be recovered through percentage deduction from payments made to the contractor. In case of interim progress payments, the deduction should start when equivalent to twenty (20) percent of work is done on pro-rata basis so that the full amount of advance is recovered prior to the completion of



work equivalent to eighty (80) percent of the Contract Price. The advance shall be fully recovered if the contract duration is completed before eighty (80) percent of the work is done. In the event of failure to recover such advances as stated the Contractor shall be liable to pay the balance advance amount along with the interest on balance advance amount at prevailing market rate, applicable from the date of default.

GCC 17 Secured Advance

GCC 17.1 In addition to the above advance payment, KHEL shall make secured advance payment of the amount specified in the SCC.

GCC 17.2 In case of secured advance, the contractor shall not be required to submit a security. However, the secured advances shall be paid to the contractor on the following conditions:

- a. The materials shall be in accordance with the specifications and shall not be in excess of the requirements;
- b. The materials shall be delivered at the site of the works, properly stored and protected against loss, damage or deterioration;
- c. A declaration shall be given by the contractor passing on the lien on the rights of the materials to KHEL.
- d. The amount of the secured advance shall not be more than seventy five percent (75%) of the cost of materials delivered at the site of works which shall be supported by the original invoices/bills from the suppliers. All materials imported from other countries shall be supported by Bhutan Sales Tax Receipts or Customs Clearance.
- e. The secured advance shall be recovered from the interim progress payments in the months in which these materials are used in the works.

GCC 18 Retention

GCC 18.1 KHEL shall retain ten percent (10%) from each payment due to the Contractor until completion of the whole of the Works as retention money.

GCC 18.2 On completion of the whole of the Works, the retention money may be substituted by an unconditional bank guarantee issued by a reputable financial institution acceptable to KHEL. The bank guarantee shall be valid until the issue of a No Defects Liability Certificate by KHEL after the end of the Defects Liability Period and subject to the certification by the Project Manager/EIC that all defects notified by the Project Manager/EIC to the Contractor have been rectified to his satisfaction before the end of this period. If the Contractor fails to remedy any reported defect within the Defects Liability Period, KHEL shall withhold the payment of realized claims from the bank guarantee of an amount which in the opinion of KHEL represents the cost of the defect to be remedied.

GCC 19 Taxes and Duties

GCC 19.1 Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Subcontractors by laws, regulations of the Kingdom of Bhutan in connection with the Works in and outside of the Kingdom of Bhutan. The Contract Price shall be deemed to be inclusive of all such taxes, duties, levies, etc.



- GCC 19.2 Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments for:
- a. natural materials obtained from outside the Site, and
 - b. the disposal of materials from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.
- Except where otherwise stated, the Contractor shall pay royalties, rent and other payments or other compensations, if any, for getting stone, sand, gravel, clay or other materials required for the Works.
- GCC 19.2.1 At the time of release of payment, tax shall be deducted at source (TDS) from the Contractor as specified in the SCC from the gross amount of bills. KHEL shall furnish necessary TDS Certificate to the Contractor, issued by the Department of Revenue & Customs, RGoB. The Contractor shall be responsible to deduct tax at source from the gross payments made to its sub-contractors and deposit the same to the account of RGoB as per provisions of relevant law in this regard in force from time to time.
- GCC 19.2.2 Any tax that may be levied in the Kingdom of Bhutan on the profits made by the Contractor in respect of the Contract shall be to the Contractor's account and no separate claim in this regard will be entertained by KHEL.
- GCC 19.3 With respect to exemption if any available to KHEL in Bhutan for Taxes, Duties, Levies and charges, the bidder shall be intimated separately before submission of bids to KHEL.
- GCC 19.4 For the purpose of the Contract, it is agreed that the Contract Price specified in the Contract Agreement is inclusive of the taxes, duties, levies and charges prevailing at the date thirty (30) days prior to the last date of Bid submission in the Kingdom of Bhutan (hereinafter called "Tax" in this clause). 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 Contractor in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction there from, as the case may be, in accordance with GCC 38, hereof.
- GCC 19.5 The Contractor's staff, personnel and labor will be liable to pay personal income tax in Bhutan in respect of such of their salaries and wages as are chargeable under the laws and regulations for the time being in force and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed by such laws and regulations.
- GCC 19.6 The Contractor and all its expatriate personnel shall be responsible for the timely and prompt filing of all returns, documents, estimates, accounts, information and details complete and accurate in all respects as may be required under the applicable laws and regulations to the appropriate authorities in Bhutan. In case the Contractor or any of its expatriate personnel do not comply with the above requirements, which results in any penalty, interest or other liability, the same shall be borne by the Contractor.



- GCC 20 Securities
- GCC 20.1 Submission of Securities
- The Contractor shall provide the securities specified below in favor of Kholongchhu Hydro Energy Limited in the amount, manner and form specified below.
- GCC 20.2 Advance Payment Security
- GCC 20.2.1 The Contractor shall, within fifteen (15) days of the Letter of Award or signing of the Contract, whichever is earlier, provide to KHEL at his own cost, security for advance payment equivalent to ten percent (10%) of the Contract Price, with initial validity up to thirty (30) days beyond the scheduled completion period of contract. However, in case of delay in completion Period, the validity of the contract performance security shall be extended by the Contractor for such period of delay.
- GCC 20.2.2 The security shall be in the form of an unconditional and irrevocable bank guarantee as per the proforma provided in Form: 14 of Section VIIB. The Advance Payment Security shall be reduced/ prorate every six (6) months after First Running Account Bill/Stage Payment. The cumulative amount of reduction at any point of time shall not exceed seventy five percent (75%) of the advance corresponding to cumulative value of the respective plant and equipment supplied and received as per certificate issued by the Project Manager. The balance of 25% shall be released on completion of Works. It should be clearly understood that reduction in the value of security for advance shall not in any way dilute the Contractor's responsibility and liabilities under the Contract including in respect of the Works for which the reduction in the value of security is allowed.
- GCC 20.3 Contract Performance Security
- GCC 20.3.1 The Contractor shall, within fifteen (15) days of the Letter of Award or prior to signing of the Contract, whichever is earlier, provide to KHEL at his own cost, security for due performance of the Contract equivalent to ten percent (10%) of the Contract Price, with initial validity up to thirty (30) days beyond the scheduled completion period of contract. However, in case of delay in completion Period, the validity of the contract performance security shall be extended by the Contractor for such period of delay.
- GCC 20.3.2 The performance security shall be submitted as an unconditional /irrevocable Bank Guarantee issued by a nationalized Bank located in India/Bhutan or a foreign Bank located in India /Bhutan and acceptable to KHEL in the form 13 of section VIIB".
- GCC 20.3.3 The performance security will be discharged and returned to the Contractor within thirty (30) days after the issue of last Taking over Certificate.
- GCC 20.3.4 KHEL shall not make a claim under the performance security, except for amounts to which KHEL is entitled under the contract in the event of:
- (a) Failure by the contractor to pay KHEL an amount due, as either agreed by the Contractor or determined under GCC 15 (payment) or GCC 45.2 (termination), within forty two (42) days after this agreement or determination.



- (b) Failure by the Contractor to extend the validity of the Performance Security as described in the preceding paragraph, in which event KHEL may claim the full amount of the
- (c) Circumstances which entitle KHEL to terminate the contract under GCC 45.2 (termination), irrespective of whether notice of termination has been given.

D. Intellectual Property

GCC 21 Copyright

GCC 21.1 The copyright in all drawings, documents and other materials containing data and information furnished to KHEL by the Contractor shall remain vested in the Contractor, or, if they are furnished to KHEL directly or through the Contractor by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third Party.

GCC 22 Confidential Information

GCC 22.1 KHEL and the Contractor shall keep confidential and shall not, without the written consent of the other Party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other Party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Sub-vendors such documents, data and other information as it receives from KHEL to the extent required for the Sub-vendors to perform its obligations under the Contract, in which event the Contractor shall be under obligation to have a clause in the contracts with their sub vendors regarding confidentiality similar to that provided herein.

GCC 22.2 KHEL shall not use such documents, data and other information received from the Contractor for any purposes unrelated to the Contract. Similarly, the Contractor shall not use such documents, data and other information received from KHEL for any purpose other than the design, procurement of plant and equipment, construction or such other work and services as are required for the performance of the Contract.

GCC 22.3 The obligation of a Party under GCC 22.1 and GCC 22.2 above, however, shall not apply to information that:

- a. KHEL or Contractor needs to share with the RGoB;
- b. now or hereafter enters the public domain through no fault of that Party;
- c. can be proven to have been possessed by that Party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other Party; or
- d. Otherwise lawfully becomes available to that Party from a third party that has no obligation of confidentiality.

GCC 22.4 The above provisions of GCC 22 shall not in any way modify any undertaking of confidentiality given by either of the Parties hereto prior to the date of the Contract in respect of the performance of the Contract or any part thereof.



- GCC 22.5 The provisions of GCC 22 shall survive completion or termination, for whatever reason, of the Contract.
- GCC 23 Indemnity**
- GCC 23.1 The Contractor shall, subject to KHEL's compliance with GCC 23.2, indemnify and hold harmless KHEL and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of any nature, including attorney's fees and expenses, which KHEL may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:
- a. the execution of the Works by the Contractor or the use of the Works in the Kingdom of Bhutan; and
 - b. the sale in any country of the products produced by the Works.
- GCC 23.2 The Contractor shall indemnify and hold harmless KHEL and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property (other than the Works whether accepted or not), arising in connection with the supply and erection of Works and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents. For any injury, death or property damage caused by the negligence of KHEL, its contractors, employees, officers or agents KHEL shall be responsible.
- GCC 23.3 Such indemnity shall not cover any use of the Works or any part thereof other than for the purpose indicated by or reasonably to be inferred from the Contract, neither any infringement resulting from the use of the Works or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Contractor, pursuant to the Contract.
- GCC 23.4 If any proceedings are brought or any claim is made against KHEL or its representatives or its employees arising out of the matters referred to in GCC 23.1 and GCC 23.2, KHEL shall promptly give the Contractor notice thereof, and the Contractor may at its own expense and in KHEL's name conduct such proceedings or claims and any negotiations for the settlement of any such proceedings or claims.
- GCC 23.5 If the Contractor fails to notify KHEL within thirty (30) days after receipt of such notice that it intends to conduct any such proceedings or claims, then KHEL shall be free to conduct the same on its own behalf at the cost of the Contractor. Unless the Contractor has so failed to notify KHEL within the thirty (30) day period, KHEL shall make no admission that may be prejudicial to the defence of any such proceedings or claim.
- GCC 23.6 KHEL shall, at the Contractor's request, provide all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.
- GCC 23.7 KHEL shall indemnify and hold harmless the Contractor and its employees, claims,



demands, losses, damages, costs and expenses of any nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification or other documents or materials provided or designed by or on behalf of KHEL.

GCC 23.8 KHEL shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of KHEL, other than the Works not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GCC 37, provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.

GCC 23.9 The Party entitled to the benefit of an indemnity under this clause shall take all reasonable measures to mitigate any loss or damage which has occurred. If the Party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

E. Work Execution

GCC 24 **Representatives**

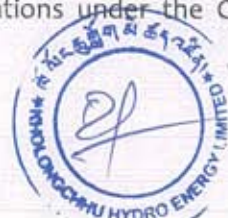
GCC 24.1 **Engineer In-Charge/Project Manager**

GCC 24.1.1 If the Engineer In-Charge is not named in the SCC or the Contract, then within fourteen (14) days of the Effective Date, KHEL shall appoint and notify the Contractor in writing of the name of the Engineer In-Charge. KHEL may from time to time appoint some other person as the Engineer In-Charge in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. KHEL shall take reasonable care to see that no such appointment is made at such a time or in such a manner as to impede the progress of Works. The Engineer In-Charge shall represent and act for KHEL at all times during the currency of the Contract and carry out duties and responsibilities specified in the Contract. However, the Engineer In-Charge shall have no authority to amend the Contract.

GCC 24.1.2 The Engineer In-Charge may exercise the authority attributable to him as specified to him or necessarily to be implied from the Contract. If the Engineer In-Charge is required to obtain the approval of KHEL before exercising a specific authority, he shall be responsible for taking such approval. KHEL undertakes not to impose further constraints on the Engineer In-Charge's authority except as provided in the Contract. However, whenever the Engineer In-Charge exercises a specific authority for which KHEL's approval is required, then (for the purpose of the Contract) KHEL shall be deemed to have given approval.

GCC 24.1.3 All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Engineer In-Charge, except as herein otherwise provided.

GCC 24.1.4 The Engineer In-Charge's representative will be appointed by and be responsible to the Engineer In-Charge and will carry out such duties and exercise such authority as may be delegated to him by the Engineer In-Charge under GCC 24.1.5. The Engineer In-Charge's representative shall have no authority to relieve the Contractor of any of his duties or obligations under the Contract except as



expressly provided hereunder or elsewhere in the Contract, nor to order any work involving delay or any extra payment by KHEL, nor to make any change in the Works.

GCC 24.1.5 The Engineer In-Charge may, from time to time delegate to the Engineer In-Charge's representative any of the powers and authorities vested in the Engineer In-Charge and he may at any time revoke such delegation and furnish to the Contractor a copy of all such written delegation of power and authorities including any revocation thereof. Any communication issued by the Engineer In-Charge's representative to the Contractor in accordance with such delegation shall have the same effect as though it had been issued by the Engineer In-Charge. Provided that:

- i) Any failure of the Engineer In-Charge's representative to disapprove any work or materials shall not prejudice the authority of the Engineer In-Charge thereafter to disapprove such work or materials and to give instructions for the removal or for the rectification thereof.
- ii) If the Contractor questions any communication of the Engineer In-Charge's representative, he may refer the matter to the Engineer In-Charge who will confirm, reverse or vary the contents of such communication.

GCC 24.1.6 The Engineer In-Charge or the Engineer In-Charge's representative may appoint any number of persons to assist the Engineer In-Charge's representative in carrying out of his duties. Such assistants shall have no authority to issue any instructions to the Contractor save in so far as such instructions may be necessary to enable them to carry out their duties and to secure their acceptance of materials, plant, equipment and machinery or workmanship as being in accordance with the Contract, and any instructions given by any of them for those purposes shall be deemed to have been given by the Engineer In-Charge's representative.

GCC 24.2 Contractor's Personnel

GCC 24.2.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the SCC, to carry out the functions stated in the Schedule or other personnel approved by the Engineer In-Charge. The Engineer In-Charge shall approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule. If the Contractor fails to deploy the personnel as committed in the Bid document, the employer shall stop the work if the quality of work is going to suffer or otherwise deduct the salaries of such personnel at a rate stipulated in the SCC per month per personnel for every month of absence of such personnel from the site. Such deductions shall continue till such time that the Contractor deploys the key personnel acceptable to the employer. If the Contractor fails to deploy such key personnel within one to four months, the deductions shall be discontinued and the contractor's failure to deploy such personnel shall be treated as a fundamental breach of contract.

GCC 24.2.2 If the Contractor's Representative is not named in the Contract, then within fourteen (14) days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request KHEL in writing to approve the person so appointed. If KHEL makes no objection to the appointment within fourteen (14) days, the Contractor's Representative shall be deemed to have been approved. If KHEL objects to the appointment within fourteen (14) days giving the reason thereof, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this clause GCC 24.2.2



shall apply thereto.

GCC 24.2.3 The Contractor's Representative shall represent and act for the Contractor at all times during the currency of the Contract and shall give to the Engineer In-Charge all the Contractor's notices, instructions, information and all other communications under the Contract.

All notices, instructions, information and all other communications given by KHEL or the Engineer In-Charge to the Contractor under the Contract shall be given to the Contractor's Representative or, in its absence, its deputy, except as herein otherwise provided.

The Contractor shall not revoke the appointment of the Contractor's Representative without KHEL's prior written consent, which shall not be unreasonably withheld. If KHEL consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in GCC 24.2.2.

GCC 24.2.4 The Contractor's Representative may, subject to the approval of KHEL (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may also be revoked at any time subject to the approval of KHEL. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to KHEL and the Engineer In-Charge.

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this clause GCC 24.2.4 shall be deemed to be an act or exercise by the Contractor's Representative.

GCC 24.2.5 From the commencement of Works at the Site until operational acceptance, the Contractor's Representative shall appoint a suitable person as the construction manager (hereinafter referred to as "the Construction Manager"). The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as his or her deputy.

