



WE COMPLETE THE PARTNERSHIP

Guidelines

For Kuwait
OFFSET Program No.(9) - 2007

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الشركة الوطنية للأوفست
National Offset Company

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GLOSSARY OF TERMS & DEFINITIONS

Term	Definition
Offset	An Obligation imposed on defense contracts that are signed by government entities with foreign entities and whose value is equal to or greater than KD3 million; in addition to civil contracts, whose value is equal to or greater than KD10 million.
Value of Offset Obligation	Equivalent to 35% of the net monetary value of the supply contract after deducting the monetary value of any of the following, if existent: <ul style="list-style-type: none">•Subcontracts signed with Kuwaiti companies.•Purchases of goods and services of national origin that are made within the context of the supply contract.•The monetary value of the Kuwaiti share in a joint venture that is subject to offset.•The balance of offset credits achieved as a result of: charges incurred to secure a bank guarantee, and/or procurement of goods and services of national origin outside the scope of the initial contract, and/or previously achieved offset credits (future credits) that are carried forward, and/or other offset credits.
Multiplier	Financial incentive system adopted to direct offset obligated foreign companies to invest in projects that achieve the objectives of the Offset Program. This system enables a reduction in the value of the initial offset obligation by a ratio equivalent to the multiplier value that is specified for the offset project.
Sub-multipliers	The multiplier values that are specified for the offset project in return for achieving each of the three primary economic objectives of the Offset Program (Transfer of Technology, job creation for Kuwaitis, provision of educational and training opportunities for Kuwaitis).
Total Offset Project Multiplier	The total value of sub-multipliers that are specified for the offset project, concomitant with the extent of its achievement of the three primary economic objectives of the Offset Program (Transfer of Technology, job creation for Kuwaitis, provision of educational and training opportunities for Kuwaitis).

Term	Definition
Offset Start Date or Effective Start-Date of Obligation	The same date of signing the Supply Contract, or the effective start date of the Supply Contract, or contract implementation start date.
Offset Credits	Determined through the mathematical multiplication of the value of investment in the offset project by the value of offset multiplier that is granted to the project. These offset credits are utilized to cover the offset obligation by an equivalent amount.
Future Offset Credits	Achieved when the value of offset credits generated from an offset project exceeds the value of the offset obligation of the foreign company.
Balance of Offset credits	Total achieved offset credits against all activities performed by the foreign company which has an offset obligation including, investing in an offset project, charges incurred to secure a bank guarantee, and/or procurement of goods and services of national origin outside the scope of the initial contract, and/or previously achieved offset credits (future credits) that are carried forward, and/or other offset credits.
Monetary Equivalence of Offset Obligation Value	The output of the mathematical multiplication of the value of investment in the offset project, by the multiplier value, which is specified for the project. It is equivalent to the value of total offset credits generated from the investment in the project.
Bank Guarantee	Equivalent to 6% of the net monetary value of the Supply Contract, after deduction of the monetary value of any of the following, if existent: <ul style="list-style-type: none">•Subcontracts signed with Kuwaiti companies.•Purchases of goods and services of national origin that are made within the context of the supply contract.•The monetary value of the Kuwaiti share in a joint venture that is subject to offset.•The balance of offset credits achieved as a result of: charges incurred to secure a bank guarantee, and/or procurement of goods and services of national origin outside the scope of the initial contract, and/or previously achieved offset credits (future credits) that are carried forward, and/or other offset credits.

GUIDELINES FOR KUWAIT OFFSET PROGRAM

Term	Definition
Foreign Supplier	The same as the Foreign contractor, defined in the Guidelines.
Supply Contract	Represents the contract signed between the foreign contractor and the different government entities or independent government institutions. It may be either a defense or a civil contract.
Buyer	Represents the government entity that has a contract with the foreign contractor.
Third Party	Represents an external independent party that is appointed by the foreign contractor to implement its offset obligation on its behalf, after securing the approval of NOC.
Entrepreneurs	Businessmen who initiate and manage business ventures innovatively.
Corporate Governance	A system that organizes the relations among the executive management of NOC, Board of Directors, shareholders and other stakeholders, with the objective of improving its management and economic efficiency, through the utilization of audit and control tools and procedures, applicable to private sector companies.
Break-even Point	The level of production or operation at which revenues and expenditures are equal and neither profits nor losses exist.
Value Added	The measure of the economic impact of the offset project on the national economy. It is equivalent to the difference between the value of the final product of the project, and the cost of raw material inputs that are utilized in its production process.

1-INTRODUCTION

- 1.1** The Government of the State of Kuwait (“GOK”) manages civil and defense procurement programs which include the acquisition of goods and services through contracts signed with foreign entities (companies or governments). The GOK established the Kuwait Offset Program (“Offset Program”) to foster the creation and development of Projects under the procurement programs to encourage and support foreign contractors, and initiate and foster fruitful, short and long-term business partnerships with Kuwaiti private sector enterprises.
- 1.2** Foreign contractors could also benefit from the Offset Program since it may bolster their business activities in Kuwait. The Offset Program may help foreign contractors expand and enhance their knowledge and understanding of the Kuwaiti business market. It may also facilitate their efforts to establish and develop strategic alliances with Kuwaiti partners and improve their business opportunities in Kuwait and the Gulf region.
- 1.3** The contract of incorporation of the National Offset Company (NOC) was signed on the 28th of March 2006, stipulating that it is a state-owned, closed shareholding company (C.S.C.). It was registered at the Commercial Registry under No. 114257. Its primary function is to manage and administer the implementation of the Offset Program on behalf of the Government of Kuwait (GOK)- Ministry of Finance (MOF), and in the process, facilitate sustainable alliances and partnerships between local entities and foreign contractors.
- 1.4** NOC commenced its operations on behalf of the Ministry of Finance on September 2, 2006, after concluding a Management Agreement (MA) with the Kuwait Ministry of Finance (MOF), under which NOC was entrusted with the management of the Offset Program.
- 1.5** Under the MA, the NOC would administer the management and implementation of the Offset Program in accordance with the present guidelines, which constitute an elaborate and expanded description of NOC’s charter and mandate as stipulated in its Articles of Association.

In the course of their implementation, the guidelines will be periodically re-evaluated in order to improve and optimize their application. All updates, changes or modifications will be reflected on NOC website at: www.kuwaitnoc.com.

2-OBJECTIVES OF THE KUWAIT OFFSET PROGRAM

The Offset Program seeks to achieve the following objectives:

Realize sound and sustainable economic benefits for the State of Kuwait, through the promotion of long term links and ventures with foreign corporations, with special emphasis on projects implemented in collaboration with the private sector; and which contribute to the achievement of the three primary objectives of the Offset Program, namely:

- a- Promote projects that lead to the transfer of appropriate advanced technologies to Kuwait, and facilitate their integration and adaptation into the local economy;
- b- Promote projects that contribute to the advancement of professional education and job training;
- c- Encourage and support projects that contribute to the creation and development of high-skill professional jobs for Kuwaiti nationals.

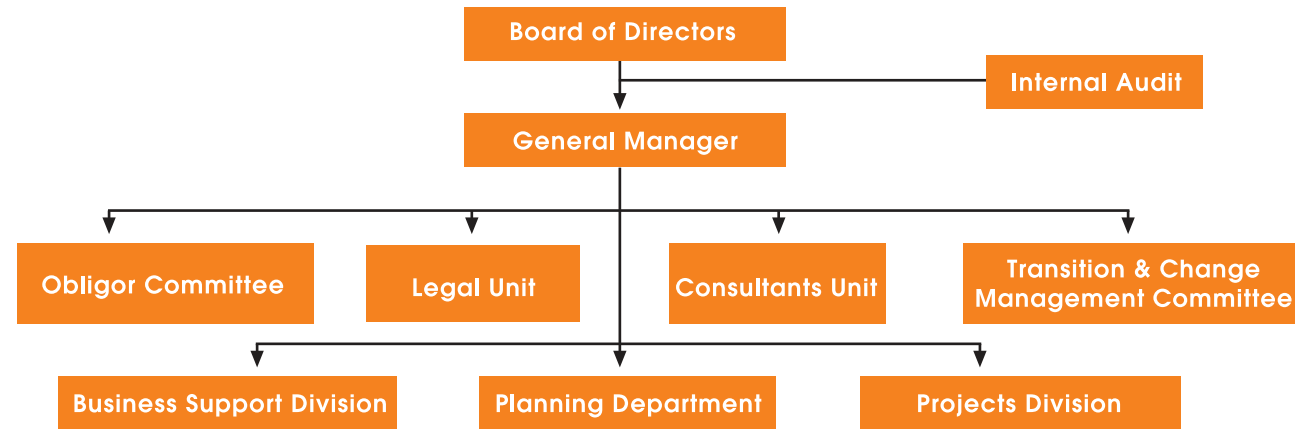
3- The Organizational Structure of NOC and its Policy

3.1 The National Offset Company (NOC) has an organizational structure consisting of the following units:

- a- The Board of Directors, comprising of five members, representing various public and non-public institutions in Kuwait and chaired by a member elected by the Board;
- b- The General Manager, appointed by the Board of Directors, runs the day-to-day operations of NOC and;
- c- The Administrative, Financial and Operational units

3.2 Chart 1 shows the skeleton of NOC’s organizational structure. Names and titles of the individuals within each unit of the organizational structure are provided in NOC website: www.kuwaitnoc.com

Chart1: NOC Organizational Chart



For further details about NOC’s Organizational Structure and functions of its various organizational divisions, refer to Annex (I).

3.1 NOC policy is to perform its obligations and responsibilities in accordance with its Articles of Association and its Management Agreement with the Ministry of Finance, as well as the laws, rules and regulations of the State of Kuwait. By executing its mandate in an efficient and effective manner, NOC will be ensuring high level and professional management of the Offset Program in order to achieve excellence in its management approach. NOC will rely on state of the art systems and procedures to facilitate and support its interaction with the foreign contractors and local entities. NOC will provide all the appropriate support to foreign contractors to assist them in successfully fulfilling their offset obligations. NOC may also assist local Kuwaiti entrepreneurs in benefiting from the Offset Program, by receiving offset investment proposals from Kuwaiti entrepreneurs, evaluating and assessing these proposals and liaising between the foreign contracts and Kuwaiti entrepreneurs, for the joint implementation of such projects. However, in providing such services to Kuwaiti entrepreneurs NOC will not be liable to any commitment towards them.

4- The Foreign Contractor and Offset Obligation

4.1 Definition of Foreign Contractor (FC):

A foreign contractor (FC), for the purpose of the Offset Program, is by definition any government or private (commercial) entity satisfying either of the following conditions:

- a- Any foreign legal entity or entities, not registered or incorporated in Kuwait, under direct contractual commitment to supply goods and/or services (“Supply Contract”) to the Government of Kuwait,
- b- Any foreign legal entity or entities party to a Supply Contract represented by a local legal entity acting as its agent or legal representative, and under which the foreign legal entity or entities will remain completely and entirely responsible for the implementation of the Supply Contract;
- c- Any joint venture formed between a foreign legal entity or entities and a Kuwaiti legal entity or entities for the purpose of jointly signing and executing a Supply Contract with the Kuwaiti Government;
- d- Any legal entity not satisfying one of the above conditions and classified as a foreign contractor by NOC.

4.1.1 Some Examples of a Foreign Contractors:

- A Foreign company or government party to a Supply Contract of goods and/or services with the Kuwait Ministry of Defense.
- A Foreign company signing a supply and service contract, as a second party, with the Ministry of Electricity and Water.
- A foreign entity party to a Supply Contract that is represented by a local entity acting as an agent or legal representative of the foreign company.

- A joint venture between a local entity or entities with one or more foreign contractors or governments as the main contractual party to a Supply Contract with a Kuwaiti Government entity or with a single authorized local or international representation.
- A foreign supplier of goods and services under a Supply Contract where all, if not most of, the in situ scope of work or services (to be provided under the contract) is carried out by the foreign contractor, such as construction of sewage plants, waste treatment, recycling plants or major/centralized utility services.
- A supplier of defense equipment and services whereby the contract is granted to the supplier as a result of a direct government-to-government agreement for the supply of defense equipment and services.

4.1.2 Some Examples of Entities that do not Qualify as Foreign Contractors:

- Foreign entity (foreign company or foreign government entity) signing a contract for non-industry related construction works. Examples of these Projects are construction of roads, infrastructure, government buildings or schools.
- Foreign entity acting as supplier of goods only (i.e. on a F.O.B. basis), directly or through a local agent/distributor or where all, if not most of, the in situ scope of work or services is carried out and executed by a local entity.
- All "Public-Private-Partnerships" (PPP) contracts signed with any Kuwaiti governmental entity.

