

# **GENERAL CONDITIONS OF CONTRACT (G.C.C)**

FOR CONSTRUCTION AND SERVICE

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## 1. DEFINITION AND INTERPRETATION

### 1.1 Definition

In the Contract (as defined below) the words and expressions defined below shall have the meanings assigned to them herein except where the context requires otherwise:

- 1.1.1 **“Accounting Year”** means the financial year commencing from 1 April of any calendar year and ending on 31 March of the next calendar year.
- 1.1.2 **“Advance Bank Guarantee”** means the bank guarantee to be provided by the Contractor in respect of the Advance Payment, in accordance with the Payment Terms of the Contract.
- 1.1.3 **“Advance Payment”** means a sum equal to the amount stated in Payment Terms and paid to the Contractor by the Employer by way of a advance payment in accordance with the Payment Terms of the Contract.
- 1.1.4 **“Affected Party”** shall have the meaning ascribed to it in Clause 17.
- 1.1.5 **“Applicable Laws”** means all laws in force and effect, as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India including any revisions, amendments or re-enactments including without limitation regulations, rules and notifications made there under and judgments, decrees, injunctions, writs and orders of any court or regulators or quasi judicial body or any appropriate authorities, as may be in force and effect during the subsistence of the Contract.
- 1.1.6 **“Bill of Quantity”** shall mean subsequent to the placement of the Contract/Agreement/Purchase Order the successful bidder shall be required to furnish the detailed price break-up within a specified time frame. This detailed break-up of items and prices shall be considered as Bill of Quantities (BOQ).
- 1.1.7 **“Business Day / Working Day”** means any Day that is not (i) a Day on which banks in a India is legally permitted to be closed for business (including partial Days), and (b) a holiday declared by Central Government of India or State Government of India.
- 1.1.8 **“Certified Amount”** shall have the meaning ascribed to in Clause 21.
- 1.1.9 **“Change in Tax Law”** means the occurrence of any of the following after the Base Date

- a) The enactment of any new Indian law;
- b) The repeal, modification or re-enactment of any existing Indian law;
- c) The commencement of any Indian law which has not entered into effect until the date of execution of the Contract;
- d) Change in the interpretation or application of any Indian law by a court as compared to such interpretation or application twenty eight (28) days prior to the last date of submission of tender;
- e) Change in laws does not include changes in corporate income tax.

*For the purposes of this definition, "**Base Date**" shall mean the date which is seven (7) days prior to the submission of the tender.*

1.1.10 "**Change in Work**" means any addition to, deletion from, suspension of or other modification, to the Work, or to the quality, function or as delineated in this Contract, including any such addition, deletion, suspension or other modification, which requires a change in one or more of the Technical Specifications and the completion schedule.

1.1.11 "**Commencement Date**" means the date on which the Contractor shall commence the Execution of the Works on the written instructions of the Employer contained in the Notice to Proceed.

"**Communication**" means instruction or information or written notice issued on letter head or through electronic mail exchange between Parties and excludes verbal or short messaging services (SMS). The notice shall be served by delivering a copy by electronic mail, or by placing a copy in the registered account on the portal (vendor portal/project portal) of Purchaser followed by an intimation by Short Message Service. Unless otherwise stated in the Contract, all communications to be given under the Contract shall be in writing. Communication may be sent by competent authority or authority delegated to such officer/employee. Communication shall be on letter head of Party signed by competent authority/authorized signatory of the Party. Communication having financial impact or commercial impact on changes/amendment in Works or performance of the Contract or Liquidated Damages / Penalty shall be signed by authorized signatories (at least two) who may be finance head/chief executive officer (CEO) of the Project or Chief Financial Officer or Chief Executive Officer or Project Director (PD) or Chief Project Director.

1.1.12 "**Company**" shall have the same meaning as per Companies Act 2013.