GCC 24.2.6 KHEL may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of KHEL, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC 27.3. KHEL shall provide evidence of the same, whereupon the Contractor shall remove such person from the Site.

GCC 24.2.7 If any representative or person employed by the Contractor is removed in accordance with GCC 24.2.6, the Contractor shall, where required, promptly appoint a replacement.

GCC 25 Work Program

GCC 25.1 Manner of execution

The Contractor shall carry out the Works:

- a. in the manner (if any) specified in the Contract,



- b. in a proper workmanlike and careful manner, in accordance with recognized good practice, and
- c. with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

GCC 25.2 Program of execution of Works

Within fifteen (15) days prior to commencement of work, the Contractor shall prepare and submit in soft copies to the Engineer In-Charge for his approval a detailed program for execution of the Works, made in the form of PERT network (prepared in the software as may be directed by KHEL (Engineer In-Charge) and showing the sequence in which it proposes to execute the Works as well as the date(s) by which the Contractor reasonably requires that KHEL shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve completion of the Works in accordance with the Contract. The program so submitted by the Contractor shall be in accordance with the Time Schedule and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Engineer In-Charge, but without modification in the Time for Completion and any extension granted in accordance with GCC 422, and shall submit all such revisions to the Engineer In-Charge for his approval.

GCC 25.3 Progress Report

The Contractor shall monitor progress of all the activities specified in the program referred to in GCC 25.2 above, and supply a progress report during the execution of the Contract to the Engineer In-Charge at his cost by fourteenth (14th) of every month.

The progress report shall be in a form acceptable to the Engineer In-Charge and shall also indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken. The progress report shall be supported by photographs and other written material as the Engineer In-Charge may direct. The Contractor shall have to attend all the meetings at his own cost with the Engineer In-Charge or any authorized representative of KHEL during the currency of the Contract, as and when required and fully cooperate with such persons and agencies involved during these discussions.

GCC 25.4 Progress of Performance

If at any time the Contractor's actual progress falls behind the program referred to in GCC 25.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of KHEL or Engineer In-Charge, prepare and submit to the Engineer In-Charge a revised program, taking into account the prevailing circumstances, and shall notify the Engineer In-Charge of the steps being taken to expedite progress so as to attain completion of the Works within the Time for



- Completion under GCC.11, any extension thereof entitled under GCC 422, or any extended period as may otherwise be agreed upon between KHEL and the Contractor.
- GCC 25.5 Progress review meetings
- The Contract shall be executed in accordance with the Contract. If agreed between KHEL and the Contractor, the Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract.
- GCC 26 Subcontracting
- GCC 26.1 The Contractor shall select and employ its Subcontractors on approval by KHEL for such major items listed in the SCC.
- GCC 26.2 In the event of a subcontractor having undertaken towards the Contractor in respect of the work executed or the goods, materials, plant, equipment and machinery or services supplied by such subcontractor, any continuing obligation extending for a period exceeding that of the Defects Liability Period or its extension under the Contract, the Contractor shall at any time, after the expiration of such period, assign to KHEL, at KHEL's request and cost, the benefit of such obligation for the unexpired duration thereof.
- GCC 26.3 The Contractor shall be responsible fully for the acts, defaults and negligence of his subcontractors, their agents, servants, workmen as if such acts, defaults, and negligence is of the Contractor. The Contractor shall be under obligation to furnish the unpriced copies of the contracts awarded to the sub-contractors at the request of KHEL.
- GCC 26.4 For items or parts of the Works not specified in SCC including but not limited to (i) the provision of labor (ii) the purchase of materials which are in accordance with the standards specified in the Contract, the Contractor may employ such Subcontractors as it may select, at its discretion.
- GCC 26.5 The Contractor shall not sub contract the whole of the Contract and shall also not sub contract any part of the scope of work which is specifically prohibited for subcontracting under the provisions of the Contract.
- GCC 27 Installation
- GCC 27.1 Setting Out/Supervision/Labor
- GCC 27.1.1 **Bench Mark:** The Engineer In-Charge shall establish / indicate the benchmarks and convey the same to the Contractor immediately after acceptance of Letter of Award. The Engineer In-Charge shall be responsible for correctness of such data/benchmarks conveyed to the Contractor.
- GCC 27.1.2 The Contractor shall be responsible for the true and proper setting-out of all the Works in relation to bench marks, reference marks and lines provided to it in writing by the Engineer In-Charge.
- GCC 27.1.3 If, at any time during the progress of Works, any error shall appear in the position, grades, dimensions, level or alignment of any part of the Works, the Contractor shall forthwith notify the Engineer In-Charge of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Engineer In-Charge. If such error is based on incorrect data by KHEL, the expense of rectifying



the same shall be borne by KHEL. The Contractor shall afford all reasonable facilities and assistance to the Engineer In-Charge. The checking of any bench mark by the Engineer In-Charge shall not relieve the Contractor of his responsibility for the correctness thereof. The Contractor shall protect and preserve all benchmarks used in setting out the Works till date of submission of final bill under the Contract, unless the Engineer In-Charge directs otherwise.

GCC 27.1.4 Contractor's Supervision: The Contractor shall give or provide all necessary superintendence during the execution of Works, and the Construction Manager or its deputy shall be on the Site to provide full-time superintendence of the execution as long as the Engineer In-Charge may consider necessary for the proper fulfilment of the contractual obligations under the Contract. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

GCC 27.1.5 Labor

- a. The Contractor shall engage and employ on the Site in the execution of the Works such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labor that has the necessary skills. The Contractor shall not recruit, or attempt to recruit, staff and labor from amongst KHEL's personnel.
- b. Unless otherwise provided in the Contract, the Contractor shall be responsible for the recruitment, transportation, accommodation, medical care and maintaining welfare facilities and catering of all labor, local or expatriate, required for the execution of the Contract and for all payments in connection therewith.
- c. The Contractor shall pay rates of wages and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions, which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.
- d. The Contractor shall be responsible, at his own cost, for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labor and personnel to be employed on the Site into the Kingdom of Bhutan. The Contractor shall submit to KHEL for its approval; details and bio-data of all expatriate personnel which he proposes to engage for the performance of Works under the Contract, at least fifteen (15) days prior to their departure for Bhutan. Such data for each personnel shall contain the name, his present address, his assignment and responsibility in connection with the Works, and a short resume of his qualifications, experience etc. in relation to the works to be performed by him.
- e. Any expatriate personnel deployed on the Works at Site, if found unsuitable or unacceptable later on to RGoB/KHEL, shall within a reasonable time, be repatriated by the Contractor, who shall make alternative arrangements for providing a suitable replacement.



- f. No person brought to Bhutan for the completion of Works shall be repatriated without the consent of the Engineer In-Charge on a written request from the Contractor for such repatriation giving reasons thereof. The Engineer In-Charge may give permission for such repatriation provided it is satisfied that the progress of Works shall not suffer due to such repatriation/replacement.
- g. The Contractor shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labor of its Subcontractors for the preservation of peace and protection of persons and property at the Site and its surroundings.
- h. The Contractor and his sub-contractor shall comply with all relevant local laws and regulations pertaining to labor and expatriate personnel issued by RGOB. The Contractor shall indemnify KHEL in respect of all claims that may be made against KHEL for non-compliance thereof by the Contractor. In case of non-compliance by the Contractor, the Engineer In-Charge may take such actions as may be necessary for compliance of the various labor laws and recover the costs thereof from the Contractor in the bill available in hand of Finance &Accounts Section of KHEL along with applicable market rate of interest for the period from the date of payment till the date of recovery.
- i. The Contractor shall, deliver to the Engineer In-Charge or Engineer In-Charge's representative, a report in such form and at such intervals as the Engineer In-Charge may prescribe, regarding (i) the number and names of employees/labor of different categories engaged by the Contractor from time to time on the Site and (ii) Contractor's Equipment deployed on the Site for completion of Works.

GCC 27.2 Contractor's Equipment

GCC 27.2.1 All Contractor's Equipment brought by the Contractor onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove the same from the Site without the Engineer In-Charge's consent that such Contractor's Equipment is no longer required for the execution of the Contract.

GCC 27.2.2 The Contractor shall deploy construction equipment as per agreed schedule. Provided further that in case of slow rate of progress of Works, the Contractor should supplement the agreed schedule of Contractor's Equipment with additional construction equipment so as to ensure completion of Works within Time for Completion at no extra cost to KHEL.

GCC 27.2.3 Unless otherwise specified in the Contract, upon completion of the Works, the Contractor shall remove from the Site all Contractor's Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.

GCC 27.2.4 If the Contractor does not make available at site the equipment committed for the Contract, the hiring charges of such equipment shall be deducted at a rate stipulated in the SCC per month for every month of absence for a period of one to four months after which the deductions shall be discontinued and the contractor's failure to produce such equipment at site shall be treated as a fundamental breach of contract.



- GCC 27.3 Site Regulations and Safety
- GCC 27.3.1 KHEL and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to KHEL, with a copy to the Engineer In-Charge, proposed Site regulations for KHEL's approval, which approval shall not be unreasonably withheld. Notwithstanding, the approval by the Engineer In-Charge the Contractor shall be responsible for the adequacy, stability and safety of all Site operations and methods of execution of the Contract.
- GCC 27.3.2 Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Works, gate control, sanitation, medical care, and fire prevention and accident prevention.
- GCC 27.3.3 The Contractor shall appoint an accident prevention officer at the Site responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and taken protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.
- GCC 27.3.4 The Contractor shall send, to the Engineer In-Charge, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports connecting health, safety, and welfare of persons, and damage to property, as the EIC may reasonably require.
- GCC 27.4 Opportunities for other contractors
- GCC 27.4.1 The Contractor shall, upon written request from KHEL or the Engineer In-Charge, give all reasonable opportunities for carrying out the work to any other contractors employed by KHEL on or near the Site. If the Contractor so requires, KHEL shall facilitate the Contractor to make use the facilities, for the purpose of execution of the Contract, created by other contractors in or around the Site. In the process of availing such facilities, if any damage is caused to the Works as a result of such usage, the Contractor shall be responsible to make good such damage at his cost.
- GCC 27.4.2 If the Contractor, upon written request from KHEL or the Engineer In-Charge, makes available to other contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other contractors of the Contractor's Equipment, or provides any other service of whatsoever nature for such other contractors, KHEL and the Contractor shall agree with other contractors the reasonable remuneration for the use of such equipment or the provision of such services.
- GCC 27.4.3 The Contractor shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors. The Engineer In-Charge shall determine the resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of KHEL in regard to their work.
- GCC 27.4.4 The Contractor shall notify the Engineer In-Charge promptly of any defects in the other contractors' work that come to its notice, and that could affect the Contractor's work. The Engineer in-Charge shall determine the corrective



measures, if any, required to rectify the situation after inspection of the Works. Decisions made by the Engineer In-Charge shall be binding on the Contractor.

GCC 27.4.5 In all matters of conflict of interest with other contractors, the Engineer In-Charge shall convey his decision which shall be final and binding on the parties.

GCC 27.5 Emergency Work

GCC.27.5.1 If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Works, the Contractor shall immediately carry out such work.

GCC.27.5.2 If the Contractor is unable or unwilling to do such work immediately, KHEL may do or cause such work to be done by his own or other means, as KHEL may determine it necessary in order to prevent damage to the Works. In such event the Engineer In-Charge shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons thereof. If the work done or caused to be done by KHEL is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by KHEL in connection therewith shall be paid by the Contractor to KHEL along with the applicable market rate of interest.

GCC 27.6 Site Clearance

GCC 27.6.1 **Site Clearance in course of performance:** In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Contractor's Equipment no longer required for execution of the Contract.

GCC 27.6.2 **Clearance of Site after completion:** After completion of all parts of the Works, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and Works clean and safe to the satisfaction of the Engineer In-Charge.

GCC 27.7 Watching and Lighting

The Contractor shall provide and maintain at its own expense all lights, guards, fencing, and watching when and where necessary or as required by the Engineer In-Charge for the proper execution and the protection of the Works, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.

GCC 27.8 Protection of the environment

GCC 27.8.1 The Contractor shall take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his methods of operation, and shall preserve and protect all existing vegetation such as trees on or adjacent to the Site which do not unreasonably interfere with the execution of the Works. The Contractor shall make necessary arrangement to prevent pollution of the water in any adjacent water bodies including stream, springs, river and lakes, etc. The Contractor shall be solely responsible and liable for all damage caused by any pollution that may be responsible for all unauthorized cutting of and damage to trees, by careless operation of his plant,



- equipment or materials and stockpiling of materials etc. and KHEL shall have no responsibility on this account.
- GCC 27.9 Explosives**
- GCC 27.9.1** Permission for the use of explosives shall be obtained from the Engineer In-Charge or from any appropriate authority as directed by the Engineer In-Charge and all explosive materials shall be used only under close supervision. It shall be the responsibility of the Contractor to seek and obtain any necessary permits, and to ensure that the requirements of the authorities are complied with, in all respects. Failure to do so may result in the Engineer In-Charge withdrawing permission to use explosives. The indemnification provided for, under the GCC 23 shall include indemnification against all claims in respect of any incident arising from the use of explosives.
- GCC 27.9.2** Handling and utilization of explosives will be done strictly conforming to provisions of Explosive Rules of Bhutan.
- GCC 28 Materials obtained from excavation**
- GCC 28.1** Materials of any kind obtained from excavation on the Site shall remain the property of KHEL and shall be disposed of as the Engineer In-Charge may direct.
- GCC 28.2** All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site shall be the absolute property of KHEL and the Contractor shall take reasonable precautions to prevent his workmen or any other person from removing or damaging any such article or thing. The Contractor shall immediately upon discovery thereof and before removal give notice to the Engineer In-Charge for such discovery and carry out the Engineer In-Charge's direction as to the disposition of the same, at the cost of KHEL.
- GCC 29 Test and Inspection**
- GCC 29.1** The Contractor shall at its own expense carry out on the Site all such tests and/or inspections of the plant, materials and any part of the Works as are specified in the Contract.
- GCC 29.2** KHEL and the Engineer In-Charge or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that KHEL shall bear all costs and expenses incurred in connection with such attendance.
- GCC 29.3** Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of the date of such test and/or inspection to the Engineer In-Charge.
- GCC 29.4** The Contractor shall provide the Engineer In-Charge with a certified report of the results of any such test and/or inspection.
- If KHEL or Engineer In-Charge (or their designated representatives) fails to attend the test and/or inspection, or if it is agreed between the Parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Engineer In-Charge with a certified report of the results thereof.
- GCC 29.5** The Engineer In-Charge may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's



- reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of Works and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.
- GCC 29.6 If any plant, equipment or any part of the Works fails to pass any test and/or inspection, the Contractor shall either rectify or replace such plant, equipment or part of the Works and shall repeat the test and/or inspection upon giving a notice under GCC 29.3.
- GCC 29.7 If any dispute or difference of opinion shall arise between the Parties in connection with or arising out of the test and/or inspection of the plant, equipment or part of the Works that cannot be settled between the Parties within a reasonable period of time, it may be referred to Arbitration in accordance with GCC 10.2.
- GCC 29.8 The Contractor shall afford KHEL and the Engineer In-Charge access at any reasonable time to the Site where the Works are being executed, in order to inspect the progress and the manner of execution of Works, provided that the Engineer In-Charge shall give the Contractor a reasonable prior notice.
- GCC 29.9 The Contractor agrees that neither the execution of a test and/or inspection of plant, equipment or any part of the Works, nor the attendance by KHEL or the Engineer In-Charge, nor the issue of any test certificate pursuant to GCC 29.4, shall release the Contractor from any other responsibilities under the Contract.
- GCC 29.10 No part of the Works or foundations shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Engineer In-Charge whenever any such part of the Works or foundations is ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract. The Engineer In-Charge shall then without unreasonable delay carry out the test/inspection or measurement.
- GCC 29.11 The Contractor shall uncover any part of the Works, or shall make openings in or through the same as the Engineer In-Charge may from time to time require at the Site, and shall reinstate and make good such part or parts.
- GCC 29.12 If any part of the Works have been covered up at the Site after compliance with the requirement of GCC 29.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by KHEL, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.
- GCC 30 Measurement and Evaluation
- GCC 30.1 The Works shall be measured, and valued for payment, in accordance with this clause.
- GCC 30.2 Whenever KHEL requires any parts of the Works to be measured, reasonable notice shall be given to the Contractor's representative, who shall:
- a. promptly either attend or send a representative to assist the Engineer In-Charge in making the measurement, and