4.2 Definition of Offset Obligor

Any Foreign Contractor ("FC") awarded a Supply Contract falling under any of the following categories is an Offset Obligor:

- A Supply Contract to the GOK relating to the defense and security sectors, inside or outside Kuwait (with the Ministry of Defense, Ministry of Interior, National Guards, or similar), and where the total value, in whole or after amendment or extension, equals to or is greater than KD3 million.
- A Supply Contract to the GOK relating to the civil sector (i.e. unrelated to the defense and security sectors), and in which a Foreign Contractor – inside Kuwait – is party, and where the total value of the Contract, in whole or after amendment or extension, equals to or is greater than KD10 million.

4.3 The Offset Obligation

When a Foreign Contractor is considered an Offset Obligor, in line with the definitions stated in Section 4.2 above, an Offset Obligation is imposed upon the Foreign Contractor.

The Offset Obligation Value (OOV) is equal to thirty five percent (35%) of the total monetary value of the Supply Contract, subject to the possible deductions described below.

When determining the OOV in connection to non-defense (civil) contracts, NOC, after examining the scope of work and requirements in the contract, will take into consideration the possibility of deducting the value of the following from the total value of the contract:

- The value of subcontracts assigned to operating Kuwaiti companies with predefined rules and responsibilities within the Supply Contract.
- The value of locally procured goods and/or services, as predefined in the Supply Contract.

NOC may consider the deduction of subcontracts assigned to Kuwaiti companies and/or the value of national goods and services from the total value of the Supply Contract, only after the contract is signed and after receiving documents that confirm such transactions, accompanied by statements from the respective GOK entities confirming their authenticity. When and if NOC approves such deductions, the offset obligor will be required to present to NOC a "Statement of Acknowledgement and Undertaking with Respect to an Offset Obligation Reduction" (In the format shown in Annex III). According to this Statement the offset obligor acknowledges that it was granted a reduction in the offset obligation, and that in the event it subsequently appears that the offset obligor was actually entitled to a lesser reduction than what he was granted then the offset obligor shall be liable to settle the difference.

Furthermore, NOC shall, deduct from OOV any Offset Credits (OC) granted to the Offset Obligor by NOC, such as:

- Offset Credits Gained Against Costs of Attaining a Bank Guarantee (see Section 9).
- Post-Contract Offset Credits (see Section 7.2.1).
- Pre-Contract Offset Credits (see Section 7.2.2).

NOC may consider the possibility of deducting from the OOV the monetary equivalence of the percentage participation of Kuwaiti legal entities in any joint Kuwaiti-Foreign ventures that have been awarded a Supply Contract with GOK, and which is subject to offset. However, such deduction is granted after the specified percentage participation of the Kuwaiti legal entity in the joint venture is confirmed and certified, and provided the following conditions are met:

- The percentage share of the Kuwaiti legal entities in the joint venture should not exceed a rate of 30%.
- If NOC decides to reduce the OOV by the monetary equivalence of the share of the Kuwaiti legal entities in the joint venture, then the joint venture entities shall not be allowed to request additional deductions from the supply contract corresponding to any subcontracts signed with Kuwaiti companies, within the context of the supply contract.

Hence, the Offset Obligation Value relating to civil contracts (non-defense) will be calculated as follows:

OOV=0.35 x (MVC-MVLGS)-OC

Where:

- OOV: is the Offset Obligation Value,
- MVC: is the Monitory Value of the Supply Contract
- MVLGS: is the monetary Value of subcontracts signed with Kuwaiti legal entities or the National Goods and Services or the share of the Kuwaiti legal entity in a joint Kuwaiti-Foreign venture.
- OC: is the Offset Credits earned by the offset obligor as per Section 7.

Concerning the Offset Obligation Value that relates to defense contracts, it will be calculated as follows:

OOV=(0.35 X MVC)-OC

The value of the Offset Obligation is a reference figure. It is not an absolute monetary commitment, which will be determined at a later stage when and after the Offset Obligor submits its proposed Offset Project(s) for approval by NOC.

4.4 Effective Start-Date of Obligation

The Offset Obligation of the foreign contractor (FC) becomes effective on the date of signing the Supply Contract.

5- Fulfillment of the Offset Obligation

Offset Obligors will have to fulfill their Offset Obligation by selecting or proposing one or more offset projects (“Project”) which must be approved by NOC, using the procedure described in these guidelines. NOC will allocate to each Project a multiplier value as defined in Section 7.1 of these Guidelines. The multiplier value will determine the absolute Monetary Equivalent of the Offset Obligation (MEOOV), which is calculated as:

MEOOV_(i)=OPI_(i) x OPM_(i)

Where:

- MEOOV_(i): is the Monetary equivalent Offset Obligation value of Project (i).
- OPI_(i): is the monetary investment in Project (i).
- OPM_(i): is the Offset Project multiplier for Project (i).

The Offset Obligation is fulfilled when the sum of all MEOOV_(i) is equal to OOV, i.e.

If OOV=MEOOV=∑ⁿ_{i=1}(MEOOV_(i))

Where n is the total number of Offset Projects.

If MEOOV is less than OOV, the Offset Obligor must select additional Offset Project(s) to satisfy its Offset Obligation. If, on the other hand, MEOOV is more than OOV, the Offset Obligor will receive Offset Credits (OC_{postc}) for the excess amount, which will be treated as described in Section 7.2 of these Guidelines.

6- The Offset Project

The Offset Project starts in the form of a concept paper submitted by the FC to NOC for initial approval.

If and when the Supply tender is awarded, and before signing the contract, NOC and the Foreign Contractor or its official representative shall sign a Memorandum of Agreement (MOA) detailing the path to which the Offset Obligation shall be satisfied. The MOA shall describe the manner in which the Offset Obligor will fulfill its Offset Obligation. The MOA can be signed at any time before the date of signing the Supply Contract and no later than that date.

6.1 Direct and indirect Offset Projects

Offset Obligors may satisfy their respective Offset Obligations by proposing direct or indirect Offset Projects.

Direct Offset Projects are those in which the FC assists the GOK entity through a mechanism such as supply arrangements, technology licenses or co-production of the underlying product within Kuwait. The overall effect of a direct Offset Project is to reduce the cost of purchase, operation and/or maintenance through participation of the seller in supplying the product. Direct offset projects could include:

- Grant labeled projects;
- Privatization projects;
- Defense related projects, including training, maintenance and test labs;
- Projects of dual defense/civil uses.

An Indirect Offset Project is one in which FC agrees to assist GOK in its development of the private sector with foreign vendor participation in projects to produce products either for export or import substitutions or investment plans unrelated to the principal import (Supply) contract.

The structure of direct or indirect Offset Projects may take any of the forms proposed under Section 6.3. Listed below are some examples of Offset Projects for each type:

- **Example1: Direct Offset Projects**

- Establishment of laboratories, services or maintenance facilities within the operational domain of the Kuwaiti Government entity party to the Supply Contract.
- Short and long-term training programs of national manpower on high technology equipment or software.
- Development of specialized software or systems for special applications.
- Establishment of a business entity with or without participation of the Kuwait Government as owner or co-owner, to provide services or goods to the buyer and/or other sectors.

- **Example 2: Indirect Offset Projects**

- Grants or donations to approved and licensed organizations in Kuwait providing educational, health care or public services.
- Establishment of business entities in Kuwait to provide goods or services.
- Establishment of specialized training centers to train Kuwaitis.
- Establishment of energy related industries.
- Investment in business ventures to promote the use of alternate energy.
- Investment in business ventures to manage and optimize the use of fuel energy or water resources.
- Procurement of national goods and services.
- Establishment of PPP Projects with local participation.

6.2 Sources Of Offset Projects

An Offset Obligor may, in the fulfillment of its Offset Obligation, suggest and propose the implementation of one or more Offset Projects from the following sources:

- a- From the compiled list made by NOC of potential project proposals pre-qualified as Offset Project recipient(s), some of which will be in conceptual format and others more elaborated. The compiled list may include Direct and/or Indirect Offset Projects;
- b- From direct or indirect Projects proposed by the Offset Obligor meeting the criteria and conditions specified in Section 6.4 below;
- c- Funds approved by NOC in which the Offset Obligor may participate.

6.3 Offset Project Structures

When implementing either option (a) or (b) above, Offset Obligors can select one or more of the following Project structures:

- a- Establish an Offset Business Venture ("OBV") with Kuwaiti businesses, entrepreneurs and/or Kuwaiti private citizens as equity partners;

- b- Establish an OBV in which the Offset Obligor's equity share is more than 49% in accordance with the Foreign Investment Law No. 8/2001, (as amended) regulating direct foreign capital investment in the State of Kuwait;
- c- Expand and develop existing business ventures;
- d- Make in kind contribution(s) or grant(s) to existing Offset Projects approved by NOC as Offset Obligation recipients;
- e- Participate in existing NOC approved and established funds or develop and create new offset funds under Kuwaiti law to finance the implementation of general and/or Offset Projects with the clear understanding that:
 1. Offset Funds must be local legal entities managed by specialized Kuwaiti or foreign financial Institutions and must be approved by NOC;
 2. Offset funds should target the achievement of one or more of the Offset Program Objectives in the same way as other Offset Projects do (The Offset Funds Guidelines are shown in Annex IV).
- f- Any other project structure approved by NOC.

6.4 Criteria for approval of Offset Project Proposals by NOC

NOC will approve Offset Project proposals according to their level of satisfaction of the following criteria:

- a- If the Offset Project leads to the transfer, integration and adaptation of appropriate technologies to Kuwait. The value of the transferred technology should be assessed, through the following:
 - Determining whether the transferred technology exists or is utilized in other countries and what is the cost of transferring it to Kuwait;
 - Determining the risks that the transferred technology becomes obsolete over a very short period and is replaced by another technology;
 - Determining the monetary value of the transferred technology through direct assistance from specialized local or international firms. NOC, jointly with the Offset Obligor or Foreign Contractor, will select the specialized firm. (More details about appropriate technology transfer agreements and partnerships are revealed in Annex V).
- b- If the Offset Project creates and adds high-skilled job opportunities for Kuwaiti nationals in accordance with the relevant Kuwaiti laws and regulations. The number, type and diversity of job opportunities are issues that must be addressed and evaluated by NOC.
- c- If the Offset Project contributes to the development of an efficient and productive national labor force through specialized professional training. NOC will examine the training or local manpower development proposals and assess their degree of satisfaction for this criterion.
- d- If the Offset Project enhances and encourages business cooperation between international companies and the Kuwaiti private sector.

- e- If the Offset Project has an economic value added benefit to Kuwait.
- f- If the Offset Project supports the GOK efforts to attract foreign investments towards the Kuwait economy.
- g- If the Offset Project succeeds in expanding the export of locally produced / manufactured products or reduce the dependence on import of foreign products.

Note: Items a, b and c above are mandatory requirements. It is sufficient to meet either one of them in order to obtain approval for the Offset Project proposal with varying multiplier values. However, the other items (d, e, f and g) will be evaluated by NOC to enable it to determine the Offset Multiplier Value.

6.5 Acquisition of Pre-existing Offset Projects

In some cases, Offset Obligors may suggest to fulfill their respective Offset Obligation through the acquisition of existing Offset Projects initiated and completed by other Offset Obligors. NOC will reject any Offset Project proposal whose prime objective is to acquire equity or share capital of the existing Offset Project. However, if the proposal aims at expanding the capital base of the existing Offset Project and satisfies, in its expanded base, the Offset Project approval criteria stated in Section 6.3 above, NOC may accept the Offset Project proposal.

6.6 Legal and Equity Structure of the Offset Project

Determination of the equity and legal structure of Offset Business Ventures is left to the discretion of the Offset Obligor in accordance with Kuwait's Commercial and other applicable Laws and regulations.

6.7 Offshore Offset Projects

Generally, priority is given to Offset Project proposals if implemented in Kuwait. However, NOC may approve offshore Offset Project proposals if they can meet the objectives of the Offset Program and, more specifically, the criteria stated in Section 6.4 above. In such cases, NOC may elect to subject Offshore Offset Projects to all rules and regulations governing the fulfillment of Offset Obligations.

6.8 Offset Projects Performed through Third-Party-Arrangements

Offset Obligors may decide to satisfy their respective Offset Obligation through local or international third party agreements. In such an event, the Offset Obligor must note the following:

- The designated third party must be approved by NOC; and
- The Offset Obligor remains solely and fully responsible for the fulfillment of the Offset Obligation related to its Supply Contract and will not be released until such Offset Obligation is fully satisfied.

6.9 Offset Projects Performed through the Procurement of National Goods and Services

Offset Obligors may satisfy their respective Offset Obligations through the procurement of national goods and services, but subject to the following conditions:

- a- Procured national goods and services should not in any form or manner relate to the initial supply contract, which is originally subject to offset, nor should they relate to any other supply contract, which the foreign contractor signs with the GOK;
- b- If the cost of procurement of national goods and services cannot be determined at the initial stages of signing the supply contract, the Offset Obligor may request that the resulting offset credits accrue to its benefit and be applied in the satisfaction of Offset Obligation(s) under any future Supply Contract(s). However, the utilization of such offset credits to fulfill future obligations should be made within a maximum period of 3 years from the date at which such credits were granted.
- c- In specifying the value of offset credits that shall be granted to offset obligors in return for their purchases of national goods and services, a multiplier of 1 (one) shall be adopted (See Section 5).