- 1.1.13 **“Construction Documents”** means all drawings, calculations, computer software (programs), samples, patterns, models, operation and maintenance manuals, and other manuals and information of a similar nature, to be submitted by the Contractor for the Execution of the Works and as more specifically set out in the Employer’s Requirements.
- 1.1.14 **“Contract/Agreement”** means the agreement between the Employer and the Contractor for the Execution of the Works, including the Contract Agreement, the letter of acceptance, the Conditions of Contract, the Schedules, the Employer’s Requirements, the Tender, other tender documents and such further documents which are listed in the Contract Agreement and includes any amendment thereto made in accordance with the provisions hereof.. This includes Work Order or Letter of Award issued to the Contractor by the Employer.
- 1.1.15 **“Contract Closure”** as mentioned in Clause 29.0.
- 1.1.16 **“Contract Period”** means the period from the date of due acceptance of SAP Work Order by the Contractor to the date of Final Taking Over Certificate.
- 1.1.17 **“Contractor’s IPR”** shall have the meaning ascribed in Clause 6.6.4.
- 1.1.18 **“Contractor’s Preliminary Notice”** shall have the meaning ascribed in Clause 13.6.1.
- 1.1.19 **“Contract Value”** means the price of the Contract including Taxes and Duty, payable to the Contractor for the Execution of the Works subject to such additions thereto and deductions there from as may be made under the provisions of this Contract. Contract Value is fixed lump sum set out in Appendix 1 (Breakdown of Contract Value).
- 1.1.20 **“Contractor”** means the successful Tenderer to whom this Contract is awarded and includes Vendor / Supplier.
- 1.1.21 **“Consultant”** means any agency appointed by the Employer as engineering and project management consultants for the Works.
- 1.1.22 **“Contractor’s Equipment”** means all machinery, apparatus, appliances, equipment, material, vehicles, plant and all other things of whatsoever nature required for purpose of the Execution of the Works, but does not include Plant or Materials intended to form or forming part of the Permanent Works
- 1.1.23 **“Defect Liability Period (DLP)”/Defects Liability Period”** shall mean minimum period of twelve (12) months calculated from the date of issuance of each Acceptance Certificate for the Stage or mentioned in this Contract/Agreement, Works or any part of the Works.

Provided that, if any part of the Works or subsystems or part or component of that part of the Works has been replaced, renewed or repaired during the Defects Liability Period, the Defects Liability Period in respect of such part or subsystem or components of that part shall again start for a period of twelve (12) months from the date of such replacement, renewal or repair has been completed to the satisfaction of the Employer.

- 1.1.24 **“Design Data”** means all specifications, plans, drawings, details, graphs, sketches, models, levels, setting-out dimensions, calculations duly verified by the Contractor and other documents relating to the design of the Works prepared or to be prepared by or on behalf of the Contractor.
- 1.1.25 **“Drawings and Designs”** means the drawings and designs (including the Design Data) submitted by the Contractor and approved by the Employer’s Representative in accordance with which the Contractor shall proceed with the Execution of the Works.
- 1.1.26 **“Employer”** shall mean entity named in the Execution Cover or Special Conditions of the Contract and includes assignees, administrator, executors, successors, associated company/subsidiary/joint venture/firm/representative. .
- 1.1.27 **“Employer Indemnities”** means Employer and its affiliates, and their respective partners, directors, officers, agents and employees.
- 1.1.28 **“Employer’s Requirements”** means the following documents along with appendices, schedules and attachments thereto: (a) General Specification and Technical Specification, as included in the Contract, and any alterations and modifications to such documents in accordance with the provisions of this Contract.
- 1.1.29 **“Employer’s Representative”** means any person nominated or appointed from time to time by the Employer to act as its representative for the purposes of the Contract and notified as such in writing to the Contractor.
- 1.1.30 **“Employer’s Preliminary Notice”** shall have the meaning ascribed to in Clause 13.2.
- 1.1.31 **“Environmental Standards”** means the Environmental Guidelines, the equator principles and any prescribed standards under Applicable Law relating to (a) pollution, contamination, clean-up, protection and reclamation of the environment; (b) health and safety, including, without limitation, the exposure of employees or other Persons to any Hazardous Materials; (c) the release or threatened release of any Hazardous Materials; (d) the management of any Hazardous Materials, including, without limitation, the manufacture, generation, formulation, processing, labelling, distribution, introduction into commerce, registration, use, treatment, handling, storage, disposal, transportation, reuse,

recycling or reclamation of any Hazardous Materials; and (e) any applicable permit, approval, notice, requirement or order issued by a Competent Authority with respect to the foregoing.