- b. supply any particulars requested by KHEL
- GCC 30.3 If the Contractor fails to attend or send a representative, the measurement made by (or on behalf of) KHEL shall be accepted as accurate.
- GCC 30.4 Except as otherwise stated in the Contract, wherever any Works are to be measured from records, these shall be prepared by KHEL Engineer In-Charge. The Contractor shall, as and when, requested, attend to examine and agree the records with KHEL the Engineer In-Charge, and shall sign the same when agreed. If the Contractor does not attend, the records shall be accepted as accurate.
- GCC 30.5 If the Contractor examines and disagrees with the records, and/or does not sign them as agreed, then the Contractor shall give notice to KHEL Engineer In-Charge of the respects in which the records are asserted to be inaccurate. After receiving this notice, Engineer In-Charge shall review the records and either confirm or vary them. If the Contractor does not so give notice to KHEL the Engineer In-Charge within seven (7) days after being requested to examine the records, they shall be accepted as accurate.
- GCC 30.6 Except as otherwise stated in the Contract and notwithstanding local practice:
- a. measurement shall be made of the net actual quantity of each items of the Works, and
 - b. the method of measurement shall be in accordance with the Bill of Quantities/Technical Specifications.
 - c. in case of extra items, the Engineer In-Charge shall specify the method of measurement for such items at the time of his order for execution of such extra item.
- GCC 30.7 Except as otherwise stated in the Contract, the Engineer In-Charge shall proceed to agree or determine the Contract Price by evaluating each item of work, applying the measurement agreed or determined in accordance with the above clauses and the appropriate rate or price for the item.
- GCC 31 Tests on Completion**
- GCC 31.1 The Contractor shall give to the Engineer In-Charge not less than twenty one (21) days' notice of the date after which the Contractor will be ready to carry out each of the tests on completion. Unless otherwise agreed, tests on completion shall be carried out within fourteen (14) days after this date, on such day or days as the Engineer In-Charge shall instruct.
- GCC 31.2 In considering the result of the tests on completion, KHEL shall make allowances for the effect of any use of the Works by KHEL on the performance or other characteristics of the Works. As soon as the Works, or a part thereof, have passed any tests on completion, the Contractor shall submit a certified report of the results of these tests to KHEL.
- GCC 31.3 If the tests on completion are being unduly delayed by the Contractor, KHEL may by notice require the Contractor to carry out the tests within twenty one (21) days after receiving the notice. The Contractor shall carry out the tests on such day or days within that period as the Contractor may fix and of which he shall give notice to KHEL.
- GCC 31.4 If the Contractor fails to carry out the tests on completion within the period of twenty one (21) days, KHEL's personnel may proceed with the tests at the risk and



- cost of the Contractor. The tests on completion shall then be deemed to have been carried out in the presence of the Contractor and the result of the tests shall be accepted as accurate.
- GCC 31.5 If the Works, or a part, fail to pass the tests on completion, KHEL may require the failed tests on completion on any related work, to be repeated under the same terms and conditions.
- GCC 32 Taking Over of Works
- GCC 32.1 The Works shall be taken over by KHEL after completion, either in full or in part upon successful execution of Works by the Contractor in accordance with provisions of Contract.
- GCC 32.2 On successful completion of Works or any part thereof and upon request of the Contractor for taking over the Works and issuance of Taking Over Certificate (TOC), KHEL shall, within forty-five (45) days after the receipt of the Contractor's application, or within fifteen (15) days from the date of actual handing over of relevant Works, whichever is later, either issue the TOC as per Form 14 of Section VII or reject the application giving his reasons and specifying the work required to be done by the Contractor to enable the TOC to be issued.
- GCC 32.3 TOC shall be issued to the Contractor specifying the date on which the Works or any part thereof were complete and ready for taking over, after ascertaining the following:
- a. The Works under the Contract have been satisfactorily completed by the Contractor as per the provisions of Contract.
 - b. The Contractor has cleared the Site of all the surplus materials, wreckage, rubbish and removed all scaffoldings, shuttering materials, labor huts/sheds, cleaned the dirt from Site, temporary sanitary and water supply arrangements and all electrical gadgets/ equipment/ switches, wiring, any wood work or any such item, as relevant to the Contract to the satisfaction of the Engineer In-Charge, except those required for carrying out rectification works.
 - c. All the defects have been rectified to the complete satisfaction of the Engineer In-Charge.
 - d. The Contractor has furnished to the Engineer In-Charge "as-built drawings", if any, of the Works, in the number of copies specified in the SCC, showing all Works as executed as per the requirement of KHEL as to their size, referencing system and other relevant details.
- GCC 32.4 Issuance of such certificates shall not relieve the Contractor of any of his obligations which otherwise were to be complied with under the terms and conditions of the Contract.
- GCC 32.5 Notwithstanding the above-mentioned provisions, the issuance of TOC shall not be held up for delay in completion of minor outstanding works and rectification of defects that do not affect the use of the Works for their intended purpose. In such a case the Contractor shall however be required to give an undertaking that in case he fails to complete/rectify within a mutually agreed period, KHEL shall be at liberty to complete/rectify works at his risk and cost, and deduct an amount as may be considered appropriate by KHEL applicable market rate of interest.



- GCC 32.6 Any part of the Works for which no separate Time for Completion has been provided shall not be taken over or used by KHEL unless mutually agreed between the Parties.
- GCC 32.7 Issuance of TOC for any part of the Works is only for the purpose of facilitating the Contractor to receive the payment for part of the Works completed and for determination of liquidated damages in respect thereof and shall not relieve the Contractor of his responsibilities under the Contract towards other parts of the Works.

F. Guarantees and Liabilities

- GCC 33 **Liquidated Damages for delay**
- GCC 33.1 The Contractor guarantees that it shall attain completion of Works (or a part of Works for which a separate Time for Completion is specified) within the Time for Completion as per mile stones specified in SCC pursuant to GCC 11, or within such extended time to which the Contractor shall be entitled under GCC 40 hereof.
- GCC 33.2 If the Contractor fails to attain completion of Works or any part thereof within the Time for Completion or any extension thereof under GCC 40, the Contractor shall pay to KHEL liquidated damages in the amount computed at the rates specified in the SCC. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as "Maximum" in the SCC. Once the "Maximum" is reached, KHEL may consider termination of the Contract, pursuant to GCC 45.2.1h. KHEL may without prejudice to other remedies under the Contract deduct the amount of the liquidated damages from any monies due or becoming due to the Contractor or forfeit the Contract Performance Security.
- Such payment shall completely satisfy the Contractor's obligation to attain completion of Works or the relevant part thereof within the Time for Completion or any extension thereof under GCC 40. However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Works or from any other duties, obligations and liabilities of the Contractor under the Contract.
- GCC 33.3 No bonus will be given for earlier completion of Works or part thereof.
- GCC 33.4 In case the Works as a whole is completed by the Contractor within the stipulated Time for Completion, the interim liquidated damages imposed for delays in not achieving the specified interim contract milestones will be refunded to the Contractor after issuance of the completion certificate.
- GCC 33.5 KHEL, if not satisfied that the works can be completed by the Contractor within specified Time for Completion, and in the event of failure on the part of the Contractor to complete Works within further extension of time allowed as aforesaid, shall be entitled, without prejudice to any other right, or remedy available in that behalf, to terminate the Contract.
- GCC 33.6 In the event of such termination of the Contract as described above KHEL shall be entitled to recover liquidated damages up to ten percent (10%) of the Contract Price. The Contract Performance Security shall be adjusted towards liquidated damages. The balance work under the Contract shall be completed in any other manner at the risk and cost of the Contractor.



- GCC 34 Defect Liability**
- GCC 34.1** The Defect Liability Period shall be as specified in the SCC and shall commence from the date the Works are taken over by KHEL. Where any part of the Works is taken over separately, the Defects Liability Period for that part shall commence on the date it was taken over.
- GCC 34.2** If during the Defect Liability Period any defect is found in the construction, materials and workmanship of the Works executed by the Contractor, the Contractor shall promptly, in consultation and agreement with KHEL regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good such defect as well as any damage to the Works caused by such defect.
- GCC 34.3** If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Works caused by such defect within fifteen (15) days of the intimation of the defect, and complete the remedying of such defect within the time specified by KHEL, KHEL reserves the right to get such work done in a manner as mentioned hereunder:
- a. carry out the work itself or by others, in a reasonable manner and at the Contractor's cost but the Contractor shall have no responsibility for the work; and the Contractor shall pay to KHEL the costs including the applicable market rate of interest reasonably incurred by KHEL in remedying the defect or damage;
 - b. require the Engineer In-Charge to agree or determine a reasonable reduction in the Contract price; or
 - c. if the defect or damage deprives KHEL of substantially the whole benefit of the Works, KHEL may terminate the Contract as a whole, or in respect of such major part, which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, KHEL shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs along with applicable market rate of interest and the cost of dismantling the same, clearing the Site and returning plant and materials to the Contractor.
- GCC 34.4** If the Works or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Works or such part, as the case may be, shall be extended by a period equal to the period during which the Works or such part cannot be used by KHEL because of any of the aforesaid reasons.
- GCC 35 Limitations of Liability**
- GCC 35.1** Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage, which may be suffered by the other Party in connection with the Contract, other than under GCC 23.
- GCC 35.2** The aggregate liability of the Contractor to KHEL, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify KHEL with respect to patent infringement.



- GCC 35.3 In all cases the Party claiming a breach of Contract or a right to be indemnified in accordance with the Contract shall be obliged to take all reasonable measures to mitigate the loss or damage.
- GCC 35.4 The limitation of liability shall not apply in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

G. Risk Distribution

GCC 36 Protection of Works

The Contractor shall have total responsibility for protecting the Works till it is finally taken over by KHEL. No claim will be entertained by KHEL for any damage or loss to the Works and the Contractor shall be responsible for the complete restoration of the damaged works/equipment to its original condition to comply with the specification and drawings. Should any such damage to the Works occur because of other party not under Contractor's supervision or control, the Contractor shall settle his claim directly with the party concerned, and the Contractor shall proceed to repair the work immediately and no cause thereof will be assigned pending resolution of dispute.

The Contractor shall also take the total responsibility of replacing or compensating for the damage or loss of properties belonging to other parties and local communities or individual house hold during the execution of work. Properties such as Neys (if any), water supply lines, irrigation channels or cultivated fields shall be fully protected and in case the same is not protected, the Contractor shall take the full responsibility to replace or compensate for the same as per the joint assessment at the full risk and cost of the Contractor.

GCC 37 Insurance

GCC 37.1 The Contractor shall provide Comprehensive All Risk (CAR) Insurance, in the joint names of KHEL and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period from locally available eligible source, in the amounts and deductibles stated in the SCC hereunder for the following events which are due to the Contractor's risks:

- a) loss of or damage to the Works, Plant and Materials to be built into the works.
- b) Third party insurance. The Contractor shall insure against his liability for any material or physical damage, loss or injury which may occur to any property, including that of KHEL, or to any person, including any employee of KHEL, by or arising out of the execution of the Works or in the carrying out of the Contract. Such insurance shall be effected with an insurer and in terms approved by KHEL, which approval shall not be unreasonably withheld, and for an amount of Nu. 0.5 (one half) million for any one loss on reinstatement basis but in total not exceeding Nu. 2 (two) million and if this ceiling is touched, the Contractor shall take a policy for the Third Party Insurance for an amount to be decided by the Engineer In-Charge and the premium for such an additional insurance policy will be reimbursed by KHEL to the Contractor as per actual.



- GCC 37.2 Policies and certificates for insurance shall be delivered by the Contractor to the Engineer In-Charge for the Engineer In-Charge's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.
- GCC 37.3 The Contractor shall be responsible for taking out insurance cover for its Employees including Laborers, Constructional Plant, equipment and other things brought on to the site by him.
- GCC 37.4 **Insurance against Accident, etc. to Workmen for Accident or Injury to Workmen.** The Contractor shall also be responsible for insuring against such liability and shall continue such insurance during the whole of the time that any persons are employed by him on the Works and shall, when required, produce to the Engineer In-Charge such policy of insurance and the receipt for payment of the current premium. Provided always that, in respect of any persons employed by any sub-contractor, the Contractor's obligation to insure as aforesaid under this sub-clause shall be satisfied if the sub-contractor shall have insured against the liability in respect of such persons in such manner that KHEL is indemnified under the policy, but the Contractor shall require such sub-contractor to produce to the Engineer In-Charge, when required, such policy of insurance and the receipt for the payment of the current premium.
- GCC 37.5 If the Contractor does not provide any of the policies and certificates required, KHEL may effect the insurance which the Contractor should have provided and recover the premiums which KHEL has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due from the Contractor to KHEL on the applicable market rate of interest.
- GCC 37.6 Alterations to the terms of insurance shall not be made without the approval of the Engineer In-Charge.
- GCC 37.7 Both parties shall comply with any conditions of the insurance policies.
- GCC 37.8 Insurance Policy shall be as per Policies available with the local Insurance Companies.
- GCC 38 **Change in Laws and Regulations**
- GCC 38.1 If, after the last date of Bid submission, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed in the Kingdom of Bhutan (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract.
- GCC 39 **Force Majeure**
- GCC 39.1 "Force Majeure" shall mean any event or circumstance beyond the control of KHEL or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the Party affected and which substantially affect the performance of the Contract and shall include, without limitation the following:



- a. war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy and civil war;
 - b. rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts;
 - c. confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any government authority;
 - d. earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster;
- GCC 39.2 If either Party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.
- GCC 39.3 The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them. The Time for Completion shall be extended in accordance with GCC 42.
- GCC 39.4 The Party or Parties affected by the event of Force Majeure shall at all times use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfil its or their obligations under the Contract so far as reasonably practicable.
- GCC 39.5 Delay or non-performance by either Party hereto caused by the occurrence of any event of Force Majeure shall not
- a. constitute a default or breach of the Contract
 - b. give rise to any claim for damages or additional cost or expense occasioned thereby if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure occurring after the Contract becomes effective.
- GCC 39.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the Parties will attempt to develop a mutually satisfactory solution, failing which the dispute shall be resolved in accordance with GCC 10.2.
- GCC 39.7 Notwithstanding GCC 39.5, Force Majeure shall not apply to any obligation of KHEL to make payments to the Contractor herein.
- GCC 39.8 Notwithstanding any other provision of this clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either party to the other Party of such event or circumstance:



- a. the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- b. the sum payable by KHEL to the Contractor shall be the same as would have been payable under GCC 45.1.3 if the Contractor had been terminated under GCC 45.1.

GCC 39.9 Loss to any Party due to occurrence of Force Majeure event shall be borne by the respective Party. However, the reconstruction of the damaged Works shall be executed by the Contractor upon receiving the instructions from KHEL. The Contractor shall be paid for this work by KHEL at contract rates with suitable extension of Time for Completion. Provided further that cost of redoing of damaged Works due to Force Majeure events insurable as on Effective Date of Contract shall not be payable to the Contractor by KHEL.

H. Change in Contract Elements

GCC 40 Variations

GCC 40.1 The Engineer In-Charge shall order any variation of the form, quality or quantity of the Works or any part thereof that may, in his opinion, be necessary. Each variation may include, but is not limited to, any of the following:

- (a) increase or decrease in the quantity of any work included in the Contract,
- (b) omission or insertion of any item of work,
- (c) change in the character or quality or kind of any such work,
- (d) change in the levels, lines, position and dimensions of any part of the works,
- (e) additional work of any kind, or
- (f) change in any specified sequence or timing of construction activities.

GCC 40.2 The Engineer In-Charge shall make any such variation by issuing written instructions to the Contractor and ensure that such variations are duly noted in the Site Order Register. A variation made shall not, in any way, vitiate or invalidate the Contract, but the effect, if any, of all such variations shall be valued in accordance with GCC 41.

GCC 40.3 The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer In-Charge stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, or (ii) such Variation triggers a substantial change in the sequence of the progress of the Works. Upon receiving this notice, the Engineer In-Charge shall cancel, confirm or vary the instruction.