7- The Offset Project Multiplier and Offset Credits

7.1 Offset Project Multiplier

The Offset Project Multiplier system is devised to encourage Offset Obligors, (or their representatives) to initiate and establish Offset Projects that, when implemented, achieve the economic objectives of the Offset Program. Higher priority and higher multiplier values are granted according to the degree of their respective contribution to the achievement of such objectives. Offset Obligors receive Offset Project Multipliers, for every proposed Offset Project, according to the level of achievement each Offset Project realizes against the Offset Program Objectives stated in Section 2 and re-emphasized in Section 6.4 above. The measure is mainly directed at achieving items (a), (b) and (c) of Section 6.4 which are restated below for re-emphasis:

- a- Does the Offset Project realize certain technology or technologies? What type? How technical? Can they be integrated, applied and operated? What is the benefit to Kuwait's economy or its sectors from this technology? How much does it cost to transfer and own this technology if possible? (Refer to Annex V).
- b- Does the Offset Project promote the employment of national labor? How much? What types of skills? For how long?
- c- Does the Offset Project provide specialized training to local manpower? What kind of training? For how long? How many trainees? Who are the instructors? What kind of skills to be realized after training? Where will they be used?

The allocation of Offset Project Multipliers varies according to the Offset Project type, i.e. whether the fulfillment of the Offset Obligation will be through Direct or Indirect Offset Projects or through Offset Approved Funds. Table (1) below gives the values of Offset Project multipliers for each type of Offset Project.

The principle for the allocation of Offset Project Multipliers for Direct and Indirect Offset Projects is applied as follow:

a- Offset Project Multipliers for Direct and Indirect Offset Projects

- Direct Offset Projects have high priority, and are granted the highest value of Offset Multipliers.
- The values of Offset Multipliers for Direct Offset Projects range from 1.75 to 5.5, depending on the extent to which such Projects satisfy the Offset Program Objectives as stated above.
- The maximum multiplier shall be granted to Offset Projects achieving all the Offset Program objectives, while lower Offset Multipliers shall be granted to Offset Projects that do not realize all the objectives of the Offset Program.
- The total Offset Project Multiplier is calculated from the sum of sub-multipliers granted against each realized objective as stated in “Table 1” below.
- Indirect Offset Projects have lower priority reflected in the value of Offset Multipliers granted for each Offset Project.
- The values of Offset Project Multipliers for Indirect Offset Projects range from 1 to 5 depending on the extent to which such Projects achieve the objectives of the Offset Program as stated above.
- When calculating the Offset Project Multipliers for indirect Offset Projects, NOC will examine the economic sectors under which these Projects are categorized. Offset Projects in leading economic sectors, namely health, education, environment, social programs, manufacturing and services receive higher multiplier values (refer to The UN International Standard Industrial Classification of All Economic Activities, ISIC, found at: <http://unstats.un.org/unsd/cr/registry/default.asp>)

b- Offset Project multipliers for Offset Funds

- Offset funds can also be utilized by Offset Obligors to fulfill their respective Offset Obligations.
- Offset funds should achieve at least two of the primary objectives of the Offset Program, as specified in Section 2 above, to be granted a multiplier of 3.5. This multiplier value could be increased to 5.5 after NOC reviews and assesses the annual achievements of the Fund and confirms that it achieves all three primary economic objectives of the Offset Program.
- Under such Offset Project type, the Offset Obligor deposits the monetary investment value of its Offset Obligation in a fund, which is pre-approved as an Offset fund by NOC. Based on the value of monetary investment by the obligor and the multiplier value that is granted to the fund the Monetary Equivalent of the Offset Obligation (MEOOV), which is achieved by the offset obligor through such investment , is calculated as follows:

$$MEOOV_{(f)} = OFI_{(f)} \times OFM_{(f)}$$

Where:

- MEOOV_(f): is the monetary equivalent Offset Obligation value of Fund (f),
- OFI_(f): is the monetary investment in Fund (f) and
- OFM_(f): is the Offset Project multiplier for Fund (f)

The Offset Obligation is fulfilled through an investment in an offset fund if:

$$MEOOV_{(f)} = OOV$$

Offset funds are particularly suitable for Foreign Contractors having Offset Obligations of small size, or those who do not have the capability or readiness to implement Direct or Indirect Offset Projects in Kuwait.

Table 1: The values of Offset Multipliers assigned to various types of Direct and Indirect Offset Projects and to Offset Funds

Offset Project Category or Type	Offset Program Objectives			Minimum Multiplier	Maximum Multiplier
	Technology Transfer	Job Creation	Education and Training		
Direct Offset	2	1.75	1.75	1.75	5.5
Indirect Offset	1.5 to 1.8	1.0 to 1.60	1.0 to 1.60	1.0	5.0
Offset Funds				3.5	5.5

7.2 The Offset Crediting System

The Offset crediting system is devised to enable Offset Obligors to generate Offset Credits in return for their investments in Offset Projects. These Offset Credits are counted against and deducted from the Offset Obligation Value (OOV) enabling Offset obligors to use the Offset credits to partially or totally fulfill their respective Offset Obligations. There are two types of Offset credits:

a- Post-Contract Offset Credits, which include all offset credits that are earned by the Offset Obligor after tender award and contract signing, such as:

- Offset Credits from investing in offset projects or funds, and
- Offset Credits resulting from charges incurred by obligors in securing financial guarantees (bank guarantees) and
- Offset Credits resulting from the purchase of national goods and services by the Offset Obligor to fulfill its Offset Obligation.

b. Pre-Contract Offset Credits (Pre-emptive), which include all activities undertaken by potential Offset Obligors, from which it may generate Offset credits as per the rules and regulations, specified in these Guidelines.

7.2.1 Post-Contract Offset Credits (OC_{postC})

Post Contract Offset Credits are generated from the various activities that the Offset Obligor undertakes to perform and execute its Offset Obligation under the Supply Contract. Post Contract Offset Credits may be earned from the following areas:

a- Offset Credits From Investments in Offset Projects or Funds:

When investing in NOC approved Offset Project(s) or Fund(s), an Offset Obligor shall be entitled to Offset Credits that may be equal to or exceed the Offset Obligor's current Offset Obligation. If the generated offset credits exceed the Obligor's current obligation NOC may grant Offset Credits (OC_{foc}) to the Offset Obligor, to be used in the fulfillment of future Offset Obligations. Accordingly:

If: $MEOOV_{(i)} = OPI_{(i)} \times OPM_{(i)} = OOV$

Then the investment in the offset project is considered to be exactly sufficient to cover the obligor's current obligation.

If: $MEOOV_{(i)} = OPI_{(i)} \times OPM_{(i)} > OOV$

Then the investment in the offset project is considered to be in excess of what is required to cover the obligor's current obligation and the obligor shall be entitled to future offset credits. The value of such future offset credits shall be equivalent to:

Future Offset Credits = $MEOOV_{(i)} - OOV$

(OPI, OPM, OOV and MEOOV are as calculated in Sections 4.3 and Section 5 respectively).

Future offset credits can be utilized by obligors to partially or totally cover future offset obligations; however, the value of future Credits that are generated from a specific offset investment project should not exceed the total offset obligation, which the offset investment project was initially intended to fulfill (i.e. The value of future credits should not exceed the equivalent of 100% the value of the current offset obligation of the foreign contractor).

b- Offset Credits Realized from Charges Incurred by Obligors for Issuing (Bank Guarantees)

When submitting an Offset bank guarantee to NOC, an Offset Obligor may earn Credits in return for any resulting monetary charges incurred. In such a case Offset Credits are calculated on a one-to-one basis. That is, for each Kuwaiti Dinar paid in charges, by the offset obligor to secure the bank guarantee, its Offset Obligation Value (OOV) will be reduced by an equivalent amount, without consideration to the

multiplier value of the Offset Project; the granting of offset credits in return for such expenses takes place after the offset obligor submits to NOC a statement from the issuing bank confirming the charges imposed for issuing the bank guarantee. Hence:

$OC_{FG} = K_{FG}$

Where:

- OC_{FG}: is Offset credits earned in return for charges incurred to secure the bank guarantee.
- K_{FG}: is The monetary charges incurred to secure the bank guarantee realized for the Offset Projects.

For example, if the Offset Obligor Supply Contract is equivalent to KD10 Million and the bank guarantee is 6% of the Supply Contract, and the annual charges incurred to secure a bank guarantee range from KD 3,000 to KD 9,000 (at a rate ranging from 0.5% to 1.5% of the value of the bank guarantee). Therefore, if the Offset obligation is fulfilled after 5 years the cost of the bank guarantee would range from KD15,000 to KD45,000, and the offset credits earned by the offset obligor would range from KD15,000 to KD45,000. For more information about the bank guarantee see Section 9.

c- Procurement of national goods and services

If the Offset Obligor, in fulfilling its Offset obligation, purchases locally produced goods and/or services, the Offset Obligor can utilize the equivalent monetary value of the procurements as post Offset Credits. The Offset Credits earned from such activities are equal to the monetary value of the purchased national goods and services. That is, an offset multiplier of one (1) is applied to such purchases. Hence:

$OC_{LGS} = K_{LGS}$

Where:

- OC_{LGS}: is Offset credits earned from the purchase of national goods and services;
- K_{LGS}: is the monetary value of national goods and/or services procured by the offset obligor.

d- Other Offset Credits

In some cases, NOC might require the Offset Obligor to conduct additional studies or investigations related to the proposed or ongoing Offset Projects (E.g. verification of technologies, detailed business plans or other requirements). Under such requirements, NOC will grant Offset Credits to the Offset Obligor, equivalent to the monetary value of the costs incurred, to conduct these additional tasks. That is, an offset multiplier of one (1) is applied to such expenditures; It is noteworthy that the granting of offset credits by NOC to the offset obligor, as a result of incurring such expenses, takes place only after the Offset Obligor presents supportive documents that confirm such expenses and after NOC reviews and approves these documents.

Hence:

$$OC_{other} = K_{other}$$

- OC_{other} : is Offset credits earned from expenditures incurred by the Obligor to provide the additional studies;
- K_{other} : is the costs incurred by the Offset Obligor to secure the additional studies.

e- Total Post-Contract Offset credits are therefore calculated as Follows:

$$OC_{postC} = MEEOV_{(i)} + OC_{FG} + OC_{LGS} + OC_{other}$$

7.2.2 Pre-Contract Offset Credits (Pre-emptive Offset Credits)

- Foreign Contractors with no Offset Obligation(s) (i.e are not Offset Obligor) and yet anticipate to sign future contracts, as a result of which they may be subject to offset, can initiate an Offset Project in advance and collect Offset Credits (on pre-emptive basis). They can use and apply the realized Offset Credits against future Offset Obligation(s).
- All Pre-Emptive Offset Projects must be approved by NOC.
- The balance of Offset Credits earned through Pre-Emptive Offset Projects can be utilized to cover future offset obligations for a maximum period of 3 years from the date of earning such Credits.
- Pre-emptive Offset Credits can be transferred, assigned or sold to a third party(ies), to be utilized to cover its respective offset obligations; but subject to the pre-approval of NOC. The transfer or sale of offset credits to a third party can be made within a maximum period of 3 years from the date of earning such credits.
- The pre-contract Offset Credits are calculated for every Offset Project as follows:

$$OC_{preC} = OPI \times OPM$$

- Where: OPI: is the Offset Project investment value;
- OPM: is the Offset Project Multiplier.

7.3 Offset Credits Calculation

- The value of Offset Credits is calculated based on the monetary equivalence of the Offset Obligor's participation in the Offset Projects or Funds chosen by the Offset Obligor and approved by NOC. Both tangible and intangible (patents, know-how) capital and asset participation by Offset Obligor are taken into account when calculating Offset Credits.
- The steps leading to the decision of whether to allocate Offset Credits to an Offset Investment Project are as follows:

- a- The Project is evaluated and approved by NOC as an Offset Project;
 - b- The investment in the Project is actually made by the Offset Obligor; and;
 - c- The first year's financial statements of the Offset Project are reviewed for approval by NOC. Based on these statements, offset credits that are generated from the investment in the project are estimated and granted to the obligors.
- The value of generated offset credits is determined as follows:
 - a- The value of the Obligor's/Foreign Contractor's investment in the Offset Project or Fund is determined;
 - b- The OC_{postC} is determined as in Section 7.2.1 above;
 - c- The OC_{preC} is determined as in Section 7.2.2 above;
 - d- The total Offset Credits are calculated, as per the following formula:

$$OC = OC_{postC} + OC_{preC}$$

- Earned future offset credits can be transferred, assigned to third parties or sold to other foreign contractors or offset obligors, however, such transactions should be pre-approved by NOC and should be executed within a maximum of 3 years from the date of earning such Credits.