1.1.32 **“Execution”** means the construction of the Works in accordance with the construction drawings, specifications, correction of the defects in the Works and other things required to be undertaken pursuant to the Contract and the words “Execute”, “Execution” and “Executed” shall be construed accordingly.

1.1.33 **“Free Issue Material”** The Employer shall provide Free Issue Material (FIM) if specified in the tender, to Contractor, as per quantities/sizes indicating costs of such free issue material mentioned in the tender.

1.1.34 **“Force Majeure”** shall have the meaning ascribed to in Clause 17.

1.1.35 **“Final Taking Over Certificate”** shall have the meaning ascribed to it under Clause 9.9.5.

1.1.36 **“Good Industry Practice”** means the exercise of the highest degree of skill, diligence, prudence and foresight in compliance with the obligations under the Contract which would be expected from a skilled and experienced person engaged in construction industry more particularly carrying construction of RCC Works.

1.1.37 **“HSE Conditions”** means the Employer's health, safety and environment conditions containing the requirements and conditions to be met with respect to safety, health and environment.

1.1.38 **“Hazardous Materials”** means (i) any element, compound, substance, chemical or biological derivative, radiation, noise, vibration, material or combination thereof which by reason of its composition or characteristics is defined in any Applicable Law or Directive as a hazardous material; (ii) any pollutant, contaminant, solid waste, hydrocarbon product, toxic or hazardous substance or waste, any flammable, explosive or radioactive materials regulated under, or subject to, any Laws of India; and (iii) any other material which any Competent Authority shall determine from time to time is harmful, toxic, or dangerous, or otherwise ineligible for handling, storage or disposal by unregulated means.

1.1.39 **“Intellectual Property Rights”** shall have the meaning ascribed to it under Clause 6.6.

1.1.40 **“Key Personnel”** shall have meaning ascribed to it under Clause 7.16.



- 1.1.41 **“Letter of Intent/Letter of Award (LoA)”** means the formal letter of intent or letter of acceptance or letter of award issued by the Employer to the Contractor whereby Employer gave its formal acceptance to the Contractor.
- 1.1.42 **“Latent Defect”** shall mean a defect, inherently lying within the Goods/Equipment or arising out of design deficiency, which do not manifest themselves and/or was not reasonably discoverable/discovered up to end of Defect Liability Period.
- 1.1.43 **“Management Control”** shall mean change in ownership of Employer Company under Companies Act 2013 /laws of India. It shall also encompass operational control of the Employer.
- 1.1.44 **“Material Adverse Effect”** means the effect of any act or event which materially and adversely affects the ability of either Party to exercise its material rights or perform any of its material obligations under and in accordance with the provisions of the Contract.
- 1.1.45 **“Monthly Progress Report”** means the monthly progress report submitted by the Contractor in accordance with the Employer's Requirements.
- 1.1.46 **“Mile Stone”** means a date identified for the completion of a Stage set out in the Contract.
- 1.1.47 **“Notice to Proceed”** means the notice issued by the Employer to the Contractor in accordance with Clause 9.1.2.
- 1.1.48 **“Owner/Client”** means the entity named as Owner / Client Company in the invitation for tenders and includes its associated company/subsidiary/joint venture/firm/representative, legal successors and assignees.
- 1.1.49 **“Parties”** means the Employer and the Contractor and “Party” means any one of the Party.
- 1.1.50 **“Parent Company”** means the person that controls the Contractor by virtue of its beneficial ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of the Contractor, or the ability to control the composition or the decisions of the board of directors, or the possession of the power to direct or cause the direction of the management and policies of the Contractor. It shall have meaning as ascribed in the Companies Act 2013.
- 1.1.51 **“Parent Company Guarantee”** means the irrevocable, non transferrable and unconditional guarantee to be provided by the Parent Company in favor of the Employer in the form more particularly set out in this Contract (Parent Company Guarantee) and to