GCC 40.4 Under no circumstances, the contractor shall suspend the work on account of non-settlement of rates of additional items.

GCC 40.5 All Variations shall be included in updated Programs produced by the Contractor.

GCC 40.6 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.



GCC 41 Payments for Variations

GCC 41.1 Upon certified completion of the whole works, if reduction or increase in the total value of the work is found to be within 20% of initial contract price, then there shall be no change in the contract rates for individual items of work specified in the bill of quantities irrespective of the quantum of variation in individual items.

GCC 41.2 However, if reduction or increase is found to be more than 20% of initial contract price, the increase in payment for minus variation or decrease in payment for plus variation shall be specified based on slabs of variation in the contract value as specified below:

| Variation in Value of Works | Increase in Payment for minus variation | Decrease in Payment for plus variation |
|-----------------------------|---|--|
| Upto 20% | Nil | Nil |
| Above 20% and upto 35 % | 6.00% | 3.00% |
| Above 35% and upto 60% | 8.00% | 4.00% |
| Above 60 % and upto 100% | 10.00% | 5.00% |
| Above 100% | NA | 6.00% |

While working out the value of Works for the purpose of variation, the extra/substituted items for which new rates have been paid (but includes similar items, rate of which has been worked out from the BOQ) and payment towards price adjustment, and the adjustment towards statutory variations shall not be considered.

Illustration

- a. In case of variation in value of Works by (plus) + 60 percent, the payment for (60-20) percent i.e. 40 percent of value of Works shall be decreased by 4 % (four percent.). The reduction in Contract rates shall commence as soon as the value of Works executed reaches 120% of Contract Price.
- b. In case of variation in value of Works by (minus) – 55 percent, the payment for (55-20) percent i.e. 35 percent of value of Works shall be increased by 8% (eight percent).

GCC 41.3 No variation limit for any individual BOQ item has been specified in these GCC except for the payment due to the Contractor as detailed above. No claim for revision of rate(s) for any individual BOQ item shall be admissible irrespective of the extent to which the ordered quantity may get revised (+) or (-) during the actual execution of the Works.

GCC 41.4 Within 14 days of the date of instruction for executing varied Works and before the commencement of such Works, notice shall be given either (a) by the Contractor to the Employer of his intention to claim extra payment or a varied rate or price, or (b) by the Engineer In-Charge to the Contractor of the intention to vary a rate or price.

GCC 41.5 The valuation of Variation shall be carried out in the following sequence:

- a. The rates already provided in the Bill of Quantities, shall apply in respect of the same item(s) of work to be executed due to variation.



- b. In case of items for which rates are not available in the Bill of Quantities, the rates of such items as far as practicable shall be derived from the quoted rates of analogous/similar item(s) in the Bill of Quantities after submission of details by the Contractor. The decision to select analogous / similar item(s) shall be taken by the Engineer In-Charge and the same shall be conclusive and binding on the Contractor.
- c. In the cases, where analogous/similar items are also not available in the Bill of Quantities, such items shall be termed as extra items. The Contractor, within 14 days (or as agreed by the Engineer In-Charge) from the receipt of order to execute such items, shall submit rate analysis to the Engineer In-Charge supported by documentary evidence of basic rates adopted therein, notwithstanding the fact that the rates for such items exist in the Contract; having regard to the cost of materials, actual wages of labor and ownership & operational cost Construction Equipment required as per standard norms or if standard norms are not specified/available then on the basis of labor / materials / Construction Equipment actually engaged for the particular work.
- d. Over and above the cost of labor, materials arranged by the Contractor and ownership & operational cost of Construction Equipment, an element of 20% shall be allowed to cover the Contractor's overheads, profits, and supervision charges.
- e. The Employer shall examine the rate analysis submitted by the Contractor and fix the rates after considering the same.

GCC 41.6 If there is delay in the Employer and the Contractor coming to an agreement on the rate of varied Works including extra items and substitute items, provisional rates @ 75% of the rates as determined by the Employer shall be payable as a provisional payment till such time as the rates are finally determined.

GCC 41.7 Under no circumstances, the Contractor shall at any stage suspend work on account of non-settlement of rates of such item(s).

GCC 42 Extension of Time for Completion

GCC 42.1 The Time(s) for Completion specified in the SCC shall be extended by KHEL, if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- a. any Change in the Works as provided in GCC 40.1, or
- b. any occurrence of Force Majeure as provided in GCC.39, or
- c. any suspension order given by KHEL under GCC.44 hereof or reduction in the rate of progress pursuant to GCC 44.4 or
- d. any changes in laws and regulations as provided in GCC 38 or
- e. any act of omission on the part of KHEL or its authorized representative to the extent such omission has caused delay in the Contractor's performance of his work.
- f. any act, omission or delay on the part of any other contractors employed by KHEL for executing work not forming part of this Contract, or
- g. any other default or breach of Contract by KHEL.



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

GCC 42.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Engineer In-Charge a notice in writing of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension within twenty-eight (28) days of the commencement of such event or circumstance. Within twenty-eight (28) days after receipt of such notice and supporting particulars of the claim, KHEL shall agree upon the fair and reasonable period of extension.

GCC 42.3 The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

GCC 42.4 In no case the extension in Time for Completion will be permitted for the defaults on the part of the Contractor.

GCC 43 Price Adjustment

GCC 43.1 The Contract Price shall be adjusted for increase or decrease in rates and prices of labor and materials if the Contract duration is more than 18 (Eighteen) months.

GCC 43.2 The Price adjustment shall apply for the work done from the start date upto the initial intended completion date or extensions granted by the Engineer In-Charge and shall not apply to the work carried out beyond the stipulated time for reasons attributable to the Contractor.

GCC 43.3 The Price adjustment shall be determined during each quarter by using the formula given below.

Adjustment for variation of material prices:

$$V = W \times 0.80 \times 0.75 \times (M - M_0) / M_0$$

Where:

V = amount of variation for materials payable to/recoverable from the contractor for the period under review;

W = value of the work done during the period under review minus [(amount of secured advance recovered in the same period) + (value of works executed under variations for which the variations are paid in the new rate)];

M₀ = Material Index for the month in which the tender was submitted.

M = the average value of the above Index Number for the 3 months period under review;

Adjustment for variation in labor wages:

$$V = W \times 0.80 \times 0.25 \times (L - L_0) / L_0$$

V = amount of variation for Labor payable to/recoverable from the contractor for the period under review;

W = value of the work done during the period under review minus (amount of secured advance recovered in the same period + value of works executed under variations for which price adjustments will be worked separately based on terms mutually agreed between the Project Engineer and the Contractor);



Lo = Labor Index for the month in which the tender was submitted;

L = the average value of the above Index Number for the three (3) months period under review;

GCC 43.4 For the applications of the above formulae, the appropriate Index Numbers published by the source indicated in the SCC shall be adopted.

GCC 43.5 To the extent that full compensation for any rise or fall in costs to the contractor is not covered by the provisions of this or other clauses in the contract, the unit rates and prices included in the contract shall be deemed to include amounts to cover the contingency of such other rise or fall in costs.

GCC 44 **Suspension**

GCC 44.1 The Engineer In-Charge at any time may, by notice to the Contractor, order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons thereof. The Contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Works against any deterioration, loss or damage) until ordered in writing to resume such performance by the Engineer In-Charge.

GCC 44.2 If, by virtue of a suspension order given by the Engineer In-Charge, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Engineer In-Charge requiring that KHEL shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a Change in the Works in accordance with GCC 40, excluding the performance of the suspended obligations from the Contract.

GCC 44.3 If KHEL fails to do so within such period, the Contractor may, by a further notice to the Engineer In-Charge, elect to treat the suspension, where it affects only a part of the Works, as a deletion of such part of the Works in accordance with GCC 40 or, where it affects the whole of the Works, as termination of the Contract under GCC 45.1.

GCC 44.4 If the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to KHEL, including but not limited to KHEL's failure to provide possession of or access to the Site or other areas in accordance with GCC 13.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Works or failure to make any due payment even after a period of sixty (60) days from the due date; then the Contractor may by fourteen (14) days' notice to KHEL suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

GCC 44.5 After the permission or instruction to proceed is given by the Engineer In-Charge, the Contractor and the Engineer In-Charge shall jointly examine the Works and the plant and materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or plant or materials, which has occurred during the suspension.

GCC 44.6 If the Contractor's performance of its obligations is suspended for a cumulative period of more than twenty-eight (28) days, the rate of progress is reduced



pursuant to this clause GCC 44.6 , then the Time for Completion shall be extended in accordance with GCC 42.1 equivalent to the period of suspension plus twenty-five percent (25%) thereof, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by KHEL, as considered reasonable, to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's faulty workmanship or materials or of the Contractor's failure to protect, store or secure the Works in accordance with GCC.44.1 or any other default or breach of the Contract.

GCC 44.7 During the period of suspension, the Contractor shall not remove from the Site any plant, equipment, material or any part of the Works or any Contractor's Equipment, without the prior written consent of KHEL.

GCC 45 Termination

GCC 45.1 Termination for KHEL's Convenience

GCC 45.1.1 KHEL may at any time decide to terminate the Contract, in whole or in part, for any reason whatsoever by giving the Contractor and a copy to the Engineer In-Charge a twenty-eight (28) days prior notice of termination that refers to this clause GCC 45.1.1 . The Contractor shall have no claim to any payment of compensation or otherwise whatsoever on account of any profit or advantage which might have been derived from the execution of the Works in full but which he did not derive in consequence of the said termination of the whole or part of the Works.

GCC 45.1.2 Upon receipt of the notice of termination under GCC 45.1.1 , the Contractor shall either immediately or upon the date specified in the notice of termination

- a. cease all further work, except for such work as KHEL may specify in the notice of termination for the sole purpose of protecting that part of the Works already executed, or any work required to leave the Site in a clean and safe condition;
- b. terminate all subcontracts, except those to be assigned to KHEL pursuant to paragraph (d)(ii) below;
- c. remove all Contractor's Equipment from the Site, repatriate the Contractor's and its Subcontractors' personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition;
- d. In addition, the Contractor, subject to the payment specified in GCC 45.1.3 , shall
 - i. deliver to KHEL the parts of the Works executed by the Contractor up to the date of termination;
 - ii. to the extent legally possible, assign to KHEL all right, title and benefit of the Contractor to the Works and to the plant, equipment or material as at the date of termination, and, as may be required by KHEL, in any subcontracts concluded between the Contractor and its Subcontractors;
 - iii. deliver to KHEL all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Works.



- GCC 45.1.3 In the event of termination of the Contract under GCC 45.1 , KHEL shall pay to the Contractor the following amounts:
- a. the Contract Price, properly attributable to the parts of the Works executed by the Contractor as of the date of termination,
 - b. costs incurred by the Contractor in protecting the Works and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC45.1.2.
- GCC 45.1.4 The Contractor shall, if required by the Engineer In-Charge furnish to him wage books, time sheets and other relevant documents as may be reasonably necessary to enable him to certify the reasonableness of the amount payable under this clause.
- GCC 45.1.5 after the termination has taken effect under this clause KHEL shall promptly return the contract performance security to the Contractor.
- GCC 45.2 Termination for Contractor's Default
- GCC 45.2.1 KHEL, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in any of the following circumstances by giving a fourteen (14) days prior notice of termination with a copy to the Engineer In-Charge and its reasons thereof to the Contractor, referring to this clause GCC 45.2.1; if the Contractor:
- a. becomes bankrupt or insolvent or goes into liquidation, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous action in consequence of debt
 - b. assigns or transfers or sub-contracts (engagement of labour on piece work basis shall not be deemed to be sub-contracting) the Contract in whole or in part or any right or interest therein or attempts to assign, transfer or sub-contract in violation of the provision of GCC 46.
 - c. in the opinion of KHEL, has engaged in fraud or corruption, as defined in GCC 4 in competing for or in executing the Contract.
 - d. has abandoned the Works or otherwise plainly demonstrates its intention not to continue performance of his obligations under the Contract.
 - e. has without valid reason failed to commence the Works pursuant to a notice given by the Engineer In-Charge to commence the Works under GCC 11 or has suspended (other than pursuant to GCC 42.2) the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from KHEL to proceed.
 - f. persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause and does not make good such failure or neglect within reasonable period even after a written notice by the Engineer In-Charge.
 - g. refuses or is unable to provide sufficient materials, services or labour to execute and complete the Works in the manner specified in the program



furnished under GCC 25.2 at rates of progress that give reasonable assurance to KHEL that the Contractor can attain completion of the Works by the Time for Completion as extended.

- h. the liquidated damages to be levied in terms of the provisions under GCC 33 has reached a maximum of ten percent (10%) of the Contract Price and it appears to the Engineer In-Charge that the Contractor is unable to complete the Works

GCC 45.2.2

Upon receipt of the notice of termination under GCC 45.2.1, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,

- a. cease all further work, except for such work as KHEL may specify in the notice of termination for the sole purpose of protecting that part of the Works already executed, or any work required to leave the Site in a clean and safe condition
- b. terminate all subcontracts, except those to be assigned to KHEL pursuant to paragraph (d) below
- c. deliver to KHEL the parts of the Works executed by the Contractor up to the date of termination
- d. to the extent legally possible, assign to KHEL all right, title and benefit of the Contractor to the Works as at the date of termination, and, as may be required by KHEL, in any subcontracts concluded between the Contractor and its Subcontractors
- e. deliver to KHEL all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Works.

GCC 45.2.3

KHEL may enter upon the Site, expel the Contractor, and complete the Works itself or by employing any third party at the risk and cost of the Contractor. The Contractor shall not be allowed to remove any materials, plant and temporary works from the Site until the matter is amicably resolved. KHEL or any third party may then use the Contractor's materials, equipment, and design documents for completing the Works. KHEL may, to the exclusion of any right of the Contractor over the same, take over and use Contractor's Equipment with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of KHEL and with an indemnification by KHEL for all liability including damage or injury to persons arising out of KHEL's use of such equipment, owned by the Contractor and on the Site in connection with the Works for such reasonable period as KHEL considers expedient for the completion of the Works.

Upon completion of the Works or at such earlier date as KHEL thinks appropriate, KHEL shall give notice to the Contractor that such Contractor's Equipment will be returned to the Contractor at or near the Site and shall return such Contractor's Equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.

GCC 45.2.4

Subject to GCC 45.2.5, the Contractor shall be entitled to be paid the following:

- a. the Contract Price, properly attributable to the parts of the Works executed by the Contractor as of the date of termination



- b. costs incurred by the Contractor in protecting the Works and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC 45.2.2.

Any sums due to KHEL from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract. If KHEL is not able to recover its dues from the Contractor, KHEL may recover this due from the Performance Security pursuant to (a) (b).

GCC 45.2.5 If KHEL completes the Works, the cost of completing the Works by KHEL till the completion of Defect Liability Period shall be determined.

If the sum that the Contractor is entitled to be paid, pursuant to GCC 45.2.4, plus the reasonable costs incurred by KHEL in completing the Works, exceeds the Contract Price, the Contractor shall be liable for such excess.

If such excess is greater than the sums due to the Contractor under GCC 45.2.4, the Contractor shall pay the balance to KHEL and in case of non-payment by contractor KHEL may en-cash the Bank Guarantee available to that extent, and if such excess is less than the sums due to the Contractor under GCC 45.2.4, KHEL shall pay the balance to the Contractor.

KHEL and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

GCC 45.3 Termination by the Contractor

GCC 45.3.1 The Contractor may terminate the Contract by giving a notice of fourteen (14) days to KHEL to that effect, referring to this clause GCC 45.3.1, if:

- a. KHEL becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if KHEL takes or suffers any other analogous action in consequence of debt.
- b. KHEL substantially fails to perform his obligations under the Contract.
- c. a prolonged suspension affects the whole of the Works.