8- Offset Fulfillment Certificate

An Offset Fulfillment Certificate is issued by NOC in favor of the Offset Obligor or its representative after verifying the fulfillment of its Offset Obligation. The certificate constitutes NOC's acknowledgement that the Offset Obligor has fulfilled its Offset Obligation, as specified in the Memorandum of Agreement. However, for such a certificate to be issued, NOC will request the following information from the Offset Obligor:

- Financial statements, relating to the Offset Project covering, its first financial year and certified by one of the auditing firms approved by NOC;
- If the investment involves the transfer of technology and/or know-how to Kuwait, a specialized international institution, mutually selected by the Offset Obligor and NOC, must have assessed and determined the monetary value of the transferred technology;
- A Bank statement(s), if applicable, confirming the Offset Obligor's transfer of, or subscription to its share of, the investment to the Offset Project;
- If the Offset Venture is a Shareholding Company, the Official Articles of Association and Registration Certificate of the Incorporation should be provided.
- Equity share certificates, certified by the Ministry of Commerce or the concerned government entities, specifying the value of equity share of the Offset Obligor in the Offset Project Venture.

Before issuing the Offset Fulfillment Certificate, NOC may request to visit the site of the Offset Project and assess the actually achieved progress.

9- Bank Guarantee to Implement the Offset Obligation

In order to ensure the obligor’s compliance to fulfill the offset Obligation, NOC requires that the Obligor provide a bank guarantee, which is unconditional, non-divisible and irrevocable, issued by a Kuwaiti bank in favor of the National Offset Company, and subject to the following conditions:

- Its value should be equivalent to 6% of the Supply Contract value;
- It must be submitted by the Offset Obligor within a period of 30 days from the date of signing the Supply Contract, or upon the commencement of actual implementation of the contract;
- It must be valid for 1 year and renewable until the fulfillment of the Offset Obligation, as verified by the Offset Fulfillment Certificate (OFC);
- After each partial fulfillment of the Offset Obligation, NOC shall grant the Obligor a bank guarantee reduction certificate, reflecting each partial Offset Obligation fulfillment, and the bank guarantee value shall be reduced accordingly;
- When the Offset Obligor totally fulfills its Offset Obligation in accordance with the conditions specified in Section 8, NOC shall issue a statement for the release of the bank guarantee;
- If the GOK, for any reason, cancels the Supply Contract, the bank guarantee shall, accordingly, be cancelled;
- NOC shall cash the bank guarantee if the Offset Obligor fails to execute its Offset Obligation according to the terms of MOA and/or its addenda, if any.
- In the event NOC cashes the bank guarantee, it shall release the Offset Obligor from its Offset Obligation. However, in such event, NOC shall contact the respective Kuwaiti Government entities, report the lack of or failure in performance of the Offset Obligor and recommend the exclusion of the Foreign Contractor from future Supply Contracts.
- Offset Obligors will receive Offset Credits for any charges made by the issuing bank. The calculation of the Bank guarantee Offset Credits is given by the following formula:

$$OC_{FG} = K_{FG}$$

Where:

OC_{FG}: is the Offset Credits from the bank guarantee

K_{FG}: is the bank charges to issue the bank guarantee

10- Penalties

If the Offset Obligor fails to submit the required bank guarantee within the specified timeframe or refuses to implement the Offset Obligation in accordance with the requirements specified in the Memorandum of Agreement, a penalty shall be imposed on the Offset Obligor, in an amount not exceeding 6% of the value of the Supply Contract which is subject to an Offset Obligation. The penalty value will be deducted from any payments that are due under the Supply Contract to the Offset Obligor in cooperation and coordination with the Kuwaiti Government entities, with whom the supply contract was signed.

In the event a penalty is imposed, NOC shall contact the respective Kuwaiti Government entities, report the lack of or failure in performance of the Offset Obligor and recommend the exclusion of the Foreign Contractor from future Supply Contracts.

11- Reporting of Offset Project Implementation Progress

- During the inception stage of the Offset Project, the Offset Obligor must keep NOC informed about the various stages of progress of the Offset Project. Offset Obligors must submit quarterly progress reports listing important achievements and highlighting obstacles confronted, as well as steps taken to address them. Based on such reports, NOC management shall make every effort to assist and cooperate with the Offset Obligor to overcome obstacles.
- Once the implementation of the Offset Project begins, and after the completion of its first financial year, a comprehensive Offset Progress Report (OPR) is to be submitted to NOC. The report should include the financial statements of the Offset Project and show the level of involvement of the Offset Obligor in the Project. The financial statements should be certified by one of the auditing firms approved by NOC.
- In subsequent years, annual reports should be submitted to NOC highlighting the economic achievements of the project, particularly in connection to the employment and training of Kuwaiti professionals and the transfer of technology.

12- Stages of Implementation of the Offset Project

12.1 Offset Start Date

- As noted in section 4.4 the Offset Obligation becomes effective as of the date of signing the Supply Contract. This is the Offset Start Date (OSD).
- If the effective implementation of the Supply Contract is delayed by more than ninety (90) days from its date of signature, and where this difference is material, a Foreign Contractor may petition NOC to adjust its Offset Start Date to the Contract's effective date.

- If important changes to the schedule of the Supply Contract implementation occur after its signature date and if these changes are not the result of the Offset Obligor’s performance or lack of performance, the Offset Obligor should immediately notify NOC and, accordingly, may request an appropriate adjustment to the OSD.
- NOC will review the adjustment requests, submitted by Offset Obligors, and take the necessary actions based on the situations presented in the request.

12.2 The Offset Milestone Schedule

Table 2 below shows the milestone events for an Offset Obligation until its fulfillment.

Table 2: Offset Milestone Schedule

Milestone Event	Description & Primary Events
Concept Paper Stage	<ul style="list-style-type: none">• This stage starts before the signing of the Supply Contract.• Foreign Contractors are expected to become acquainted with all conditions and regulations of the Offset Program.• Short-listed Foreign Contractors who submit best tender proposals, or Foreign Contractors negotiating direct Supply Contracts with the Government of Kuwait, are required to submit to NOC concept papers of the Offset Project proposals they plan to implement if and when they are awarded the Supply Contract. Annex VI lists the basic information that the Concept Paper should include.• NOC evaluates the Concept Paper and may request additional information, and subsequently decides to approve or reject the concept.• If the Concept Paper is approved, the Foreign Contractor, before signing the Supply Contract with the GOK or any of its agencies, can proceed to negotiate and sign the Memorandum of Agreement with NOC.• If the Concept Paper is rejected by NOC, the Foreign Contractor should submit another Concept Paper or choose one of NOC’s pre-approved Offset Projects or Funds.

Milestone Event	Description & Primary Events
Memorandum of Agreement Stage	<ul style="list-style-type: none">• The MOA is signed by the Foreign Contractor and NOC Management prior to, or at the same time of signing the Supply Contract.• In the MOA, the Foreign Contractor officially commits to fulfilling its Offset Obligation, which is a pre-requisite for signing the Supply Contract. A pro-forma of the MOA is shown in Annex IX.• The Offset Obligation start date will coincide with the date of signing the Supply Contract, and not the date of signing the MOA.• Offset Obligors should provide a bank guarantee within 30 days of the date of signing their Supply Contract with the Kuwaiti Government, guaranteeing the fulfillment of their Offset Obligation.
Business Plan Preparation Stage	<ul style="list-style-type: none">• The Business Plan should provide details pertaining to the implementation and operation of the Offset Project over a period of at least 5 years. Annex VII lists the basic information that the Business Plan should include.• Offset Obligors are required to finalize the Business Plan of the Offset Project within 4 months from the date of signing the Supply Contract.• The Business Plan preparation period may be extended by NOC, on a case by case basis.
Business Plan Evaluation Stage	<ul style="list-style-type: none">• NOC Management evaluates the Business Plan in line with internal procedures within a period of 2 months from the date of receiving it.• Any additional information that NOC Management may require should be received within the 2 month period.• If the Business Plan is approved, the Offset Obligor is notified and is expected to start on the procedures of finalizing Offset Project pre-implementation procedures.• If the Business Plan is not approved, then the Offset Obligor is required to re-submit a new Business Plan(s), or make the required amendments in the one already submitted. Delays in the Offset Schedule due to inadequate Business Plan(s) will be deducted from the Grace Period while continuous delays may trigger punitive actions.

Milestone Event	Description & Primary Events
Grace Period Stage	<ul style="list-style-type: none">• A Grace Period of not more than 6 months from the date of approving the business plan is granted to the Offset Obligor.• During the Grace Period the Offset Obligor should finalize all studies and paperwork for the Offset Project and secure all licenses and permits, such that by the end of this period, the Offset Project should be ready for implementation.• Any delays in the Offset Project implementation schedule accrued to that point, and for which the Offset Obligor is responsible, are deducted from the Grace Period.• Delays in the various approvals caused by NOC Management will be added to the Grace Period.• During the Grace Period the Offset Obligor should submit quarterly progress reports to NOC Management.
Offset fulfillment certificate	<ul style="list-style-type: none">• Once the Offset Obligor effectively invests in the approved Offset Project, and the conditions for issuing the Offset Fulfillment Certificate (Listed in Section 8 above) are met, such Certificate shall be issued by NOC Management.• If the Business Plan of the Offset Project requires the Offset Obligor to make its investments over a specific timeframe, NOC shall, accordingly, issue fulfillment statements to reflect this gradual investment scheme; provided that it receives the necessary certified financial statements that confirm such investments.

13- NOC Services

Besides administering the Offset Program on behalf of the Ministry of Finance, NOC can provide a number of advisory services to Foreign Contractors and local investors intended to facilitate and accelerate the development and implementation of their respective Offset Investment Projects. A list of the nature of such services can be requested from NOC offices or obtained from NOC website.

14- Basis of Assessment of Supply Contract, Offset Obligation and Offset Investment Values

The Kuwaiti Dinar shall be the currency used in assessing the equivalent values of the supply contract, the offset obligation, and investments by offset obligors. For that purpose NOC shall adopt the currency conversion rate that is published by the Central Bank of Kuwait (CBK), and which is applicable on the date of signing the supply contract.

15- Legal Disputes

All matters relating to the fulfillment of the Foreign Contractors' Offset obligation and performance under the Offset Program shall be interpreted and governed by the Laws of the State of Kuwait, and be subject to the jurisdiction of Kuwaiti Courts.

16- Public Exposure of the Offset Program

It is highly recommended for the Offset Obligor to disclose its Offset Project using various public relation sources. It should also highlight achievements made in the process of meeting Offset Obligation. The NOC will support any request to disclose Offset Project activities and may contribute to them in manpower, information or other resources if necessary and appropriate.

17- Proprietary Information

Neither NOC Management nor the Offset Obligor may, at any time, disclose or permit the disclosure of any part or whole of proprietary information to any third party without the prior written consent of the other Party. Both NOC and the Offset Obligor shall take reasonable measures to avoid any disclosure of proprietary information to any unauthorized person by their employees, prime contractors, sub-contractors, agents and attorneys.