be obtained by Contractor at the time of signing of Contract/due acceptance of Work Order by the Contractor whichever is earlier. The format of Company Guarantee is attached in the Annexure 6.

- 1.1.52 **“Parent Company Undertaking”** means the undertaking to be provided by the Parent Company in favor of the Employer in the form more particularly set out in the Contract (Parent Company Guarantee) and to be obtained by Contractor at the time of signing of Contract/due acceptance of Work Order by the Contractor whichever is earlier. The format of Company Undertaking is attached in the Annexure 7.
- 1.1.53 **“Payment Terms”** means the document containing the terms of payment of the Contract Value to the Contractor as set out in the Contract (Payment Terms).
- 1.1.54 **“Penalty”** to be paid or payable by Vendor under this Contract/Agreement or under combination of other Agreements. Penalty may be in form of compensation, breach of any stipulated clauses or any damages.
- 1.1.55 **“Person”** or **“Persons”** means an individual, partnership, limited partnership, corporation, business trust, Joint Stock Company, trust, unincorporated association, joint venture, Governmental entity or other entity of whatever nature.
- 1.1.56 **“Performance Bank Guarantee”** means the bank guarantee to be procured in accordance with Clause 4.2 for the performance of the Contractor’s obligations under the Contract.
- 1.1.57 **“Permanent Works”** means the permanent works to be Executed (including all permanent structures and all work intended to form a continuing function after completion of the Works) in accordance with the Contract.
- 1.1.58 **“Performance Certificate”** means the certificate issued by the Employer/Employer’s Representative under Clause 10.9.
- 1.1.59 **“Plant”** means the machinery, equipment, and apparatus and the likes, intended to form or forming part of the Permanent Works.
- 1.1.60 **“Political Event” shall mean any event or circumstance or combination of events or circumstances of a political nature, social unrest in India or directly involving India or a change in the Constitutional Law/Federal Laws of India or State(s) in India (including the effects of such events and circumstances or combination of events or circumstances) referred to in this Contract that materially and adversely affects the performance by a Party of its obligations under this Contract.**

- 1.1.61 **“Pricing Document”** means the document annexed to this Contract containing the price and completed BOQ.
- 1.1.62 **“Project”** means the site/ location/ title where the Scope of Work is to be executed.
- 1.1.63 **“Provisional Taking Over Certificate”** shall have the meaning ascribed to it under Clause 9.9.1.
- 1.1.64 **“Punch List”** means as defined in Clause 8.9.
- 1.1.65 **“Quality Plan”** means the plan and the execution methodology for the complete scope of works as submitted by the Contractor and approved by the Employer for execution of the works.
- 1.1.66 **“Rectification Works”** means all preventive measures required to comply with the Employer’s Requirements. Remedial works necessary or appropriate in terms of the Contract to remedy or rectify any defect in Works and all such work of repair, reconstruction, rectification and make good defects, imperfections or other faults in the Works and part thereof, as the case may be; and any other work required to be performed by the Contractor for the fulfillment of its obligations under the Contract.
- 1.1.67 **“Reasonable Excuse”** shall be an excuse, which in the opinion of the Employer/Employer’s Representative has resulted from circumstance which is beyond the control of the Contractor.
- 1.1.68 **“Schedules”** means the schedules annexed to the Contract.
- 1.1.69 **“SCC” means ‘Special Conditions of Contract forming part of this Contract / Agreement.**
- 1.1.70 **“Site”** means the designated land, including right of way and/or places provided by the Employer where the Works is to be executed and any other place as may be specifically designated in the Contract as forming part of the Site or designated as such by the Employer’s Representative.
- 1.1.71 **“Subcontract”** means a subcontract awarded to a Subcontractor.
- 1.1.72 **“Sub-Contractor”** means any person named in the Contract as a sub-Contractor or a manufacturer, supplier of any goods materials, labour or services for the Works or any person to whom a part of the Works has been subcontracted by the Contractor with the consent of the Employer or the Employer’s Representative, as the case may be, and the permitted legal successors in title to such person, but not any assignee of such person.