GCC 45.3.2 If the Contract is terminated under GCC 45.3.1, then the Contractor shall immediately

- a. cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Works already executed, or any work required to leave the Site in a clean and safe condition
- b. terminate all subcontracts, except those to be assigned to KHEL pursuant to paragraph (d)(ii) below
- c. remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractor's personnel from the Site
- d. In addition, the Contractor, subject to the payment specified in GCC 45.2.4, shall
 - i. deliver to KHEL the parts of the Works executed by the Contractor up to the date of termination



- ii. to the extent legally possible, assign to KHEL all right, title and benefit of the Contractor to the Works and to the plant, equipment or materials as of the date of termination, and, as may be required by KHEL, in any subcontracts concluded between the Contractor and its Subcontractors
- iii. Deliver to KHEL all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Works.
- GCC 45.3.3 If the Contract is terminated under GCC 45.3.1, KHEL shall pay to the Contractor all payments specified in GCC 45.1.3.
- GCC 45.3.4 Termination by the Contractor pursuant to GCC 45.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of or in addition to rights conferred by GCC 45.3.
- GCC 45.3.5 in this clause GCC 45.3, in calculating any monies due from KHEL to the Contractor, account shall be taken of any sum previously paid by KHEL to the Contractor under the Contract, including any advance payment paid pursuant to GCC 16.
- GCC 46 Assignment**
- GCC 46.1 The Contractor shall not, without the express prior written consent of KHEL, assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or there under, except that the Contractor shall be entitled to
- (i) assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract in favor of its bankers;
- (ii) assign to the insurers (in cases where the insurers have discharged the Contractor's loss or liability) of the Contractor's right to obtain relief from any other liable party.
- GCC 47 Release from Performance**
- GCC 47.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either KHEL or the Contractor, the Engineer In-Charge shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made and after deduction of all the dues of KHEL from the contractor.



SECTION V – SPECIAL CONDITIONS OF CONTRACT (SCC)



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.

| SCC Item No | GCC Clause Ref., if any | Particulars |
|---------------------------------------|-------------------------|---|
| A. Contract and Interpretation | | |
| 1. | GCC 3.9 | The contract shall be deemed to have come into full force and effect from the 7 th day of signing Contract Agreement. |
| 2. | GCC 10.2 | In the event of failure to settle disputes amicably, it shall be finally settled by arbitration in accordance with the rules and procedures of Alternative Dispute Resolution Act of Bhutan 2013. The arbitration award shall be final on the parties who shall be deemed to have accepted to carry out the resulting award without delay and to have waived their right to any form of appeal insofar as such waiver can validly be made. The cost and expenses of Arbitration proceedings will be borne by each party as stipulated in the relevant Act. |
| B. Subject Matter of Contract | | |
| 3. | GCC 11.2 | <i>At the end of this sub-clause add the following:</i> A contract can be prematurely terminated by the Employer upon failure by the Contractor to mobilize resources and commence physical activities within 45 days from the effective commencement date. |
| 4. | GCC 11.3 | The entire scope of works covered under this contract shall be completed within twenty-four (24) months from the effective commencement date. |
| C. Payment | | |
| 5. | GCC 15.1 | <i>At the end of this Subclause, add the following:</i> The release of first progressive interim payment shall be subject to submission of documentary evidence by the Contractor towards having taken the insurance policy(ies) in terms of relevant provision of GCC 37 and acceptance of the same by the EIC. |



| | | |
|--------------------------|------------|---|
| 6. | GCC 15.9 | <p>At the end of this clause, add sub-clause 15.9</p> <p>KHEL reserves the right to carry out post payment audit and technical examination of the final bill including all supporting vouchers, abstract, etc. KHEL further reserves the right to enforce and recover any over payment when detected. This recovery is notwithstanding the fact that the amount of the final bill may include any item which is under dispute between the Parties and referred to for settlement under GCC 10 and notwithstanding the fact that the amount of the final bill figures in the arbitration decision / award.</p> |
| 7. | GCC 17.1 | In addition to the advance payment, secured advance shall be seventy five percent (75%) of the cost of materials delivered at site of works which shall be supported by the original invoices/bills from the supplier. |
| 8. | GCC 19.2.1 | The present rate of deduction of tax at source of the gross value of the invoice is 2% in case of Bhutanese Bidders. |
| E. Work Execution | | |
| 9. | GCC 24.1.1 | <p>The Engineer In-Charge shall be:</p> <p>Head, Civil Infrastructure Division, Kholongchhu Hydro Energy Limited, Doksum, Trashiyangtse, Bhutan.</p> <p>However, for Electrical Works, the supervision, monitoring, joint measurement of executed works with the Contractor on a periodic basis and certification of joint measurement will be done by an official of Construction Power Division (CPD), KHEL duly nominated by Head of CPD from the beginning of the works based on which the Civil Infrastructure Division shall make entries in the Measurement Book and forward the same for payment along with the bills of Civil Works to Finance Division, KHEL for disbursement.</p> |



| 10. | GCC 24.2.1 | <p>If the Contractor fails to deploy personnel as committed in the Bid Document, a lump sum deduction of such personnel per month per person for every month of absence from the site is as under:</p> <table border="1" data-bbox="472 322 1412 674"> <thead> <tr> <th data-bbox="472 322 549 405">Sl. No.</th> <th data-bbox="553 322 938 405">Designation</th> <th data-bbox="943 322 1412 405">Monthly Deduction or commensurate for days of absence</th> </tr> </thead> <tbody> <tr> <td data-bbox="472 412 549 461">1</td> <td data-bbox="553 412 938 461">Project Manager</td> <td data-bbox="943 412 1412 461">Nu. 45,000.00</td> </tr> <tr> <td data-bbox="472 468 549 517">2</td> <td data-bbox="553 468 938 517">Project Engineer (Civil)</td> <td data-bbox="943 468 1412 517">Nu. 40,000.00</td> </tr> <tr> <td data-bbox="472 524 549 573">3</td> <td data-bbox="553 524 938 573">Engineer Electrical</td> <td data-bbox="943 524 1412 573">Nu. 40,000.00</td> </tr> <tr> <td data-bbox="472 580 549 629">4</td> <td data-bbox="553 580 938 629">Supervisor (Civil & Electrical) /OHS Officer</td> <td data-bbox="943 580 1412 629">Nu. 15,000.00</td> </tr> </tbody> </table> <p>Above lump sum deductions shall continue till such time that the Contractor deploys key personnel acceptable to the Employer. If the Contractor fails to deploy within one to four months, the deductions shall be discontinued and Contractor's failure to deploy such personnel shall be treated as a fundamental breach of contract.</p> | Sl. No. | Designation | Monthly Deduction or commensurate for days of absence | 1 | Project Manager | Nu. 45,000.00 | 2 | Project Engineer (Civil) | Nu. 40,000.00 | 3 | Engineer Electrical | Nu. 40,000.00 | 4 | Supervisor (Civil & Electrical) /OHS Officer | Nu. 15,000.00 |
|---------|--|---|---------|-------------|---|---|-----------------|---------------|---|--------------------------|---------------|---|---------------------|---------------|---|--|---------------|
| Sl. No. | Designation | Monthly Deduction or commensurate for days of absence | | | | | | | | | | | | | | | |
| 1 | Project Manager | Nu. 45,000.00 | | | | | | | | | | | | | | | |
| 2 | Project Engineer (Civil) | Nu. 40,000.00 | | | | | | | | | | | | | | | |
| 3 | Engineer Electrical | Nu. 40,000.00 | | | | | | | | | | | | | | | |
| 4 | Supervisor (Civil & Electrical) /OHS Officer | Nu. 15,000.00 | | | | | | | | | | | | | | | |
| 11. | GCC 25.5 | <p>KHEL and Contractor shall conduct Progress View Meeting every quarter to monitor progress of all activities specified in the work program.</p> | | | | | | | | | | | | | | | |
| 12. | GCC 26.1 | <p>The Contractor shall select and employ its sub-contractor to perform such part is:</p> <p>For work of design, engineering, supply, erection, testing and commissioning of Unitized Substation. The bidder shall quote for five reputed brands namely ABB, Schneider, Alstom, Crompton Greaves and Kirloskar Electric only. The Bidder shall try to get the equipment directly from the above manufacturers or authorized dealers. The successful bidder should ensure that required warranty certificate and commitment to provide after sales support from the manufacturer or authorized dealer are provided at the time of installation and commissioning of the equipment. All the drawings including the lay out for the above equipment should be submitted for approval of the Client within 5 months from the date of signing of Contract.</p> | | | | | | | | | | | | | | | |



| 13. | GCC 27.2.4 | <p>If the Contractor fails to make available at site the equipment committed for the Contract, the hiring charges of such equipment to be deducted is as under:</p> <table border="1" data-bbox="518 277 1380 862"> <thead> <tr> <th data-bbox="518 277 598 387">Sr. No.</th> <th data-bbox="598 277 1058 387">Equipment</th> <th data-bbox="1058 277 1380 387">Monthly Deduction or commensurate for days of absence</th> </tr> </thead> <tbody> <tr> <td data-bbox="518 387 598 439">1</td> <td data-bbox="598 387 1058 439">Excavator</td> <td data-bbox="1058 387 1380 439">466,320.00</td> </tr> <tr> <td data-bbox="518 439 598 512">2</td> <td data-bbox="598 439 1058 512">Tripper / Truck</td> <td data-bbox="1058 439 1380 512">194,400.00</td> </tr> <tr> <td data-bbox="518 512 598 564">3</td> <td data-bbox="598 512 1058 564">Concrete mixer</td> <td data-bbox="1058 512 1380 564">54,960.00</td> </tr> <tr> <td data-bbox="518 564 598 616">4</td> <td data-bbox="598 564 1058 616">Concrete vibrator</td> <td data-bbox="1058 564 1380 616">34,080.00</td> </tr> <tr> <td data-bbox="518 616 598 667">5</td> <td data-bbox="598 616 1058 667">Long ladder</td> <td data-bbox="1058 616 1380 667">10,000.00</td> </tr> <tr> <td data-bbox="518 667 598 719">6</td> <td data-bbox="598 667 1058 719">Gas welding set</td> <td data-bbox="1058 667 1380 719">30,000.00</td> </tr> <tr> <td data-bbox="518 719 598 770">9</td> <td data-bbox="598 719 1058 770">Lux meter</td> <td data-bbox="1058 719 1380 770">3,000.00</td> </tr> <tr> <td data-bbox="518 770 598 862">10</td> <td data-bbox="598 770 1058 862">Hydraulic jack & axle</td> <td data-bbox="1058 770 1380 862">50,000.00</td> </tr> </tbody> </table> <p>The hiring charges of such equipment shall be deducted per month for every month of absence for a period of one to four months after which the deductions shall be discontinued and Contractor's failure to produce such equipment shall be treated as a fundamental breach of contract.</p> | Sr. No. | Equipment | Monthly Deduction or commensurate for days of absence | 1 | Excavator | 466,320.00 | 2 | Tripper / Truck | 194,400.00 | 3 | Concrete mixer | 54,960.00 | 4 | Concrete vibrator | 34,080.00 | 5 | Long ladder | 10,000.00 | 6 | Gas welding set | 30,000.00 | 9 | Lux meter | 3,000.00 | 10 | Hydraulic jack & axle | 50,000.00 |
|--------------------------------------|-----------------------|--|---------|-----------|---|---|-----------|------------|---|-----------------|------------|---|----------------|-----------|---|-------------------|-----------|---|-------------|-----------|---|-----------------|-----------|---|-----------|----------|----|-----------------------|-----------|
| Sr. No. | Equipment | Monthly Deduction or commensurate for days of absence | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1 | Excavator | 466,320.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | Tripper / Truck | 194,400.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3 | Concrete mixer | 54,960.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4 | Concrete vibrator | 34,080.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5 | Long ladder | 10,000.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6 | Gas welding set | 30,000.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 9 | Lux meter | 3,000.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 10 | Hydraulic jack & axle | 50,000.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 14. | GCC 28.1 | <p>Substitute GCC 28.1 as under:</p> <p>Materials of any kind obtained from excavation on the Site shall remain the property of State/KHEL and shall be disposed of as the Engineer In-Charge may direct. In case materials of any kind obtained from excavation on the site for which payment for such excavation work is made separately as per actual measurement and subject to the approval of the Engineer In-Charge, the same materials are further put to use by Contractor for the execution of some of the activities of the said work, a sum at the commercial rates (stockyard) of M/s Natural Resources Development Corporation of Bhutan, applicable for that region/branch, taxes and duties levied as per GCC 19 (<i>Taxes and Duties</i>) shall be recovered from the Contractor.</p> <p>However, the payment for royalty and permit is not required for land surface collection of sand and stone within 50 feet radius of the Construction Site, provided it is not traded or transported beyond the Construction Site by the Contractor.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 15. | GCC 32.3d | <p>The Contractor shall furnish two (2) copies of "as built drawings" of the work after completion showing all Works as executed as per the requirement of KHEL as to their size, referencing system and other relevant details to the Engineer In-Charge.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| F. Guarantees and Liabilities | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |



| | | |
|---------------------------------------|-------------------------|---|
| 16. | GCC 33.2 | The applicable rate of liquidated damages shall be as follows: i) Zero point one percent (0.1%) per day of delay on the initial Contract price beyond the scheduled completion period. ii) Maximum deduction of liquidated damages is ten percent (10%) of the Initial Contract Price. |
| 17. | GCC 34.1 | The Defect Liability Period will be 12 months from the date the work is taken over by KHEL. |
| G. Risk Distribution | | |
| 18. | GCC 37.1, 37.3 and 37.4 | Before commencing the execution of the work, the nature and content, amounts and deductibles on insurance cover to be in the joint names of KHEL and the Contractor from the Start Date to the End of Defects Liability Period shall be: The minimum insurance amounts and deductibles shall be 1.2 times the contract price and deductibles shall be as per relevant insurance policies available with the local insurance companies for loss of or damage to the works and plants and materials to be built into the works. |
| 20. | GCC 39 | At the end of GCC 39.1 add: However, force majeure shall not include the following: (i) rainfall /snowfall (ii) strike in other countries (iii) non – availability of laborers and construction materials. (iv) difficulty and risky terrain and remoteness of sites |
| H. Change in Contract Elements | | |
| 21 | GCC41.5b&c | Delete GCC 41.5b & GCC 41.5c and substituted as under; i) In case of items for which rates are not available in Bill of Quantities (BoQs), the rates of such items shall be derived from the latest Bhutan Schedule of Rates (BSRs) after adjusting such rates for that place of work by cost index prevailing at the time of execution of the item; ii) In case of items for which rates are not available in both BoQs and BSRs, the contractor within 14 days (or as may be agreed by the Engineer In- Charge) from the receipt of order to execute such items shall submit rate analysis to the Engineer In-Charge supported by documentary evidence of the basic rate adopted therein; having regards to the actual cost of materials, actual wages of labour and ownership and operational cost of Construction Equipment/Machinery actually engaged for the particular work at site. The Engineer In-Charge and Contractor shall jointly maintain contemporary records such as construction methodology being adopted and actual inputs of labour, materials and equipment/machinery on a daily basis for carrying out such works. |



| | | |
|-----|----------|--|
| 22. | GCC 43.4 | <p>Price adjustment is <i>applicable</i> for this work. For Material Index, the “Index for Materials (All Commodities) – Index Numbers of Wholesale Prices in India – by Groups and Sub Groups (Base 2016 = 100)” published by Office of Economic Advisor, Department of Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, Government of India (GoI) will be used. For Labour Index, the “Consumer Price Index for Industrial Workers – All India (Base 2001=100)” published by Labour Bureau, Ministry of Labour, GoI shall be adopted.</p> <p>However, if the Contractor fails to complete whole of the Works within the Initial Time for Completion as prescribed under Special Conditions of Contract, adjustment of prices thereafter until the date of completion of the Works shall be made using either (i) the indices or prices applicable on the date 49 days prior to the expiry of the Initial Time for Completion, or (ii) the current indices or prices; whichever is more favourable to the Employer.</p> <p>In case, GoI stops publishing any of the price indices at any time and announces a new series with a linking factor for conversion of index of new series to the old series, regulation of price variation will be done using the indices of new series along with linking factor from the period the indices of old series become unavailable. However, if the new series released by the relevant source does not have the linking factor the new series shall be used without use of Linking Factor and current as well as base indices of new series shall be used from the date, indices of old series become unavailable.</p> <p>Items of works for which rates have been derived from BSR and on actual analyzed cost or on market price basis shall not be eligible for Price Adjustment.</p> |
|-----|----------|--|





SECTION VI- TECHNICAL SPECIFICATIONS AND DRAWINGS

Notes:

Civil Works

1. The Specifications for Building & Road Works 2021 published by the Department of Engineering Services, Ministry of Works and Human Settlement (MoWHS), Royal Government of Bhutan and the amendments thereof shall be the binding specification and performance requirement document for execution of this work. These documents form integral part of the Contract Agreement and can be downloaded from the Ministry's website: www.mowhs.gov.bt

Electrical Works

1. The Specifications for Electrical Works 2021 published by the Department of Engineering Services, Ministry of Works and Human Settlement (MoWHS), Royal Government of Bhutan and the amendments thereof shall be the binding specification and performance requirement document for execution of this work. These documents form an integral part of the Contract Agreement and can be downloaded from the Ministry's website: www.mowhs.gov.bt. However, for those items of activities not covered by this, the Technical Specifications (TS) as appended at **Annexure - I** shall apply and will be binding. In case of any discrepancy between the Specifications for Electrical Works 2021 and TS referred at **Annexure I** for some item of activities, the **Annexure - I** shall prevail.