18- Mechanism for Special GOK Contracts

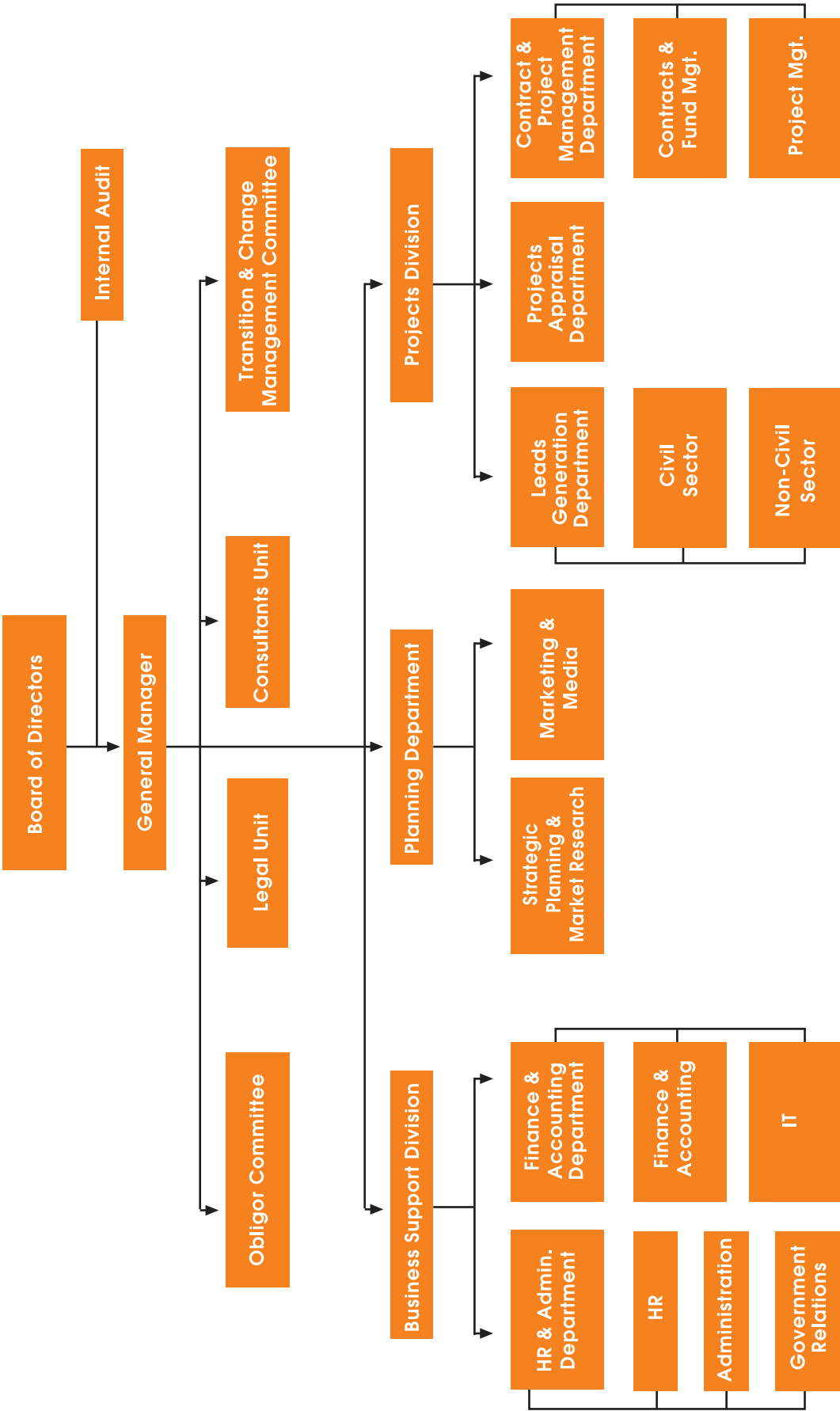
NOC shall have the right to approve or adopt mechanisms or special standards that would give the offset obligor better benefits than the mechanisms and standards specified in these Guidelines, in relation to some government contracts, that may have special nature, and based on NOC’s special consideration, which will concurrently achieve the general interests of Kuwait. These better benefits shall be granted in line with the following:

- a- The government entity that has a contract agreement with the foreign contractor requests from the Board of Directors of NOC to adopt special mechanisms and standards, different from those specified in these Guidelines, indicating the reasons and justification for such request.
- b- The Board of Directors of NOC studies and assesses the request and if it approves it, it suggests the suitable mechanism through which the additional benefits can be granted and addresses the issue to his Excellency the Minister of Finance for him to review and consider the adoption of such extra benefits.

Annex I

Organizational Structure of The National Offset Company & Functions

Organizational Structure of the National Offset Company (NOC)



NOC Organizational Structure

Internal Audit:

Audits current policies and procedures and detects areas of potential or existing hazards, and provides assurance with respect to internal controls, operational efficiency, compliance with policies, accuracy of information, and Ministry of Finance Management Agreement procedures. It is assigned by and report directly to the Board of Directors.

Obligor Committee:

Provides the institutional framework to advise on the communication and relationship strategy with various stakeholders involved with the offset program, also addresses issues facing the obligors and agrees on action steps to be taken with the presence of the Government entity that has tendered the supply contract, with particular attention to direct offset projects. It convenes on ad-hoc basis.

Transition & Change Management Committee:

Assumes an active role in overseeing the change process during the transition period, and facilitates the shift towards the evolved Organizational Structure in line with the approved Implementation Roadmap and the company’s Business Plan, as well as identify resources required for the change. It focuses on developing a “service culture” that enhances positive attitude, profound flexibility and continuous improvement.

Legal Unit:

Coordinates legal affairs of NOC with government entities, coordinates the company’s relations with external law firms, provides legal support to the company’s departments, assists in reviewing, negotiating and finalizing Memorandum of Agreement (MOAs), and other business contracts.

Projects Division:

1. Leads Generation Department:

Develops effective business networks with key government entities (both military and civil contracts), and other stakeholders, obligors, local private sector, and civil society institutions, identifies supply contracts subject to offset, and potential leads for project flow ideas in line with the company’s objectives.

2.Projects Appraisal Department:

Receives and appraises Concept Papers and Business Plans for offset projects, assigns offset multipliers in accordance with the Offset Program Guidelines, advises on any possible matchmaking between the parties with approved Concept papers and obligors.

3.Contracts & Projects Management Department:

Administers the offset obligation MOAs, provides guidance and support to obligors before and during project execution, exercises regulatory policies throughout the obligation fulfillment process, monitors the completion of obligations and follows up on implemented projects generating periodic progress reports that reflects the Offset Program achievement record, and maintains its data system. Reviews fee claims to the Ministry of Finance in accordance with the Management Contract signed between both parties.

Planning Department:

1. Strategic Planning & Market Research Section:

Develops and monitors the company’s Business Plan and the annual action plans, communicates with other departments and recommends necessary changes, conducts market research activities, analyzes key developments in the offset industry, and records lessons learnt from other offset programs.

2. Marketing & Media Section:

Develops and executes the company’s marketing strategy and the annual marketing plans, promotes the company’s corporate identity, creates sustained public awareness on its services and its unique role in advancement of the national economy, and handles various media and press inquiries and other related services.

Business Support Division:

1. Finance & Accounting (two sections):

Finance & Accounting applies appropriate accounting standards and policies, manages the budgeting and financial performance reporting, performs financial management activities, calculates management fee claims, follows up with Ministry of Finance for invoices, and evaluates and recommends different investment options. IT monitors and coordinates the development of the company’s IT infrastructure and software systems based on business requirements, prepares IT budget, provides support to the system users, ensures security backup, archives data and maintains proper documentation.

2. Administration & Human Resources Department (three sections):

Human Resources performs all HR activities such as recruitment & resource planning, compensation & benefits, training & competency development, personnel and career development and performance measurement, in addition to providing administrative support services to the personnel. The Government Relations section maintains the relation with various government entities to facilitate the company’s work.

Annex II

List of Kuwaiti Government Entities & Independent Government Institutions

Ministries & Government Offices	Subsidiary Government Entities	Independent Government Institutions
The Amiri Diwan	The National Assembly	Kuwait Petroleum Corporation
Audit Bureau	Kuwait University	Kuwait News Agency
The Council of Ministers	Kuwait Municipality	Zakat House
Department of LegalAdvice and Legislation (Al-Fatwa)	Public Authority for Civil Information	Kuwait Institute for Scientific Research
Ministry of Planning	Kuwait Fire Service Directorate	Public Housing Authority
Civil Service Commission	Public Authority for Applied Education and Training	Public Institution for Social Security
Ministry of Foreign Affairs	Public Authority for s Minors Affair	Public Authority for Industry
Ministry of Finance General Administration	Kuwait Investment Authority	Kuwait Ports Authority
Ministry of Finance General Accounts	Public Authority for Agricultural Affairs and Fish Resources	Kuwait Fund for Economic Development
Directorate General of Customs	Public Authority for the Assessment of Compensation Resulting from Iraqi Aggression	Central Bank of Kuwait
Ministry of Commerce and Industry	Public Authority for Youths and Sports	Credit and Savings Bank
Ministry of Justice	Public Authority for the Environment	Kuwait Airways Corporation
Ministry of Interior		
Ministry of Defense		
The National Guards		
Ministry of Education		
Ministry of Higher Education		
Ministry of Health		
Ministry of Social Affairs and Labor		
Ministry of Information		
Ministry of Awqaf and Islamic Affairs		
Kuwait Awqaf Public Foundation		
Ministry of Communication		
Ministry of Public Works		
National Council for Culture, Arts and Literature		
Ministry of Oil		
Ministry of Electricity and Water		
Directorate General of Civil Aviation		

Annex III

Statement of Acknowledgement and Undertaking with Respect to an Offset Obligation Reduction

Acknowledgement and Undertaking with Respect to an Offset Obligation Reduction

We, the undersigned _____ , duly represented herein _____
by _____ as per power of attorney/proxy dated _____
(copy herewith enclosed) hereby recognize and acknowledge that we have been granted
a reduction of _____ from our Initial Contract, with total value
of (_____), based on our purchase of national goods
and services and sub-contracts to local companies , which we are committed to undertake
in accordance with our Contract No. (_____)
signed with _____ on _____ (date).

We acknowledge that our Offset Obligation, which is equal to 35% of the aforementioned
Contract value, less the aforementioned reduction of(_____), stands at an
amount of(_____).

Accordingly, we acknowledge and undertake that in the event it subsequently appears
that the actual value of such purchases and/or local sub-contracts is less than the
aforementioned reduction amount, based on supporting statements and documents that
are audited by an approved auditing firm, we shall be liable to settle the difference and
to re-invest it and, to that effect, we acknowledge the right of the National Offset Company
to deduct the said difference from our bank guarantee or any residual amount thereof,
or from any amount due to us by the concerned Government entity.

Capacity : _____
Signature: _____
Date: _____
Power of Attorney
/proxy No. : _____

Annex IV

General Guidelines of Offset Funds

By developing or accrediting Investment Funds, NOC seeks to provide an opportunity to offset obligors that have small obligations to be able to fulfill their offset obligations through investing in these Funds, thus facilitating the fulfillment of their offset obligations. Needless to say, direct offset investment projects are given the highest priority by NOC, in view of their better contribution towards realizing added value for the local economy. Following are the required standards and procedures for establishing Offset Funds:

- Offset Funds should be established in conformity with rules and regulations that are applicable for investment funds in Kuwait. They should be approved by the Central Bank of Kuwait.
- NOC shall evaluate the Fund Study, and assess the multiplier that may accrue for investments in such funds. Offset funds should achieve no less than two of the objectives of Kuwait Offset Program to be granted a multiplier of 3.5. This multiplier value could be increased to 5.5 after NOC reviews and assesses the yearly achievements of the Fund, and confirms that they coincide with the three objectives of the Offset Program.
- The Fund should have a registered office in Kuwait, with the possibility of establishing branches abroad.
- The Fund Manager should be legally authorized to administer the Fund, pursuant to his commercial license conferred by the Ministry of Commerce and Industry (or the concerned supervisory entities).
- The Fund Manager should avail the knowledge of competent experts in managing and operating the Fund. He should also invest no less than 60% of the fund's capital inside the State of Kuwait. Moreover, he is required to seek expert advice from foreign companies that participate in the fund. If the nature of the fund stipulates that its investments outside Kuwait exceed the percentage rate specified above, in such a case, the company that has an offset obligation should attain approval from NOC, for such offshore investments, and these investments should achieve economic benefits for Kuwait, over both the medium and long term.

- During the early stages of preparing the fund study, its manager shall coordinate with NOC regarding the fund's Articles of Association and its prospectus, in order to ensure their conformity with the rules and regulations of the Offset Program. Moreover, he shall sign a Memorandum of Understanding with NOC, which specifies the framework of cooperation between the two sides and their commitments.
- The Fund Manager shall form a Monitoring Committee which consists of major participants in the Fund in addition to one representative or more from NOC, aiming at adopting a strategy and work plan, as well as approving the Fund's proposed projects.
- When an offset obligated company participates in one of NOC's approved funds, and after NOC confirms that such participation was undertaken in line with the rules and regulations of the fund, it shall notify the company in writing that it has completed its offset obligation, to the extent of its participation in the fund. Such written certificates shall be issued to the company within a period of two weeks from the date of licensing / closing the Fund.
- Offset obligated companies that participate in offset funds shall not be allowed to dispose of their investment units in the funds, without prior written approval by NOC or after the completion of the lockup period. Upon exiting from offset funds offset obligors may transfer their investment units to other companies that have new offset obligations.
- The Fund Manager shall submit semi-annual reports regarding the fund's operations to NOC.
- In the event the offset obligated company wishes to participate in one of the Offset Program approved funds, through a donation, and to waive its principal contribution sum and investment, then it should specify the social service entity or charity institution to which it wishes to donate its principal investment amount and any financial returns on the investment, after the fund is terminated and liquidated.