Tender Drawings

1. The Tender Drawings are attached at **Annexure - II** and
2. All the drawings including the lay out for the Unitized Substation should be submitted for approval of the Client within 5 months from the date of signing of Contract.



SECTION VIIA- BIDDING FORMS

(Form No. 1 to Form No. 9)

Applicable Forms from this Section is to be submitted by the Bidder along with the bid



Form 1: Bid Security (Bank Guarantee)
[Ref: ITB - 17.1.1(a)]

(To be kept in envelope I)

(The Bank shall fill in this Bank Guarantee Form in their Letter Head, in accordance with the instructions indicated in the bracket)

(To be kept in envelope I)

Bank Guarantee No.

Date.....

To

M/s Kholongchhu Hydro Energy Limited,
Chorten Kora,
Trashy Yangtse: Bhutan

Dear Sir/ Madam,

In accordance with NIT No., M/s having its Registered/Head Office at (here-in-after called the 'Bidder') wish to participate in the said Tender for[Name of Works/Goods]

As an irrevocable bank guarantee against Bid Security for an amount of[insert currency and amount in words and figures*]..... valid up to.....[insert date@].....is required to be submitted by the Bidder as a condition precedent for participation in the said Tender which amount is liable to be forfeited on the happening of any of the events mentioned in the Bidding Document.

We, the [Name & address of the Bank] having our Head Office at (#) guarantee and undertake to pay immediately on demand by M/s Kholongchhu Hydro Energy Limited (KHEL) or its authorized representative, the amount of[insert currency and amount in words and figures*]..... without any reservation, protest, demand and recourse. Any such demand made by KHEL shall be conclusive and binding on us irrespective of any dispute or difference raised by the Bidder.

This Guarantee shall be irrevocable and shall remain valid up to(@). If any further extension of this guarantee is required, the same shall be extended to such required period on receiving instructions from M/s..... [Bidder's Name]..... on whose behalf this guarantee is issued.

All rights of KHEL under this Guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities there under unless a demand or claim is lodged by KHEL under this Guarantee against the bank within the above mentioned expiry date of validity or, from that of the extended date.

Dated this _____ day of _____ 20_____ at _____.



WITNESSES:

SIGNATURE OF AUTHORIZED SIGNATORY OF THE BANK DULY AFFIXED WITH LEGAL STAMP & STAMPED OFFICIAL SEAL

1.
.....
(Signature)

.....
(Name)

.....
(Official Address)

2.
.....
(Signature)

.....
(Name)

.....
(Official Address)

1.
.....
(Signature)

.....
(Name)

.....
(Designation)

SIGNATURE OF AUTHORIZED SIGNATORY OF THE BANK DULY AFFIXED WITH LEGAL STAMP & STAMPED OFFICIAL SEAL

2.
.....
(Signature)

.....
(Name)

.....
(Designation)

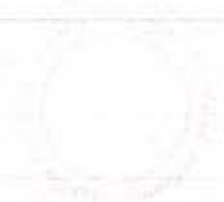
Note: (*) Shall be as specified in the BDS.

(@) The Bid security shall be valid till the date as specified in BDS.

(#) Complete mailing address of the Head Office and issuing branch of the Bank to be given with fax no./telephone no. of the contact person.

The Bank Guarantee shall be from a bank as per provisions of ITB.

Bank Guarantee shall be duly signed by the authorized signatory(ies) of the Bank by affixing the legal stamp.



99



Form 2: Technical Bid Submission Form

[Ref: ITB – 18.1]

[The Bidder shall fill in and submit this Bid form with the Technical Bid in the **Company Letter Head**

[date]

Identification No. and Title of Contract: [insert identification number and title of Contract]

To,
The Chief
Procurement & Contracts Division
Kholongchhu Hydro Energy Ltd.
Post Box No.: 23
Trashiyangtse.

Having examined all the Bidding Document (with reference to ITB 17.2.1), including addenda [insert list], we offer to execute the [name and identification number of Contract] in accordance with the Conditions of Contract accompanying this Bid This Bid and your written acceptance of it shall constitute a binding Contract between us. We understand that you are not bound to accept the lowest or any Bid you receive.

We hereby confirm that this Bid complies with the Bid validity and Bid Security required by the Bidding Document and specified in the Bidding Data Sheet.

We have no conflict of interest in accordance with ITB 5.2.

Our firm, its affiliates or subsidiaries—including any subcontractors or suppliers for any part of the Contract—has not been declared ineligible under the laws or official regulations of Bhutan, in accordance with ITB 6.1.

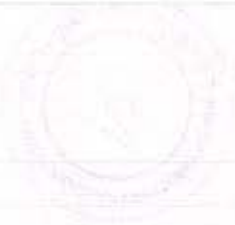
Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to contract execution if we are awarded the contract, are listed below:

| Name and address of agent | Amount and Currency | Purpose of Commission or gratuity |
|---------------------------|---------------------|-----------------------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| (if none, state "none")." | _____ | _____ |

In case if I withdraw my bid after opening for whatsoever reasons, I agree to the forfeiture of the EMD/Bid Security.

Our duly executed Integrity Pact Statement is attached herewith as Form 3.

Authorized Signature:



(Affix Legal Stamp)

Name and Title of Signatory:.....

Name of Bidder:.....

Address:



Form 3: Integrity Pact Statement
[Ref: ITB – 17.1.2 (b)]

[Integrity Pact Statement, as provided by the Anti-Corruption Commission (ACC of the Royal Government of Kingdom of Bhutan from time to time is to be used.]

INTEGRITY PACT

1. General

Whereas the **Chief (Procurement & Contracts)** representing the Kholongchhu Hydro Energy Ltd., a company incorporated under the Companies Act of the Kingdom of Bhutan, 2000, hereinafter referred to as the **“Employer”** on one part, and (Name of bidder or his/her authorized representative, with power of attorney) representing M/s. (Name of firm), hereinafter referred to as the **“Bidder”** on the other part hereby execute this agreement as follows:

2. Objectives:

Whereas, the Employer and the Bidder agree to enter into this agreement, hereinafter referred to as IP, to avoid all forms of corruption or deceptive practice by following a system that is fair, transparent and free from any influence/unprejudiced dealings in the **bidding process¹** and **contract administration²**, with a view to:

- 2.1 Enabling the Employer to obtain the desired contract at a reasonable and competitive price in conformity to the defined specifications of the works or goods or services; and
- 2.2 Enabling bidders to abstain from bribing or any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also refrain from bribing and other corrupt practices.

3. Scope:

The validity of this IP shall cover the bidding process and contract administration period.

4. Commitments of the Employer:

The Employer Commits itself to the following: -

- 4.1 The Employer hereby undertakes that no officials of the Employer, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favor or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person,

¹ Bidding process, for the purpose of this IP, shall mean the procedures covering tendering process starting from bid preparation, bid submission, bid processing, and bid evaluation.

² Contract administration, for the purpose of this IP, shall mean contract award, contract implementation, un-authorized sub-contracting and contract handing/taking over.



organization or third party related to the contract in exchange for an advantage in the bidding process and contract administration.

- 4.2 The Employer further confirms that its officials shall not favor any prospective bidder in any form that could afford an undue advantage to that particular bidder in the bidding process and contract administration and will treat all Bidders alike.
- 4.3 Officials of the Employer, who may have observed or noticed or have reasonable suspicion shall report to the head of the employing agency or an appropriate government office any violation or attempted violation of clauses 4.1 and 4.2.
- 4.4 Following report on violation of clauses 4.1 and 4.2 by official (s), through any source, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings shall be initiated by the Employer and such a person shall be debarred from further dealings related to the bidding process and contract administration.

5. Commitments of Bidders

The Bidder commits himself/herself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of the bidding process and contract administration in order to secure the contract or in furtherance to secure it and in particular commits himself/herself to the following: -

- 5.1 The Bidder shall not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favor, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Employer, connected directly or indirectly with the bidding process and contract administration, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding process and contract administration.
- 5.2 The Bidder shall not collude with other parties interested in the contract to manipulate in whatsoever form or manner, the bidding process and contract administration.
- 5.3 If the bidder(s) have observed or noticed or have reasonable suspicion that the provisions of the IP have been violated by the procuring agency or other bidders, the bidder shall report such violations to the head of the procuring agency.

6. Sanctions for Violation:

The breach of any of the aforesaid provisions shall result in administrative charges or penal actions as per the relevant rules and laws.

- 6.1 The breach of the IP or commission of any offence (forgery, providing false information, mis-representation, providing false/fake documents, bid rigging, bid steering or coercion) by the Bidder, or any one employed by him, or acting on his/her behalf (whether with or without the knowledge of the Bidder), shall be dealt with as per the terms and conditions of the contract and other provisions of the relevant laws, including Debarment Rules.
- 6.2 The breach of the IP or commission of any offence by the officials of the procuring agency shall be dealt with as per the rules and laws of the land in vogue.

7. Monitoring and Administration:

- 7.1 The respective procuring agency shall be responsible for administration and monitoring of the IP as per the relevant laws.
- 7.2 The bidder shall have the right to appeal as per the arbitration mechanism contained in the relevant rules.



We, hereby declare that we have read and understood the clauses of this agreement and shall abide by it.

The parties hereby sign this Integrity Pact at Trashiyangtse on, 2022.



[Handwritten signature]
29/1/2022

Affix
Legal
Stamp

EMPLOYER

BIDDER/REPRESENTATIVE

CID:

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 1 | 1 | 0 | 5 | 0 | 0 | 2 | 9 | 4 | 0 |
|---|---|---|---|---|---|---|---|---|---|---|

CID:

| | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|

Witness: *[Handwritten signature]*

Witness:

Name: *Jamba Dorji*

Name:

CID

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 1 | 7 | 0 | 9 | 0 | 0 | 2 | 1 | 6 | 0 |
|---|---|---|---|---|---|---|---|---|---|---|

CID

| | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|--|

[Handwritten signature]

Form 4: Bidder's Information Form

[Ref: ITB – 17.1.2 (e)]

[The Bidder shall fill in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted.]

Date:[insert date of Bid submission]

NIT No.:

| | |
|-----|---|
| 1. | Bidder's Legal Name: |
| 2. | In the case of a Joint Venture (JV) legal name of each member of the Joint Venture: |
| 3. | Bidder's or each member of JV's Country of Registration: |
| 4. | Bidder's Year of Registration: |
| 5. | Bidder's Legal Address in Country of Registration: |
| 6. | Bidder's Local Address in Bhutan (if any): |
| 7. | Bidder's Website Address: |
| 8. | Bidder's Business Activities: |
| 9. | Bidder's Authorized Representative Name: Designation: Address: Telephone/Fax numbers: E-mail Address: |
| 10. | Status of the Bidder (check the box as applicable): <input type="checkbox"/> Bidding Company <input type="checkbox"/> Lead Member of the Joint Venture <input type="checkbox"/> Agent of the Foreign Bidder |
| 11. | Attached are copies of the following original documents: [check the box(es) of the attached original documents] <input type="checkbox"/> Tax Clearance Certificate of Bidder named in 1or 2 above <input type="checkbox"/> Valid Trade License of Bidder named in 1or 2 above |

Date :

Signature.....

Place :

Name.....

Designation.....

Seal.....



Form 5: Power of Attorney
[Ref: ITB – 17.1.2 (d)]

(To be executed on)

KNOW ALL MEN BY THESE PRESENTS THAT WE, [insert name of the Bidder] a Company incorporated under the [insert relevant statute of the country of incorporation] and having its registered office at [insert address] (hereinafter referred to as the "Bidder") having been authorized by the Board of Directors of the Company, inter alia, to execute contracts in the name of and for and on behalf of the Company. I [insert name of the person giving the power of attorney] presently holding the position of [insert designation of the person giving the power of attorney] in the company do hereby constitute, appoint and authorize Mr..... [insert name, designation and residential address of the person to whom the power of attorney is being given] as our true and lawful attorney to do in our name and on our behalf all such acts, deeds, things necessary and incidental for submission of our Bid against NIT No....., floated by KHEL. I hereby further authorize the above attorney for signing and submission of the Bid and all other documents, information related to the Bid including undertakings, letters, certificates, declarations, clarifications, acceptances, guarantees, any amendments to the Bid and such documents related to the Bid, and providing responses and representing us in all the matters before KHEL in connection with the Bid for the said NIT till the completion of the bidding process.

I accordingly hereby nominate, constitute and appoint above named severally, as my lawful attorney to do all or any of the acts specifically mentioned immediately herein above.

WE do hereby agree and undertake to ratify and confirm whatever the said Attorney shall lawfully do or cause to be done under and by virtue of this power of Attorney and the Acts of Attorney to all intents and purposes are done as if I had done the same on behalf of the Company if these presents had not been made.

IN WITNESS whereof I, have executed these presents this the day of at

EXECUTANT

Signature:
Name:
Designation:

ACCEPTED:

Signature of Attorney.....
Name:
Designation.....

Office Seal.....



Form 6: information for Meeting Qualification Requirement (QR)

[Ref: ITB - 17.1.2 (f)]

To,
The Chief
 Procurement & Contracts Division
 Kholongchhu Hydro Energy Ltd.
 Post Box No.: 23
 Trashiyangtse.

NIT No.:

Bidder's Name & Address:

Dear Sir/Madam,

We seek qualification under ITB 17 and BDS and our qualification data in support thereof is enclosed in the following Forms:

| | | | |
|----|---------|---|--|
| 1. | Form 6A | : | Experience Details of Bidder |
| 2. | Form 6B | : | Details of Financial Capacity Status |
| 3. | Form 6C | : | Present order book position |
| 4. | Form 6D | : | Past Performance Data |
| 5. | Form 6E | : | Data regarding Key Construction Personnel |
| 6. | Form 6F | : | Brief write up regarding Project Management |
| 7. | Form 6G | : | Data regarding available Equipment/Machineries |

We further understand and agree that any misleading or false information furnished by us may result in summary rejection of our Bid.

Date:

Signature.....

Place:

Name.....

Designation.....

Seal.....

Note: The Bidder shall enclose relevant documents like copies of authenticated letter of awards, contracts, completion certificates etc supporting the data and details provided in the Form 7A to 7G.



Form 6A: Experience Details of Bidder

[Ref: ITB – 33.2]

(May be modified as per the requirements specified in the BDS)

Bidder's Name & Address:

NIT No.:

To,
The Chief
Procurement & Contracts Division
Kholongchhu Hydro Energy Ltd.
Post Box No.: 23
Trashiyangtse.

Dear Sir/Madam,

To satisfy the requirements stipulated in the Bidding Document, we provide the following details. We confirm that our average annual turnover from construction business during the preceding five (5) financial years as on date of Bid opening is not less than [insert the amount as per BDS]..... In support of above, we are enclosing [Balance Sheets and Profit & Loss Account duly certified by the statutory auditors, or Income Tax Return duly acknowledged by the tax department, or any other documents to be inserted as applicable]

(6A-1 Financial Details: annual Turnover) [Ref: ITB – 33.2]

| SL# | Project Name | Year | Year | Year | Year | Year | Average Annual Turnover | Remarks |
|-----|--------------|------|------|------|------|------|-------------------------|---------|
| 1 | | | | | | | | |
| 2 | | | | | | | | |
| 3 | | | | | | | | |
| 4 | | | | | | | | |
| 5 | | | | | | | | |

Submitted by
Name:
Designation:
Seal:

Attested by
Regional Revenue Director:
Place:
Date:
Official Seal:

Please enclose annual report containing [Balance Sheets and Profit & Loss Account certified by the statutory auditors/ Income Tax Return duly acknowledged by the tax department] for the above mentioned financial years



(6A-2-Financial Details of Bidder: Line of Credit) [Ref: ITB - 33.2]

(Not Applicable)

Bidder's Name & Address:

NIT No.:

To,
The Chief
Procurement & Contracts Division
Kholongchhu Hydro Energy Ltd. Post
Box No.: 23
Trashiyangtse.

Dear Sir/Madam,

To satisfy the requirements stipulated in the Bidding Document, we provide the following details. We hereby confirm that unutilised line of credit for fund based and non-fund-based limits with cash & bank balances including fixed deposits of our company, duly certified by the bankers as on a date not earlier than 15 days prior to the date of bid opening, is not less than Nu.....

We are also enclosing an original letter of authority to seek reference from our banks. The details are as under:

| S. No | Description | Amount in Nu not earlier than 15 days prior to the date of bid opening |
|-------|--|--|
| 1 | Sanctioned Line of credit Bank Guarantees Cash credit Letter of credit | |
| 2 | Utilised Line of credit Bank Guarantees Cash credit Letter of credit | |
| 3 | Unutilised Line of credit Bank Guarantees Cash credit Letter of credit | |
| 4 | Certificate from the Bankers in respect of unutilised Line of credit as above is enclosed at Appendix..... to this Form 6A | |

Date:

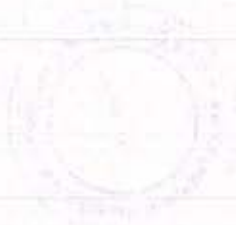
Signature.....

Place:

Name.....

Designation.....

Seal.....



Form 6B: Details of Financial Capacity Status

[Ref: ITB - 33.2]

(May be modified as per the requirements specified in the BDS)

Bidder's Name & Address:

NIT No.:

To,
The Chief
 Procurement & Contracts Division
 Kholongchhu Hydro Energy Ltd.
 Post Box No.: 23
 Trashiyangtse.

| | | |
|-----|---|--|
| A | Orders in Hand | |
| I | Total value of Contracts | |
| ii | Value of work completed out of above value upto (the certificate issued by awarding company indicating that the contract has been satisfactorily completed-to be enclosed) | |
| iii | Value of anticipated work to be done in the following Financial Years: a) b) c) | |
| B | Bidder's assessment of maximum negative cash flow (fund requirement) at any point of time between Letter of Award and completion of contract based on specified terms of payment and his expenditure plan for equipment being offered by Bidder for this package. | |
| C | Arrangement to meet the above fund requirement. | Own Funds Credit Others Total |
| D | Declaration by Bankers regarding: | |
| | i) Bank Guarantee Limits Sanctioned and unutilised as on (a date not later than 15 days prior to date of bid opening). | Enclosed at Appendix.... |
| | ii) Over Draft Limits/Cash Credit Limits – Sanctioned and un-utilised as on (a date not later than 15 days prior to date of bid opening). | Enclosed at Appendix..... |
| | iii) Deferred payment limits | |



| | | |
|--|---|--|
| | iv) Cash and Bank Balances including Fixed Deposits | |
| | v) Movable Property Hypothecation. (Please state the present utilization status also | |
| | vi) Information regarding any current litigation in which the Bidder is involved, the parties concerned, the disputes and the disputed amount if any. | |

Date:

Signature.....

Place:

Name.....

Designation.....

Seal.....

Note: Continuation sheets of like size and format, may be used and annexed to this Form if required.



Form 6C: Present Order Book Position
[Ref: ITB - 33.2]

Bidder's Name & Address:

NIT No.:

To,
The Chief
Procurement & Contracts Division
Kholongchhu Hydro Energy Ltd.
Post Box No.: 23
Trashiyangtse.

List of works under execution and their present status

| Sl. No. | Owner/ Client | Scope of Work | Order Value | Date of Order | Schedule Time of Completion | Value of Outstanding Work | Expected Time of Completion | Reason for Delay (if any) |
|---------|---------------|---------------|-------------|---------------|-----------------------------|---------------------------|-----------------------------|---------------------------|
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

Date:

Signature.....

Place:

Name.....

Designation.....

Seal.....

Note:

- Continuation sheets of like size and format, may be used and annexed to this Form if required.
- Relevant documents/LOA/Orders to be furnished to justify the data above.



Form 6D: Past Performance Data

[Ref: ITB - 33.2]

Bidder's Name & Address:

NIT No.:

To,
The Chief
Procurement & Contracts Division
Kholongchhu Hydro Energy Ltd.
Post Box No.: 23
Trashiyangtse.

Details of similar Works in last Five years

| S. No. | Owner/ Client | Scope of Work | Order Value | Date of Order | Schedule Completion Date | Actual Completion Date | Reason for Delay (if any) |
|--------|---------------|---------------|-------------|---------------|--------------------------|------------------------|---------------------------|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

Date:

Signature.....

Place:

Name.....

Designation.....

Seal.....

Note:

- Continuation sheets of like size and format, may be used and annexed to this Form if required.
- Relevant documents/LOA/Orders to be furnished to justify the data above.



Form 6E: Data regarding Key Construction Personnel

[Ref: ITB – 33.2]

Bidder's Name & Address:

NIT No.:

To,
The Chief
Procurement & Contracts Division
Kholongchhu Hydro Energy Ltd.
Post Box No.: 23
Trashiyangtse.

The qualification and experience of key construction personnel proposed for administration and execution of the Contract at the Site are as follows:

| Position | Name | Qualifications and years of experience (general) | Years of experience in proposed position |
|----------|------|--|--|
| (a) | | | |
| (b) | | | |

Date: Signature.....
Name.....
Place: Designation.....
Seal.....

Note:

- i. Please furnish the complete Site organization chart proposed to be set up for execution of the Contract.
- ii. Continuation sheets of like size and format, may be used and annexed to this Form if required.



Form 6F: Brief write up regarding Project Management
[Ref: ITB – 33.2]

Bidder's Name & Address:

NIT No.:

To,
The Chief
Procurement & Contracts Division
Kholongchhu Hydro Energy Ltd.
Post Box No.: 23
Trashiyangtse.

Dear Sir/Madam,

In line with ITB 17, we furnish below the brief write up in support of our established project management organization.

Date:

Signature.....

Place:

Name.....

Designation.....

Seal.....

Note: Continuation sheets of like size and format, may be used and annexed to this Form if required.



Form 6G: Data regarding available Equipment/ Machinery

[Ref: ITB – 33.2]

Bidder's Name & Address:

NIT No.:

To,
The Chief
Procurement & Contracts Division
Kholongchhu Hydro Energy Ltd.
Post Box No.: 23
TrasHiyangtse.

| Item of equipment | Quantity | Description, make, capacity and age (years) | Condition (new, good, poor) and number available | Owned, leased (from whom?), or to be purchased (from whom?) |
|-------------------|----------|---|--|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Date:

Place:

Signature.....

Name.....

Designation.....

Seal.....

Note: The above list of Equipment& Machineries indicates minimum requirements. However, we shall deploy any additional Equipment and Machineries which may be required as per the directive of the Engineer-in-Charge to execute the work satisfactorily and as per the time schedule stipulated



Form 7: Details of proposed Subcontractors

[Ref: ITB - 17.1.2 (g)]

To,
The Chief
 Procurement & Contracts Division
 Kholongchhu Hydro Energy Ltd.
 Post Box No.: 23
 Trashiyangtse.

NIT No.:
 Bidder's Name & Address:

Dear Sir,
 The details of all items of services which we propose to sublet, giving details of the name and nationality of the proposed Sub-Contractor for each item, are given below:

| Sl. No. | Details of Service | Name, Address & Nationality of proposed Subcontractor |
|---------|--------------------|---|
| | | |

Date: (Signature).....

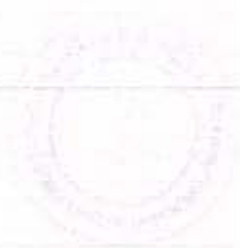
Place: (Printed Name)

(Designation).....

(Seal).....

Note:

1. Continuation Sheets containing Company profile and CV of the Su-contractors shall be submitted as an annexed to this Form.
2. Bidder shall attach letters of confirmation from the sub-contractors so as to confirm their participation.



Form 8: Quality Assurance Program
[Ref: ITB – 17.1.2 (k)]

To,
The Chief
Procurement & Contracts Division
Kholongchhu Hydro Energy Ltd.
Post Box No.: 23
Trashiyangtse.

NIT No.:
Bidder's Name & Address:
.....

Dear Sir,

We hereby provide the necessary information on Quality Assurance Programme containing the overall Quality Management and procedures, which we propose to follow during various phases of execution of the Contract.

[Note: The Quality Assurance Plan shall specify the work methodology, quality control tests and intervals for such tests in accordance with the work specifications for each item of the Works. If in the opinion of the EIC the QAP submitted by the Contractor does not fully represent the spirit of the General Conditions of Contract or the Specifications he may seek further clarification from the Contractor before his approval. The Contractor shall strictly follow the QAP in the execution of the Works. If the Contractor does not comply with the QAP, he shall not be allowed to proceed further with the Works. Details of all procedures and compliance documents shall be submitted to the EIC for information before each execution stage is commenced. Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under contract.]

Date: (Signature).....

Place: (Printed Name)

(Designation).....

(Seal).....

Note: Continuation Sheets of like size and format may be used as per Bidder's requirement and shall be annexed to this Form



Form 9: Contractor's Financial Bid (Financial Bid Submission form)

[Ref: ITB - 17.1.3 (a)]

Notes on Form of Contractor's Financial Bid (Financial Bid Submission form)

The Bidder shall fill in and submit this Bid form with the Financial Bid in case of single stage two envelope mode of tendering.

[date]

Identification No. and Title of Contract: [insert identification number and title of Contract]

To,
The Chief
 Procurement & Contracts Division
 Kholongchhu Hydro Energy Ltd.
 Post Box No.: 23
 Trashiyangtse.

Having examined the Bidding Document (with reference to ITB 17.2.1), including addenda [insert list], we offer to execute the [name and identification number of Contract] in accordance with the Conditions of Contract accompanying this Bid for the Contract Price of [insert amount in numbers], [insert amount in words] [insert name of currency].

This Bid and your written acceptance of it shall constitute a binding Contract between us. We understand that you are not bound to accept the lowest or any Bid you receive.

We hereby confirm that this Bid complies with the Bid validity and Bid Security required by the Bidding Document and specified in the Bidding Data Sheet.

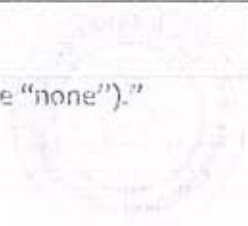
We have no conflict of interest in accordance with ITB 5.2;

Our firm, its affiliates or subsidiaries—including any subcontractors or suppliers for any part of the Contract—has not been declared ineligible under the laws or official regulations of Bhutan, in accordance with ITB 6.1.

Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to contract execution if we are awarded the contract, are listed below:

| Name and address of agent | Amount and Currency | Purpose of Commission or gratuity |
|---------------------------|---------------------|-----------------------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |

(if none, state "none".)



In case if I withdraw my bid after opening for whatsoever reasons, I agree to the forfeiture of the EMD/Bid Security.

Our duly executed Integrity Pact Statement is attached herewith as Form 4.

Authorized Signature: _____

(Affix Legal Stamp)

Name and Title of Signatory: _____

Name of Bidder: _____

Address: _____

Note: Please insert this Form only in Envelope III to avoid disqualification.



SECTION VIIB - CONTRACT FORMS

(Form No. 10 to Form No. 15)

Applicable Forms from this Contract Forms section will either be submitted by the successful Bidder or by KHEL, post award of contract.



Form 10: Letter of Award of Contract
[Ref: ITB - 38.1]

[Letterhead paper of KHEL]

Notes on Standard Form of Letter of Award

The Letter of Award shall be the basis for formation of the Contract as described in ITB 38.2 of the Instructions to Bidders. This Standard Form of Letter of Award shall be filled in and sent to the successful Bidder only after evaluation of Bids has been completed.

[Insert date]

To: [name and address of the Contractor]

This is to notify you that your Bid dated [insert date] for execution of the [insert name of the Contract and identification number, as given in the SCC] for the Contract Price of the equivalent of [insert amount in numbers and words] [insert name of currency], as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by KHEL.

The Contract in duplicate is attached hereto.

You are hereby instructed to:

- (a) confirm your acceptance of this Letter of Award by signing and dating both copies of it, and returning one copy to us no later than 15 days from the date hereof;
- (b) proceed with the execution of the said Works in accordance with the Contract;
- (c) sign and date both copies of the attached Contract and return one copy to us within 15 days of the date hereof; and
- (d) forward the Performance Security pursuant to ITB 40, i.e., within 15 days after receipt of this Letter of Award, and pursuant to GCC 20.3.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: Contract



Form 11: Contract Agreement

[Ref: ITB – 39.1.1]

THIS CONTRACT AGREEMENT is made the day of, 20..... BETWEEN KHOLONGCHHU HYDRO ELECTRIC PROJECT (KHEL), a Corporation incorporated under the laws of Bhutan and having its Registered office at (hereinafter referred to as the "KHEL" or "the Client") which expression, unless repugnant to the context shall include its successors and permitted assigns OF THE FIRST PART,

and

..... [Name of Contractor], a company incorporated under the laws of Bhutan and having its principal place of business at [address of Contractor] (hereinafter called "the Contractor") which expression shall include its successors and permitted assigns OF THE SECOND PART.

WHEREAS (Insert name of Plant /Office) has awarded the works for "....." to M/s, at his total bid value of Nu..... (Nu.....) only and the contractor has accepted to execute and complete the above works and remedy and any defects therein as per the terms and condition contained in the contract agreement.

NOW IT IS HEREBY AGREED as follows:

Article 1. Contract Documents

1.1. Contract Documents (Refer GCC.2)

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

- a. This Contract Agreement and the Appendices hereto
- b. Letter of Award including all documents referred to therein
- c. Special Conditions of Contract
- d. General Conditions of Contract
- e. Technical Specifications and Drawings
- f. Bid Form and Priced Bill of Quantities and Forms (Section VIIA, Section VIIB and Section VIII) submitted by the Contractor

1.2. Order of Precedence (Refer GCC2.1)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above

1.3. Definitions (Refer GCC 1)

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

Article 2. Contract Price

2.1. Contract Price (Refer GCC.14)



The Client hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be [amount in Nu. in words] [amount in figures] or such other sums as may be determined in accordance with the terms and conditions of the Contract.

Article 3. Effective Date for determining Time for Completion

3.1. Effective Date (Refer GCC 1)

Effective date should be strictly as stated in the relevant clauses of GCC/SCC

The Time of Completion of the Works shall be determined from the date of Letter of Award provided all of the following conditions have been fulfilled within a period of two (2) months from the date of said Letter of Award.

- a. This Contract Agreement has been duly executed for and on behalf of the Client and the Contractor;
- b. The Contractor has submitted to the Client the performance security, and the advance payment guarantee;
- c. The Client has paid the Contractor the initial advance payment.

Each party shall use its best efforts to fulfil the above conditions for which it is responsible as soon as practicable

- 3.2. If the conditions listed under 3.1 are not fulfilled within two (2) months from the date of Letter of Award because of reasons attributable to the Purchaser, the Contract would become effective only from the date of fulfilment of all the above-mentioned conditions and, the parties shall discuss and agree on an equitable adjustment to the Contract Price and the Time for Completion and/or other relevant conditions of the Contract.
- 3.3. However, if any of the conditions listed under 3.1 above are not fulfilled within two (2) months from the date of Letter of Award because of the reasons attributable to the Contractor, the Contract will become effective from the date of Letter of Award. In this case, the Contract Price and/or time of completion shall not be adjusted.
- 3.4. It is expressly understood and agreed by and between the Contractor and the Client that the Client is entering into this Agreement solely on its own behalf and not on behalf of any other person or entity. In particular it is expressly understood and agreed that the Government is not a party to this Agreement and has no liabilities, obligations or rights hereunder. It is expressly understood and agreed that the Purchaser is an Independent legal entity with power and authority to enter into contracts solely on its own behalf under the applicable laws of Bhutan and the general principles of Contract Law. The Contractor expressly agrees, acknowledges and understands that the Client is not an Agent, Representative or Delegate of the



Government. It is further understood and agreed that the Royal Government of Bhutan is not and shall not be liable for any acts, omissions, commissions, breaches or other wrongs arising out of the Contract. Accordingly, the Contractor expressly waives, releases and foregoes any and all actions or claims, including cross claims, impleader claims or counter claims against the Government arising out of this Contract and covenants not to sue the Government as to any manner, claim, cause of action or thing whatsoever arising of or under this Agreement.