Annex V

Appropriate Technology Transfer and Technology Partnerships

Kuwait’s Offset Program seeks to encourage and support projects that involve technology transfer and technology partnerships between international offset obligors and Kuwaiti enterprises. The intention is to foster entrepreneurship and technological capabilities in Kuwait. Such capabilities can be seen to reflect all those abilities needed to carry out production related activities, ranging from the planning, the purchase of equipment, business start-up and operation, adaptation of inputs, improvement to production process, changes to products and services specifications, incremental improvements to processes of products engineering and design and also the application of R&D and basic research.

a- Forms of Technology Partnerships:

Activities of technology transfer and technology partnership could be manifested in various forms of alliances, including the following:

- Creation of strategic alliances through sharing of technological capabilities and particularly of R&D related Investments.
- Blending of capital, technology, marketing and raw material resources to create win-win results for offset obligors and Kuwaiti investors.
- Taking advantage of leading edge technological developments in a number of areas (examples are: information technology and information intensive engineering and industrial production) to create offset projects that specialize in technology for industrial use.
- Identifying forms of technological cooperation that are two-way beneficial and that involve long-term mutual benefit to both Kuwaiti Investors and International Offset Obligors; benefits that go beyond the short-term financial success.
- Initiation of collaboration efforts between International Offset Obligors and Kuwaiti Entrepreneurs in the fields of research and development, manufacturing and marketing functions, to accomplish the strategic goals of both parties.
- Establishing long-term technology partnerships involving the upgrade of technologies already existing in Kuwaiti Enterprises and the introduction of new management systems in the new offset joint ventures; coupled with technical education training.
- Initiation of offset projects that not only result in one-way relationships, such as the transfer of technology under licensing agreements, production under sub-contract agreements or franchise agreements, but also through two-way partnerships focused on joint knowledge production and sharing.

b-Methods of Technical Assessment of Technologies that are Proposed for Use in Offset Projects:

Technical assessment of proposed technologies is undertaken along the following principles:

- Has patent registration for the technology been completed? What date was it registered? In whose name was it registered? What is the connection between the Foreign Offset Obligated Company and the proposed technology? Did the technology receive any other proprietary rights, or special privileges from Specialized International Institutions?
- Has the proposed technology been utilized and applied in at least 5 previous projects outside Kuwait, where its viability has been determined?
- Does the proposed technology have general and lasting applications?
- Has the proposed technology been reviewed in respectable scientific publications and did these publications confirm the importance and applications of this technology?

The following table lists some fields of technology that could be transferred to Kuwait:

Types	Major Fields of Technology
Applied Science	Artificial intelligence, Ceramics Engineering, Computing Technology, Electronics, Energy, energy Storage, Engineering Physics, Environmental Technology, Materials Science, Materials Engineering, Micro technology, Nanotechnology, Nuclear Technology, Optical Engineering, Quantum Computing
Athletics and Recreation	Camping Equipment, Playground, Sports, Sports Equipment
Information and Communication	Communication, Graphics, Music Technology, Speech Recognition, Visual Technology
Industry	Construction, Financial Engineering, Manufacturing, Machinery, Mining
Military	Bombs, Guns and Ammunition, Military Technology and Equipment, Naval Engineering
Domestic/Residential	Domestic Appliances, Domestic Technology, Educational Technology, Food Technology
Engineering	Vacuum Engineering, Agricultural Engineering, Architectural Engineering, Bioengineering, Biochemical Engineering, Biomedical Engineering, Chemical Engineering, Civil Engineering, Computer Engineering, Construction Engineering, electrical Engineering, Electronics Engineering, Environmental Engineering, Industrial Engineering, Materials Engineering, Mechanical Engineering, Metallurgical Engineering, Nuclear Engineering, Petroleum Engineering, Software Engineering, Structural Engineering, Tissue Engineering
Health and Safety	Biomedical Engineering, Bioinformatics, Biotechnology, Cheminformatics, Fire Protection Technology, Health Technologies, Pharmaceuticals, Safety Engineering,
Transport	Aerospace, Aerospace Engineering, Marine Engineering, Motor Vehicles, Space Technology, Transport

Annex VI

Content of Offset Project Concept Paper

The concept paper should contain the following information as well as any other information that the sponsors of the project may believe is pertinent. It should also be accompanied by a covering letter addressed to the management of the National Offset Company, requesting NOC's assessment of the proposed project and determining the possibility of implementing the project through the Offset Program.

It is noteworthy that the concept paper of any proposed offset project could be presented to NOC through its website at www.kuwaitnoc.com, in addition to the regular methods.

1- General Summary about the Company that is Presenting the Project :

- Company background (work field, capital, company experience;
- Previous projects implemented by the company;
- Any licenses, attained from other government departments to implement the project.

2- Project Concept :

- Project description;
- Project output of products and/ or services;
- Project objectives;
- Customers base;
- Target markets;
- Parties involved in project, ownership structure and perceived percentage distribution of equity participation;
- Competence of parties involved in the project (local investors and obligors).

3- Market Study :

- Description of target markets;
- Demand and supply situation in target markets (past, current and future);
- Competition analysis;
- Expected market share;
- Marketing channels and strategy;
- Estimates of the project's maximum output capacity;

- Sales plan and expected income;
- Current exports and imports of products and/or services that the project will produce.

4- Technical Study :

- Description & sources of raw materials, and their required specifications;
- Sources of raw materials, local regional & international;
- Estimates of yearly quantity requirements of raw materials;
- Labor requirements for the production process;
- Brief overview of the production process, Equipment and machinery requirements;
- Sources of required equipment & machinery;
- Time schedule of project setup;
- Project location and site layout;
- Technology that is suggested for the project, its specifications and importance and the justification for utilizing it in the Project.

5- Environment Assessment Study :

- Impact of project on environment;
- Description and impact of any environment friendly technology or equipment utilized in the project (If available)

6- Legal Structure and Organization :

7- Financial Study :

- Total capital cost of project;
- Financing structure;
- Estimates of annual operating costs (Fixed and variable);
- Financial statements (If available);
- Cash flow projections (If available).

8- Economic Benefits of the Project to Kuwait :

- Technology transfer;
- Creation of new high skill jobs for Kuwaitis;
- Training and education of Kuwaitis;
- Support of Kuwaiti exports and import substitution;
- Income generation;
- Economic Value added.

Annex VII

Content of Offset Project Business Plan

The Business Plan should basically include all information that is provided in the Concept Paper, but in more details and after any revision or update is made on such information. In particular, the financial data pertaining to the project should cover at least 5 years of operation of the project. The Business Plan should contain the following information as well as any other information that the project sponsors may believe is pertinent. It should also be accompanied by a covering letter addressed to the Management of the National Offset Company, revealing the name of the foreign offset obligated company, which will participate in the Project.

It is noteworthy that the Business Plan of any proposed Offset Project could be presented to NOC through its website at www.kuwaitnoc.com , in addition to the regular methods.

1- Cover Page :

The cover page should include:

- The name of the Offset Business Venture (OBV);
- The address of the Project sponsors;
- The main contact and telephone number.

2- Table Of Content :

3- Executive Summary :

- The executive summary should not be more than three pages and should be a stand alone document;
- It should be a “concise business plan within a business plan” and capture the essential subjects and issues of the project;
- It should include a summary of the financial data for the project, covering 5 years of operation.

4- Mission & Philosophy :

- Mission Statement - A relatively brief statement expressing the essential reason for the OBV’s existence and the major principles of the organization.
- Business Philosophy - Include the management style and ethical conduct under which the company will operate. What information will be shared and with whom?

5-Business & Industry :

- Description and History, of the economic field of the Proposed Project;
- Description and History, (if any) of the Offset Company which will be implementing the project, with special emphasis on the following:
 - a-Legal Structure
 - b-Equity Structure: What entities or individuals will own the OBV and the ownership percentage of each partner?
 - c-Business Strategy: The overall production and sales policy and strategy, which the Company will adopt to maximize its success. (There should be a logical consistency between the Company’s overall objectives and what the rest of the strategic plan will support).
 - d-Past Successes and Problems (if it is an existing business).
 - e-Current Status (if it is an existing business)
 - ° Is the business operating at a profit or loss?
 - ° What are its recent sales and earnings trends?
 - ° What recent important changes have occurred in the product or service mix?
 - ° Details of any other significant changes.
 - f-Future Goals and Objectives of the Company, including any significant changes in direction that are anticipated (if it is an existing business).

6- Features & Advantages of Product or Service :

- Description of products or Services that are planned to be sold;
- Expected benefits to consumers from the products and services (Quantify the benefits where possible).
- Proprietary Position: Whether products or services hold proprietary position and, if so, how will they be protected?
- What technology will be used in producing the product and how unique will it be?
- What substitute products or services can meet your customer’s needs?
- What are the existing or potential competing technologies for the product or service?
- What competitive Advantages the products or services have over competitors?
- What core competencies will the OBV possess?
- Describe future development potential of the products or services.

7-Market Research & Analysis :

- Market Size & Trends - What is the total size of the market? Is it growing or shrinking? At what rate?
- Market Share - The estimated market share that is expected to be controlled by the Project.
- Customer Profile:
 - a- Identification of target customers by geographic, demographic and any other market segments.
 - b- What are the needs of customers?
 - c- How do they decide to buy?
 - d- What customers will be targeted?
 - e- What market entry strategy will be adopted?
- External Factors:

What external factors affect demand for own products and services. Factors that are not directly related to market conditions of the project's own products and services, nor the project's administrative decisions, nor decisions taken by its customers or competitors. (These include general economic, political, organizational, legal, social, technological, and environmental conditions).
- Basis of Competition:

What is the driving force of the market, which influences the competitive edge of the project? Is it cost-driven, or advancement of technology; or is it ability of competitors to differentiate their products in terms of quality or special characteristics, or is it market segmentation?
- Competitors:

Identification of the project's competitors and where possible determination of their capabilities, in terms of sales, number of employees, products or services, and future strategies, in addition to specifying the points of weakness and strength of each competitor.
- Barriers to Entry:
 - a- Are there any factors that could inhibit the Project's entry to the market?
 - b- What are the planned strategies to overcome these barriers?

8-Marketing Plan :

- Overall Strategy: What is the overall marketing approach (e.g. composition of sales force, stages of selling, channels of distribution, types of promotion)?
- Specific Objectives and Strategies:
 - a- Specific sales objectives, in units and currency.
 - b- The strategy that will be adopted to meet the objectives.
- Sales Tactics - What specific sales tactics will be adopted (e.g. direct sales, indirect sales, telemarketing)?
- Compensation and Motivation of the Sales Force:
 - a- What strategy will be adopted to compensate and motivate the sales force, (e.g., salary, commission, combination salary and commission, bonuses, prizes)?
 - b- What training and ongoing support will be offered to sales force?
- Pricing: Describe your pricing strategy. How will the price of your product or service be determined? How does it relate to your cost? How does it fit in with your competitors' prices?
- Customer Service (if any).
- Strategic Alliances (if any, are planned).

9-Operations Plan :

- Geographic Location of project.
- Facilities: Major facilities that the project will require, including office space, plant, machinery and equipment, vehicles. Costs of the facilities should be included in the Project's capital budget and other financial projections.
- Annual Production Capacity (maximum and expected).
- Technology :
 - a- What technologies will the project bring?
 - b- Are there any competing technologies?
 - c- What research & development efforts will the project involve?
 - d- When will the product or service become obsolete?
- Suppliers:
 - a- Major materials and supplies that will be required and the companies that will supply them.
 - b- List of alternative (back-up) sources of supply.
- Inventory Requirements:

Inventory requirements and process of inventory control.

- Training & Support:
Type of training and the ongoing support that will be required for the work force.
- Quality Control:
Quality control methods that will be employed.
- Method of Payment:
How will you be paid for your products or services? What type of credit and terms will you extend?

10-Administration :

- Organization Chart.
- Board of Directors (if corporation) - Provide a brief description of the background of each director. What is their present position?
- Qualifications and Experience of the Management Team - Describe the qualifications and experience of the management team and any other key employees. Include any major accomplishments.
- Compensation - What forms and amounts of compensation are planned for the management team? How is this compensation tied to performance? What compensation is planned for the Board of Directors?
- Supporting Services - List consultants and key part-time employees.

11- Critical Risks & Problems :

Identify the critical issues facing the OBV and describe management's plans to overcome them.

12- Financial Plan :

- Historical Financial Statements - 5 years, if an existing company.
- Financial Projections for at least the first 5 years (integrated financial statements including data by line item). Including the following:
 - a- Financial Assumptions - The detailed assumptions on which the financial projections are based.
 - b- Financial Structure (present & proposed):
 - ° Amount & sources of equity (include ownership structure).
 - ° Amount & sources of debt (include interest required).
- Capital Budget (5 years - annual) - Itemize the cost of plant and equipment as well as working capital needed.

- Projection of Income (identify & segregate fixed and variable costs).
- Balance Sheet Projection.
- Projection of Cash Flows.
- Breakeven Analysis.
- Financial Controls - Describe the major financial controls and management information systems that you plan to utilize.

13-Economic Benefits To The State Of Kuwait :

- Technology Transfer:
 - a- Describe the technologies that will be transferred.
 - b- What competing technologies, if any, exist?
- Manpower:
 - a- Number of high-skilled, semi-skilled and low-skilled employees (by Kuwaiti and Non-Kuwaiti) by occupation category. Examples of occupation categories are administrative, production & distribution, sales & marketing, and research & development.
 - b- Compensation ranges (annual) for each category of employees.
- Education & Training - Detail the education and training plans for employees of each occupation category.
- Encouragement of Business Cooperation with International Companies.
- Achievement of Economic Value Added.
- Contribution towards Efforts to Attract Foreign Investments.
- Expansion of Exports and Import Substitution.
- Scientific Research - Detail any plans for scientific research activities.
- General Impact on Kuwait's Economy

14-Credit Accumulation:

- Provide an estimate of the Offset Credits that the OBV is expected to generate, in the light of the offset multiplier that is granted to OBV and the value of equity participation that the foreign contractor will be investing.

15-Appendix

- Includes items that do not fit well within the particular sections of the Business Plan. Examples are product literature, endorsement letters from customers, and contracts, in addition to technology data and environmental impact studies.

Annex VIII

Sample of Offset Project Progress Report

Depending on whether the progress report is intended to cover achievements during the Offset Project Inception Stage, or during the Project Implementation Stage, the report should concentrate on whatever of the following sections that are applicable to highlight the information required for each of these reports, as per Section 11. For the subsequent annual reports the primary stress should be on the economic benefits of the project, as specified in section 4, hereunder.

It is noteworthy that the Progress Report of any offset project could be presented to NOC through its website at www.kuwaitnoc.com, in addition to the regular presentation methods.

1- Introductory Summary

- A summary review of the overall progress, or setbacks, experienced to date.

2- Current Status of The Project

- Key Actions or Events during the Reporting Period, both positive and negative events, which had an impact on the implementation of the Project.
- Budget Variance Report - A copy of the latest budget report showing year-to-date comparisons (variances) of budget vs. actual data.

3- Financial Statements & Indicators

- Balance sheet for the reporting period.
- Income statement for the reporting period.
- Monthly cash flow statement for the reporting period.
- Primary financial indicators for the reporting period.

4- Economic Benefits of the Project to the State of Kuwait, During Reporting Period

- Employment of Kuwaitis.
- Education & Training Programs for Employees.
- Scientific research activities.
- Achievements in Technology Transfer.
- General impact of project on Kuwaiti economy.

5- Planned Actions & Milestones Over the Next Year

- Describe the significant actions that the Company is planning to take and the anticipated milestones in the next year. What are the expected results?

Annex IX

Sample of Memorandum of Agreement (MoA)

NATIONAL OFFSET COMPANY

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement, (hereinafter referred to as "MOA"), entered into this day of _____ (hereinafter referred to as the "Effective Date"), is made by and between:

1. The Government of the State of Kuwait herein duly represented for the purposes of implementing and administering this MOA by the National Offset Company ("NOC"), _____ Kuwait, duly represented herein by its Managing Director Mr. _____ (Hereinafter referred to as the "First Party").

2. (Name of the Company)

Address: _____

Duly represented herein by it _____ Mr. _____ (Hereinafter referred to as the "Second Party").

Preamble

WHEREAS, the "Second Party" has been or is about to be awarded a Government Supply Contract Number (_____), for the Project _____ , in an amount of _____ (amount in letters) involving the provision of goods and/or services to the State of Kuwait.

الشركة الوطنية للاوفست

مذكرة اتفاق

تم توقيع هذا الاتفاق، (والذي يشار إليه فيما بعد بـ"مذكرة الاتفاق") يوم _____ الموافق _____ (ويشار إليه فيما بعد بـ"التاريخ الفعلي") وذلك بين كل من :

1 . حكومة دولة الكويت وتمثلها لأغراض تنفيذ وتطبيق مذكرة الاتفاق الشركة الوطنية للاوفست، يمثلها مديرها العام السيد/ _____ وعنوانها: ص.ب: _____ - الكويت وسوف يشار إليها خلال المذكرة بعبارة "الطرف الأول" .

2. (اسم الشركة) :

عنوانها: _____

يمثلها في هذا العقد: _____

وسوف يشار إليها خلال المذكرة بعبارة "الطرف الثاني" .

التمهيد

حيث ان "الطرف الثاني" قد فاز أو في طور الفوز بعقد التوريد الحكومي رقم (_____) ("عقد التوريد") وذلك عن مشروع _____ والذي تبلغ قيمته _____ (المبلغ بالأحرف)، والذي يتضمن توريد بضائع و/ أو خدمات لدولة الكويت.

WHEREAS, the "Second Party" is fully aware that the Council of Ministers Decision No. 694 (92/31) convening on 26/7/1992 established the Counter-Trade Offset Program for the State of Kuwait, and that based on the Minister of Finance Decision No. (2) dated 23/1/2002 and the Council of Ministers Decision No. 863/2005, and Minister of Finance Decisions No. 13/2005 and No. 41/2006, and Minister of Finance Decision No. (38/2007) on activating the provisions of the new Kuwait Offset Program Guidlines No. (9)/2007 effective as of 9/9/2007; and that the administrative body in charge of administering the Program on behalf of the Ministry of Finance is the National Offset Company ("NOC").

WHEREAS, the "Second Party" recognizes and admits having carefully reviewed the aforementioned Decisions and the provisions of the Offset Program Guidelines Reference _____) dated _____ (the "Guidelines") and agrees to fulfill its obligations in accordance with the Guidelines, deemed an integral part of this MOA and complementary thereto.

NOW THEREFORE, the two parties mutually agree as follows:

1. The above preamble is deemed an indivisible part and parcel of this MOA and complementary thereto.

2. The "Second Party" acknowledges and agrees that the Supply Contract No. _____ is subject to the Offset Program of Kuwait, and that consequently the "Second Party" is required to perform an obligation towards the Offset Program ("Offset Obligation"). The total amount of such Offset Obligation is _____ (equivalent to _____ US\$) Representing thirty five percent (35%) of the Supply Contract value.

3. For the purpose of calculating the Offset Obligation, the two parties agree to use the currency conversion rate published by the Central Bank of Kuwait (CBK), applicable on the date of signing the Supply Contract.

وحيث ان "الطرف الثاني" يعلم أن برنامج العمليات المقابلة " الاوفست" تقرر بموجب قرار مجلس الوزراء رقم 694 بجلسته رقم (92/31) المنعقد بتاريخ 1992/7/26 ، وانه بناء على قرار وزير المالية رقم (2) لسنة 2002 الصادر بتاريخ 2002/1/23 وقرار مجلس الوزراء رقم 863/2005، وقراري وزير المالية رقم 13/2005 و رقم 41/2006، وقرار وزير المالية رقم (38) لسنة 2007 بشأن العمل بدليل الخطوط العريضة الجديد لبرنامج الأوفست الكويتي رقم (9) لسنة 2007 اعتباراً من تاريخ 2007/9/9، وأن الجهاز الإداري القائم بتنفيذ البرنامج هو الشركة الوطنية للأوفست نيابة عن وزارة المالية.

وحيث أن "الطرف الثاني" أقر بأنه اطلع على القرارات سالفه الذكر وعلى تلك الواردة في دليل الخطوط العريضة لبرنامج "الاوفست" لدولة الكويت، الرقم المتسلسل _____ والصادر بتاريخ _____ ، وتعهد بتنفيذ التزامه وفق تلك الأحكام باعتبارها جزءاً لا يتجزأ من هذه الاتفاقية ومكملة لها.

وفي ضوء ما سبق، فلقد اتفق الطرفان على ما يلي:

1. التمهيد السابق جزءاً لا يتجزأ من هذا الاتفاق ومكماً له.

2. ان "الطرف الثاني" يعلم ويوافق على ان عقد التوريد رقم _____ سالف الذكر سيخضع لبرنامج الأوفست لدولة الكويت، ويلتزم "الطرف الثاني" نتيجة لذلك بتنفيذ التزامه تجاه البرنامج. ويبلغ إجمالي التزام "الطرف الثاني" تجاه برنامج الأوفست _____ ويمثل 35% من قيمة عقد التوريد.

3. لاحتساب قيمة التزام الأوفست اتفق الطرفان على استخدام أسعار تحويل العملات المعلنة من قبل بنك الكويت المركزي، في تاريخ توقيع عقد التوريد.

<p>Furthermore, whenever required to establish the corresponding currency value of any transaction or payment that is made in the framework of the “Second Party’s” fulfillment of its Offset Obligation, the CBK exchange rate applicable at the date of signing the Supply Contract shall be used.</p>
<p>4. In the event the Supply Contract Value is increased or reduced, the “Second Party’s” Offset Obligation shall be adjusted proportionally and accordingly.</p>
<p>5. This “MOA” shall become effective upon the last date of its signature hereof, and shall remain in full force and effect until the “Second Party” completes its Offset Obligation.</p>
<p>6. The conclusion of this “MOA” is predicated upon the ability of the “Second Party” to submit an investment project (in the field of _____) through which it can satisfy its Offset Obligation.</p>
<p>7. The Offset Starting Date applicable to the Offset Obligation of the “Second Party” shall be the date of signing the above mentioned Supply Contract Number (_____),</p>
<p>8. The “Second Party” is granted a grace period of 1 year from the date of signing the Supply Contract, after which it starts implementing the Offset Project, and such a date will be deemed the effective starting date of the Offset Project.</p>
<p>9. Upon the signature of this MOA all rules and regulations stipulated in the Offset Program Guidelines and all Offset Program regulatory procedures shall be deemed having been herein adopted for the implementation of the “Second Party’s” Offset Obligation, which will undertake to fulfill its obligations under the Offset Program in accordance with the decisions of the “First Party’s” management, based on the Milestones Completion Schedule for the different phases of implementation of the Offset Program as set forth in the Guidelines. Such Milestones Completion Schedule may not be modified or amended in any way by the “Second Party” without the prior written agreement of the “First party”.</p>

<p>وفي حال قيام "الطرف الثاني" بأي إجراءات أو تسديد أية نفقات أثناء تنفيذه للالتزام الأوفست تستعمل أسعار تحويل العملات المعلنة من قبل البنك المركزي في تاريخ توقيع عقد التوريد .</p>
<p>4. في حال تمت زيادة أو تخفيض قيمة عقد التوريد تجعل قيمة التزام "الطرف الثاني" تجاه "الأوفست" بنسبة هذه الزيادة أو التخفيض .</p>
<p>5. يبدأ سريان هذه الاتفاقية من تاريخ آخر توقيع عليها، وتنتهي بتمام تنفيذ "الطرف الثاني" لالتزام الأوفست المترتب عليه .</p>
<p>6. يتوقف توقيع هذه المذكرة على تقديم "الطرف الثاني" ما يختاره من مشروع استثماري في مجال _____ والذي يمكن من خلاله إيفاء الالتزام المترتب عليه .</p>
<p>7. يبدأ تطبيق التزام الأوفست على "الطرف الثاني" بتاريخ توقيع عقد التوريد رقم (_____) سالف الذكر .</p>
<p>8. يمنح "الطرف الثاني" فترة سماح مدتها سنة واحدة من تاريخ توقيع عقد التوريد يبدأ بعدها بمباشرة تنفيذ مشروع الأوفست. ويعتبر ذلك هو تاريخ بدء التنفيذ الفعلي للمشروع.</p>
<p>9. اعتباراً من توقيع هذه الاتفاقية تصبح جميع الأحكام الواردة ضمن دليل الخطوط العريضة وكافة القرارات المنظمة لبرنامج الأوفست واجبة التطبيق، ويتعهد "الطرف الثاني" بتنفيذ التزامه وفقاً لهذه الأحكام. كما يتعهد "الطرف الثاني" بتنفيذ التزاماته تجاه برنامج "الأوفست" وفقاً لقرارات إدارة "الطرف الأول" المبنية على "الجدول الزمني" لمراحل تنفيذ برنامج الأوفست الوارد في دليل الخطوط العريضة لبرنامج الأوفست، ولا يجوز "للطرف الثاني" تغيير أو تعديل الجدول الزمني سالف الذكر بأي شكل من الأشكال ما لم يحصل على موافقة خطية مسبقة من "الطرف الأول" .</p>

<p>10. Once the “First Party” approves the Concept Paper, and/or Business Plan for the Offset Project, changes and/or substitutions to them may only be made with the prior written approval of the “First party”. Any change(s) and/or substitution(s) requested by the “Second Party”, whether agreed to or not by the “First Party”, shall not relieve the “Second Party” from its contractual obligations in accordance with “First Party’s” decisions based on the Offset Program Milestones Completion Schedule.</p>
<p>11. In the event the “Second Party’s” participation in an Offset Project includes equipment, machinery or modern technology, their respective value will be determined by a third party acceptable to both parties.</p>
<p>12. This MOA and all matters relating to the fulfillment of the “Second Party’s” Offset Obligation and performance under the Offset Program shall be interpreted in accordance with and governed by the Laws of the State of Kuwait. The “Second Party” agrees to submit to the jurisdiction of the State of Kuwait in respect of all disputes relating thereto.</p>
<p>13. This MOA may only be amended, supplemented, modified or terminated by a written agreement between the “First Party” and the “Second Party”. This MOA is terminated in any of the following events:</p> <p>a.The cancellation of the Supply Contract;</p> <p>b.Mutual agreement of both Parties;</p> <p>c.Fulfillment of the “Second Party’s” Offset Obligation.</p>
<p>14. An unconditional, irrevocable and non-divisible bank guarantee (in the format attached herewith as Exhibit A which forms an integral part of this MOA) issued in the name of NOC by Kuwaiti bank, shall be provided by the “Second Party” and shall be submitted not later than thirty (30) days after the date of signing of the Supply Contract; at a value equivalent to 6% of the Supply Contract Value, but may be amended in line with the final Supply Contract Value. The purpose of such bank guarantee requirement is to secure the complete performance by the</p>