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

Signed by for and on behalf of the KHEL

Signed by for and on behalf of the Contractor

Affix
Legal
Stamp

Affix
Legal
Stamp

Signature & Name

Signature & Name of Contractor

CID:

CID:

In the presence of:

Witness: _____
Name & Signature:

Witness: _____
Name & Signature:

CID:

CID:

125



125

Form 12: Bank Guarantee for Contract Performance Security
[Ref: ITB - 40.2]

(The Bank shall fill in this Bank Guarantee Form in their Letter Head, in accordance with the instructions indicated in the bracket)

Bank Guarantee No.
Date.....

To

M/s Kholongchhu Hydro Energy Limited,
Chorten Kora,
Trashy Yangtse: Bhutan

Dear Sir/Madam,

In consideration of Kholongchhu Hydro Energy Limited (hereinafter referred to as KHEL which expression shall unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s with its Registered/Head Office at (hereinafter referred to as the 'Contractor/Supplier' which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), a Contract by issue of Letter of Award No..... dated valued at [name of currency and amount in figures and words], for (insert Scope of Contract) and the Contractor/Supplier having agreed to provide a Contract Performance Guarantee for the faithful performance of the entire Contract equivalent to ten percent (10%) of the said value of the Contract to KHEL.

We (insert Name and Address of the bank issuing the Guarantee) having its Head Office at # hereinafter referred to as the 'Bank' which expression shall, unless repugnant to the context or meaning thereof include its successors, administrators, executors and assigns), do hereby guarantee and undertake to pay KHEL, on demand any and all monies payable by the Contractor/Supplier to the extent of [insert amount of the Bank Guarantee and its currency] at any time up to @..... (day/month/year) without any demur, reservation, contest, recourse or protest and or without any reference to the Contractor/Supplier. Any such demand made by KHEL on the Bank shall be conclusive and binding notwithstanding any difference between KHEL and the Contractor/Supplier or any dispute pending before any Court, Tribunal or any other Authority. The Bank undertakes not to revoke this guarantee during its currency without prior consent of KHEL.

KHEL shall have the fullest liberty without affecting in any way the liability of the Bank under this guarantee from time to time to extend the time for performance of the Contract by the Contractor/Supplier. KHEL, shall have the fullest liberty, without affecting this guarantee to postpone from time to time the exercise of any powers vested in KHEL or of any right which they might have against the Contractor/Supplier and to exercise the same at any time and any manner, and either to enforce or to forbear to enforce any covenants, contained or implied in the Contract between KHEL and the Contractor/Supplier or any other course of remedy or security available to KHEL. The Bank shall not be released of its obligations under these presents by any exercise by KHEL of its liberty with reference to the matters aforesaid or any of them or by reason or any other acts



of omission or commission on the part of KHEL or any other indulgence shown by KHEL or by any other matter or thing whatsoever which under the law would but for this provision have the effect of relieving the Bank.

The Bank also agrees that KHEL at its option shall be entitled to enforce this guarantee against the Bank as a Principal debtor, in the first instance without proceeding against the Contractor/Supplier and notwithstanding any security or other guarantee that KHEL may have in relation to the Contractor's/Supplier's liabilities.

Notwithstanding anything contained herein above, our liability under this guarantee is restricted to and shall remain in force up to and including and shall be extended from time to time for such period, as may be desired by M/s on whose behalf this guarantee has been given.

All rights of KHEL under this Guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities there under unless a demand or claim is lodged by KHEL under this Guarantee against the bank within the above-mentioned expiry date of validity or, from that of the extended date.

Dated this day of20 at

Witness:

.....
(Signature)

.....
(Name)

.....
(Official Address)

2.
(Signature)

.....
(Name)

.....
(Official Address)

1.
(Signature)

.....
(Affix Legal Stamp & Stamp Official Seal)

.....
(Name)

.....
(Official Address)

2.
(Signature)

.....
(Affix Legal Stamp & Stamp official Seal)

.....
(Name)

.....
(Official Address)

- Note:**
- *Contractor/Supplier as applicable.
 - @) This date will be thirty (30) days beyond the scheduled end of Defect Liability Period of the last work covered under the Contract/last supplies completed.
 - (#) Complete mailing address of the Head Office of the Bank to be given.



Form 13: Bank Guarantee for Advance Payment
[Ref: GCC - 16.1]

(The Bank shall fill in this Bank Guarantee Form in their Letter Head, in accordance with the instructions indicated in the bracket)

Bank Guarantee No.

Date.....

To

M/s Kholongchhu Hydro Energy Limited,
Chorten Kora,
Trashy Yangtse: Bhutan

Dear Sir/Madam,

In consideration of the Kholongchhu Hydro Energy Limited (hereinafter referred to as KHEL) which expression shall unless repugnant to the context or meaning thereof include its successors, administrators, executors and assigns having awarded to M/s..... with its registered/Head Office at (here-in-after referred to as the Contractor/Supplier*) which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns, a Contract by issue of KHEL's Letter of Award No. dated and the same having been unequivocally accepted by the Contractor/Supplier resulting in a 'Contract', dated valued at [name of currency and amount in figures and words] for (insert Scope of Contract) (hereinafter called the Contract) and KHEL having agreed to make advance payment to the Contractor/Supplier for performance of the above Contract amounting to..... [insert currency and amount of the advance], as an advance against Bank Guarantee to be furnished by the Contractor/Supplier.

We, [Insert name and address of the bank issuing Branch] having its Head Office at (hereinafter referred to as the 'Bank' which expression shall, unless repugnant to the context of meaning thereof, include its successors, administrators, executors and assigns) do hereby guarantee and undertake to pay KHEL immediately on demand any or all monies payable by the Contractor/Supplier to the extent of [insert currency and amount of the advance] at any time up to @..... without any demur, reservation, contest, recourse or protest and/or without any reference to the Contractor. Any such demand made by KHEL on the Bank shall be conclusive and binding notwithstanding any difference between KHEL and the Contractor/Supplier or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.

KHEL shall have the fullest liberty without affecting in any way the liability of the Bank under this guarantee from time to time to vary the advance or to extend the time for performance of the Contract by the Contractor/Supplier. KHEL shall have the fullest liberty, without affecting this guarantee to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Contractor/Supplier and to exercise the same at any time in any manner and either to enforce or to forbear to enforce any covenants contained or implied in the



Contract between KHEL and the Contractor /Supplier or any other course or remedy or security available to KHEL. The Bank shall not be released of its obligations under these presents by any exercise by KHEL of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of KHEL or any other indulgence shown by KHEL or by any other matter or thing whatsoever which under law would, but for this provision, have the effect of relieving the Bank.

The Bank also agrees that KHEL at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor/Supplier and notwithstanding any security or other guarantee that KHEL may have in relation to the Contractor's/Supplier's liabilities.

Notwithstanding anything contained hereinabove our liability under this guarantee is limited to..... [insert currency and amount of the advance]..... and it shall remain in force up to and including and shall be extended from time to time for such period as may be desired by M/s on whose behalf this guarantee has been given.

All rights of KHEL under this Guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities there under unless a demand or claim is lodged by KHEL under this Guarantee against the bank within the above-mentioned expiry date of validity or, from that of the extended date.

Dated this day of20..... at

Witness:

1.
(Signature)

1.
(Signature)

(Affix Legal Stamp & Stamp Official Seal)

.....
(Name)

.....
(Name)

.....
(Official Address)

.....
(Official Address)

2.
(Signature)

2.
(Signature)

(Affix Legal Stamp & Stamp Official Seal)

.....
(Name)

.....



| | |
|--------------------|--------------------|
| | (Name) |
| (Official Address) | |
| | (Official Address) |

Note: * Contractor/Supplier as applicable.
@) This date will initially be twelve (12) months, which will be further extended upon instruction of the Engineer In-charge, depending upon the amount of advance recovered.



Form 14: Completion Certificate

[Ref: GCC 32.2]

(On the letter head of KHEL as per provisions of GCC)

Date:

Contract No.:

[Name of Contract]

To: [Name and address of Contractor]

Dear Sirs,

Pursuant to the Contract entered into between yourselves and KHEL dated [insert date]....., relating to the[brief description of the Works]....., we hereby notify you that the following part(s) of the Works was (were) complete on the date specified below, and that, in accordance with the terms of the Contract, KHEL hereby takes over the said part(s) of the Works, together with the responsibility for care and custody and the risk of loss thereof on the date mentioned below.

1. Description of the Works or part thereof: [description]

| Billing Schedule Sl. No. | Description of item | Total | Quantity/Percentage (%) | | |
|--------------------------|---------------------|-------|-------------------------------------|----------------------|--------------------------------|
| | | | Cumulative achieved up to last bill | Claimed in this bill | Cumulative achieved up to date |
| | | | | | |
| | | | | | |

2. Date of Completion: [date]

3. Defects to be rectified, if any:

However, you are required to complete the outstanding items listed in the enclosure hereto as soon as practicable.

This letter does not relieve you of your obligation to complete the execution of the Works in accordance with the Contract nor of your obligations during the Defects Liability Period.

Very truly yours,
Title
(Project Manager)

Encl: List of outstanding items to be completed



Form 15: Form of Joint Venture Agreement (if applicable) [Ref: ITB – 7.1]

(On non-judicial stamp paper of appropriate value to be purchased in the name of Lead Member of the Joint Venture)

THIS Joint Venture Agreement is executed on this day of..... Two thousand and between M/s..... a company incorporated under the and having its Registered Office at (hereinafter called the "Lead Member" which expression shall include its successors, executors and permitted assigns), M/s. a company incorporated under the and having its Registered Office at..... (hereinafter called the "Member" which expression shall include its successors, executors and permitted assigns), M/s..... a company incorporated under the and having its Registered Office at (hereinafter called the "Member" which expression shall include its successors, executors and permitted assigns) for the purpose of making a Bid and entering into a Contract (in case of award) against the NIT No.: for procurement of by KHEL incorporated under the Companies Act of having its Registered Office at (hereinafter called KHEL.)

WHEREAS the Bidding Documents stipulates that a Joint Venture of two or more firms as members, meeting the requirement of ITB 7, as applicable may Bid, provided the Lead Member fulfils all technical qualification requirements listed for an individual Bidder and the financial qualification requirements is met jointly by all the members of the Joint Venture subject to the condition that each member meets at least the minimum financial qualification requirements as specified in the Bidding Documents and in such a case, the Bid shall be signed by the Lead Member of the Joint Venture, who will be jointly and severally liable to perform the Contract and all obligations hereunder.

NOW THIS INDENTURE WITNESSETH AS UNDER:

In consideration of the above premises and agreements all the Members to this Joint Venture do hereby now agree as follows:

1. In consideration of the award of the Contract by KHEL to the Joint Venture, we, the Members to the Joint Venture do hereby agree that M/s shall act as Lead Member and further declare and confirm that we shall jointly and severally be bound unto KHEL for the successful performance of the Contract and shall be fully responsible for the execution of the Works in accordance with the Contract.
2. The Lead Member is hereby authorized by the Members of the Joint Venture to bind the Joint Venture with respect to the Contract as may be awarded by KHEL and to receive instructions for and behalf of all the Members of the Joint Venture.
3. It is hereby agreed that the Lead Member shall furnish the Bid security as stipulated in the Bidding Documents on behalf of the Joint Venture.



4. In case of any breach of the said Contract by the Lead Member or other Member(s) of the Joint Venture agreement, the Member(s) do hereby agree to be fully responsible for the successful performance of the Contract and to carry out all the obligations and responsibilities under the Contract in accordance with the requirements of the Contract.

5. Further, if KHEL suffers any loss or damage on account of any breach in the Contract or any shortfall in meeting the performance guaranteed as per the specification in terms of the Contract, the member(s) of these presents undertake to promptly make good such loss or damage caused to KHEL, on its demand without any demur. It shall not be necessary or obligatory for KHEL to proceed against Lead Member to these presents before proceeding against or dealing with the other Member(s).

6. The financial liability of the member of this Joint Venture agreement to KHEL, with respect to any of the claims arising out of the performance or non-performance of the obligations set forth in the said Joint Venture agreement, read in conjunction with the relevant conditions of the Contract shall, however, not be limited in any way so as to restrict or limit the liabilities of any of the Members of the Joint Venture agreement.

7. It is expressly understood and agreed between the members to this Joint Venture agreement that the responsibilities and obligations of each of the members shall be as delineated in Appendix-I (**To be incorporated suitably by the members*) to this agreement. It is further agreed by the Members that the above sharing of responsibilities and obligations shall not in any way be a limitation of joint and several responsibilities of the members under this Contract.

8. It is clearly agreed that the Lead Member shall ensure performance under the Contract and if one or more of the members fail to perform its respective obligations under the Contract, the same shall be deemed to be a default of all the members of the Joint Venture.

9. It is hereby expressly agreed between that members to this Joint Venture that neither member shall assign or delegate its rights duties or obligations under this agreement except with the prior written consent of KHEL.

10. This Joint Venture agreement shall be construed and interpreted in accordance with the laws of the Kingdom of Bhutan and the courts of the Kingdom of Bhutan shall have the exclusive jurisdiction in all matters arising thereunder.

11. In case of an award of a Contract, we the members to the Joint Venture agreement do hereby agree that we shall be jointly and severally responsible for furnishing a Contract Performance Security from a bank in favour of KHEL in the forms acceptable to KHEL for value of ten percent (10%) of the Contract Price. It is further agreed that the Joint Venture agreement shall be irrevocable and shall form an integral part of the Contract, and shall continue to be enforceable till completion of the Contract. It shall be effective from the date first mentioned above for all purposes and intents.

12. We undertake that the Joint Venture agreement shall not be modified or amended without the written permission from KHEL.



IN WITNESS WHEREOF, the Members to the Joint Venture agreement have through their authorized representatives executed these presents and affixed Common Seals of their companies, on the day, month and year first mentioned above.

1 For lead Member

(Signature of authorized representative)

Signature

Name

Designation

For other Members

2 (Signature of authorized representative)

Signature

Name

Designation

WITNESSES:

1.....

2.....

(Signature)

(Signature)

Name

Name

Official Address.....

Official Address.....

3.....

(Signature)

Name

Official Address.....



Form 16: Release of Retention Money

[To be provided on the relevant legal document or Letter Head of the Financial Institution]

The **bank/successful Bidder** providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets.

[Bank's name and address of issuing branch or office]

Beneficiary: M/s Kholongchhu Hydro Energy Limited, Chorten Kora, Trashi Yangtse

Date: [date]

RELEASE OF RETENTION PAYMENT GUARANTEE No.: [number]

We have been informed that [name of Contractor/Supplier] (hereinafter called "the Contractor"/"Supplier") has entered into Contract vide No. [reference number of the contract] dated [date of Contract] with you, for the execution of [name of contract and brief description of Works/Goods] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a guarantee for release of Retention Money is required.

We [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [amount in figures] ([amount in words] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract, without you needing to prove or show grounds for your demand or the sum specified therein.

This guarantee shall expire no later than 30 days from the date of issuance of the No Defect Liability Certificate by KHEL or completion of Warranty Period, calculated based on a copy of such Certificate/Warranty which shall be provided to us, or on the [number] day of [month], [year], whichever occurs first. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date or from that of the extended date. If any further extension of this guarantee is required, the same shall be extended to such required period on receiving instructions from M/s -----(Bidder's Name) on whose behalf this guarantee is issued.

Dated this day of20 at

Witness:

1.
(Signature)

1.
(Signature)

(Affix Legal Stamp & Stamp Official Seal)

.....
(Name)

135



.....
(Official Address)

2.

(Signature)

.....
(Name)

.....
(Official Address)

.....
(Official Address)

2.

(Signature)

(Affix Legal Stamp & Stamp Official Seal)

.....
(Name)

.....
(Official Address)



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SECTION VIII: BILL OF QUANTITIES (BOQ)

Note:

The Bill of Quantities for this work (Civil and Electrical) is attached as Annexure – III. Please refer Annexure – III.