<p>10 . في حال موافقة "الطرف الأول" على الفكرة المبدئية، و/أو خطة العمل لمشروع الأوفست الاستثماري فإن أي تعديل أو تبديل للفكرة المبدئية أو خطة العمل يستلزم موافقة خطية مسبقة من "الطرف الأول"، وسواء تمت موافقة "الطرف الأول" على التعديل و/أو التبديل الذي قد يطلبه "الطرف الثاني"، أو لم يتم فإن ذلك لن يعفي "الطرف الثاني" من تنفيذ التزاماته وفقاً لقرارات "الطرف الأول" المبنية على المراحل الزمنية المحددة لتنفيذ برنامج "الأوفست" .</p>
<p>11. في حال ساهم "الطرف الثاني" في مشروع أوفست بالأجهزة والمعدات أو التقنية المتطورة فسيتم تقييم قيمتها من قبل طرف ثالث يحوز على موافقة كلا الطرفين .</p>
<p>12. يخضع هذا الاتفاق وكل الأمور المتعلقة بتنفيذ الالتزامات الخاصة "بالطرف الثاني" تجاه برنامج الأوفست لقوانين دولة الكويت، كما يوافق "الطرف الثاني" بأن يكون القضاء الكويتي هو المختص في أي منازعات قانونية تثار في هذا الخصوص .</p>
<p>13. لا يجوز إضافة أو تعديل أو تغيير مذكرة الاتفاق هذه، أو إنهاؤها إلا بموجب اتفاقاً خطياً بين الطرفين. وينتهي سريان هذا الاتفاق في الحالات التالية :</p> <p>(أ) الإلغاء الكامل لعقد التوريد .</p> <p>(ب) الاتفاق المتبادل بين الطرفين على إنهاء هذا الاتفاق.</p> <p>(ج) وفاء "الطرف الثاني" بالتزامه تجاه برنامج الأوفست.</p>
<p>14. سوف يقدم "الطرف الثاني" كفالة مصرفية غير مشروطة وغير قابلة للنقض أو التجزئة لصالح الشركة الوطنية للأوفست (حسب النص المرفق "النموذج أ" والذي يعتبر جزءاً لا يتجزأ من هذه المذكرة) صادرة من أحد البنوك الكويتية، وذلك في مهلة أقصاها ثلاثين يوم من تاريخ توقيع "الطرف الثاني" على "عقد التوريد" .</p>

<p>“Second Party” of its Offset Obligation under the Offset Program in accordance with its requirements. The “First Party” shall have the right to cash in the bank guarantee in following cases:</p> <ul style="list-style-type: none"> • The “Second Party” refuses to implement its Offset Obligation and/or • In the event of any default or breach by the “Second Party” in the performance of its obligations and its inability to remedy such default or breach within the time specified in the official notice received to such effect, <p>Payment of liquidated damages by the “Second Party” shall be the sole remedy of NOC for the non-performance of its Offset Obligation.</p> <p>Pursuant to the terms of the bank guarantee, the value of the bank guarantee will be reduced proportionately (in amount(s) equal) to the company’s fulfillment of its Offset Obligation. Such bank guarantee shall be fully released by the “First Party” when the “Second Party” demonstrates that it had actually fully implemented its Offset Obligation.</p>
<p>15. This Memorandum of Agreement or other documents related to the subject matter hereof shall be treated by both Parties as strictly confidential and may not be disclosed in whole or in part to any third party except as may be required by law, or to professional advisors for the purpose of the implementation of its terms, and unless pre-approved by the corresponding party of this agreement.</p>
<p>16. Should either of the two parties involved in this MOA is subject to merger or any other form of reorganization, it is agreed that the successor in law to such party shall also be bound by the terms of this MOA as if such party was an original party hereto.</p>
<p>17. The “First Party” shall have the right to request that all financial documents submitted by the “Second Party” and pertaining to the Offset Project be certified by an international auditing firm approved by NOC.</p>

<p>وتكون قيمة هذه الكفالة المصرفية ما يعادل نسبة 6% من قيمة عقد التوريد، وتعادل قيمة هذه الكفالة في ضوء القيمة النهائية لعقد التوريد . والهدف من الكفالة المصرفية هو ضمان تنفيذ "الطرف الثاني" لالتزامه تجاه برنامج الأوفست بالشكل المطلوب. ويحق "للطرف الأول" اتخاذ قرار تسجيل هذه الكفالة في حال:</p> <ul style="list-style-type: none"> • رفض "الطرف الثاني" تنفيذ التزام الاوفست المترتب عليه . • أي تقصير أو إخفاق من قبل "الطرف الثاني" في تنفيذ التزامه بشأن الأوفست وإخفاقه في معالجة ذلك التقصير أو الإخفاق في الموعد المحدد في الإخطار الذي يبلغ "للطرف الثاني" كتابة بصفة رسمية يفيد إخلاله بالتزامه . وسيكون ذلك بمثابة التعويض الاتفاقي الوحيد مقابل عدم الالتزام بالبرنامج. <p>وتبعا لشروط الكفالة المصرفية فإن الكفالة المصرفية ستخفص كلما أوفى "الطرف الثاني" بجزء من التزامه، وقيمة تساوي مقدار وفائه لالتزامه . وسيتم إلغاء الكفالة المصرفية من قبل "الطرف الأول" عندما يظهر "الطرف الثاني" بأنه قد وفى فعليا بالالتزامات المترتبة عليه تجاه برنامج الأوفست .</p>
<p>15. يلتزم طرفي هذه الاتفاقية بالتعامل مع هذه الوثيقة أو أي وثائق أخرى متعلقة بها على أنها معلومات سرية، ولن يفصح عنها بشكل كامل أو جزئي لأي جهة ثالثة، باستثناء ما يتطلبه القانون، أو للمستشارين المختصين، وذلك بهدف تطبيق بنودها، وما لم يحوز أولاً على الموافقة الخطية من الطرف الآخر على ذلك.</p>
<p>16. في حال خضوع أي من طرفي مذكرة الاتفاق هذه لعملية دمج أو أي شكل آخر من عمليات إعادة التنظيم الإداري فإنه من المتفق عليه أن يقوم الجهاز التنظيمي والإداري الجديد المنبثق حسب الأصول القانونية عن أي من طرفي هذه الاتفاقية، بالالتزام بشروط مذكرة الاتفاق هذه، وكأنه الفريق الأصلي الموقع على هذه الاتفاقية.</p>
<p>17. يحق "للطرف الأول" الطلب من "الطرف الثاني" القيام بتصديق كافة الوثائق المالية المقدمة والخاصة بمشروع الأوفست من قبل أحد المكاتب العالمية للتدقيق المحاسبي المعتمدة لدى الشركة الوطنية للأوفست.</p>

<p>18. The “Second Party” should exert every possible effort to highlight the role of the Offset Program in achieving the successful implementation of its Offset Project. Such efforts should include, but should not be limited to, press releases, press conferences and/or advertisements.</p>
<p>19. This MOA shall be executed in both the Arabic language and the English language. In the event of a conflict between the two versions, the Arabic version shall prevail.</p>

<p>18. يلتزم "الطرف الثاني" ببذل الجهد اللازم في سبيل توضيح دور برنامج الأوفست في تنفيذ مشروع الأوفست بنجاح، وعلى سبيل المثال لا الحصر تتضمن هذه الجهود التصاريح والمؤتمرات الصحفية، بالإضافة إلى الإعلانات.</p>
<p>19. حررت مذكرة الاتفاق هذه باللغتين العربية والانجليزية، وفي حالة وجود تعارض بين النسختين يعتد بالنص العربي.</p>

Annex X

Sample of Bank Guarantee Form
& Bank Guarantee Reduction Certificate (Exhibit A in MoA)

دولة الكويت

On Behalf of The State of Kuwait

Signature

التوقيع

Mr. / السيد

Managing Director المدير العام

National Offset Company الشركة الوطنية للأوفست

State of Kuwait دولة الكويت

Date: التاريخ

Stamp: الختم

الممثل الرسمي للشركة

On Behalf of The Company

Signature

التوقيع

Name in English

Mr. /

Title

Company Name

Country Name

SAMPLE OF BANK GUARANTEE FORM

To: _____

الى: _____

Bank Guarantee

كفالة مصرفية

No: _____

رقم: _____

We are informed that (Supplier) _____ (hereinafter called the "Contractor") has entered into a Memorandum of Agreement (hereinafter called the "MOA") with you dated _____ relating to the Offset Program stemming from a Contract signed between the Contractor and _____ (Kuwait government Entity) for the Supply of (Goods/Services/Supplies) (the "Contract") and that a bank guarantee of _____ (Amount) _____ representing 6% of the Contract value is required as security for the fulfillment by the Contractor of its obligations towards the Offset Program.

بلغنا ان (المورد) _____

(يدعى فيما يلي "المتعهد") قد عقد معكم مذكرة اتفاق بتاريخ _____ بخصوص برنامج الاوفست المنبثق عن العقد الموقع بين المتعهد و(حكومة دولة الكويت) لتزويد (بضائع/خدمات/تجهيزات) وانه مطلوب من المتعهد خطاب كفالة مصرفية بمبلغ _____ والذي يمثل 6% من قيمة العقد كضمان لتنفيذ التزامات المتعهد تجاه برنامج الأوفست.

Being so, on behalf of the Contractor, we, (Bank) _____hereby give you our guarantee and undertaking to pay you upon your first demand, despite any contestation from the Contractor or any other third party, any amount or amounts, not exceeding in total a maximum value of _____(Amount)_____ on receipt of your demand in writing, stating that the Contractor has failed to meet its obligation under the Offset Program.

The amount available under this guarantee shall be reduced automatically by the value of any drawing(s) hereunder. Further, the amount available hereunder shall be reduced, with the equivalent of the amount of Reduction Certificate (to be provided in the format attached) when submitted to us by the Contractor, from time to time, provided it is signed by an official or authorized representative of the National Offset Company, and shall be construed to be effective only when we notify you of any such reductions in writing.

This guarantee is valid for any and all written demands received by us from you on or before _____(date)_____after which date our liability to you under this guarantee will cease and this guarantee will be of no further effect.

This guarantee shall be governed by Kuwaiti Law.

وعليه، ونياية عن المتعهد، نحن، (البنك) _____نضمن لكم ونتعهد بان ندفع للشركة الوطنية للأوفست عند اول طلب منها، على الرغم من أي معارضة من قبل المتعهد او أي طرف آخر، أي مبلغ او مبالغ لا تزيد في مجموعها عن _____ وذلك عند تسلمنا مطالبتها خطيا .

سوف يتم تخفيض المبلغ المتاح بموجب هذا الضمان تلقائيا بقيمة اية مبالغ يتم مصادرتها بموجب هذا الضمان، وبالتالي سوف يتم تخفيض المبلغ المسموح بموجب هذا الضمان بالمبلغ المعادل لقيمة شهادة التخفيض (التي سوف تقدم على النموذج المرفق) عندما يتم تقديم هذه الشهادة إلينا من قبل المتعهد شريطه ان تكون مذيلة بتوقيع مسؤول أو ممثل مفوض من قبل الشركة الوطنية للأوفست، وسوف تعتبر نافذة المفعول فقط عندما نخطرکم خطيا بهذا التخفيض.

ويبقى هذا الضمان صالحاً لدى تسلمنا أية وكل مطالبة خطية قبل او في _____ (تاريخ). وبعد هذا التاريخ سوف ينتهي التزامنا تجاهكم بموجب هذا الضمان وسوف لن يكون لهذا الضمان أي مفعول بعد ذلك .

يخضع هذا الضمان للقانون الكويتي .

Sample of Bank Guarantee Reduction Certificate

Bank Guarantee No. _____

(on beneficiary’s letterhead)

REDUCTION CERTIFICATE

To: (insert local Bank Guarantee)

Date: (insert date)

The undersigned, the National Offset Company (“NOC”), acting as the duly authorized representative of the Government of the State of Kuwait for the purpose of the Offset Program, hereby certifies that with reference to the Memorandum of Agreement (MoA) signed between _____ (name of Contractor) and the National Offset Company (NOC) on_____ (date), relating to an Offset Obligation stemming from the Supply Contract No. (_____), between the _____ (name of the Government entity) and _____ (name of the Contractor):

- A) It has been demonstrated to the NOC that (name of the Contractor) has implemented a portion of its Offset Obligation in respect of the referenced Supply Contract.
- B) The NOC hereby requests that the amount available for draw under_____ (name of the local Bank) Guarantee No. (_____) be reduced by an amount of (_____), thus reducing the total value of the Bank Guarantee to a new value of (_____).

Very truly yours,
National Offset Company (NOC)

Name: _____
Title: _____