- 1.1.73 **“Suspension Order”** shall have the meaning ascribed to it in Clause 9.8.
- 1.1.74 **“Tax Invoice/RA Bill”** shall have the meaning ascribed to it under GST Laws. Format of Tax invoice and associated documents are furnished in Annexures no 5 and 8. RA Bill/bill is called Running Bill which is same as Tax Invoice.
- 1.1.75 **“Temporary Works”** means works (other than the Contractor’s Equipment and Permanent Works) required for the Execution of the Works.
- 1.1.76 **“Tender”** means the Contractor’s final proposal (including the price proposal) as accepted by the Employer pursuant to the invitation for tenders issued by the Employer for the Execution of the Works.
- 1.1.77 **“Tests on Completion”** means the tests specified in the Contract and designated as such, including any tests as may have to be carried out before any Stage, Works or any part of the Works is taken over by the Employer for obtaining the Provisional/Final Taking Over Certificate.
- 1.1.78 **“Time for Completion”** means the time for completing of the Works or a Stage (as the case may be), calculated from the date of issuance of the Notice to Proceed.
- 1.1.79 **“Variation”** means any alteration and/or modification to the Employer’s Requirements, which is instructed by the Employer’s Representative or as suggested by the Contractor and approved as a variation by the Employer’s Representative in accordance with Clause 12.
- 1.1.80 **“Variation Order”** shall have the meaning ascribed to it in Clause 12.
- 1.1.81 **“Works”** means, all Permanent and Temporary Works consisting of the items listed in the Scope of Work and BOQ annexed along with the Order including Construction Works and any services to be carried out at Site in accordance with the Contract.
- 1.1.82 **“Work Order”** means any work order issued pursuant to LoA together with all annexures, schedules, enclosures, Documentation and any other attachments and amendments thereof and the Drawings, specifications referred to therein.
- 1.1.83 **“Works Programme”** means the program showing the sequence, method and timing of Works and other related activities in the form and content prescribed by the Employer’s Requirements, or any amended or varied version thereof, as submitted by the Contractor and for which the Employer’s Representative has issued a notice of no objection.

## 1.2 Interpretation

In the Contract except where the context requires otherwise:

- 1.2.1 Words indicating one gender include all genders;
- 1.2.2 "Written" or "in writing" means hand-written, written, or electronically made and resulting in a permanent record;
- 1.2.3 Any reference to any provision of an act of Parliament or of a state legislature shall be construed, at the particular time, as including a reference to any modification, extension or re-enactment thereof, to all instruments, orders or regulations then in force;
- 1.2.4 The singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities;
- 1.2.5 The headings are inserted for convenience and shall not limit, alter or affect the meaning of the Contract;
- 1.2.6 The terms defined in Schedule and the Employer's Requirements shall have the same meaning ascribed thereto when used elsewhere in the Contract and vice versa;
- 1.2.7 The words "include" and "including" shall be construed without limitation;
- 1.2.8 The Schedules shall form an integral part of the Conditions of Contract and shall be in full force and effect as though they were expressly set out in the body of the Conditions of Contract;
- 1.2.9 The word "consent" wherever used, shall mean prior written consent;
- 1.2.10 Any reference to any agreement/contract, deed, instrument, license, code or other document of any description shall be construed, at the particular time, as a reference to that agreement/contract, deed, instrument, license, code or other document as the same may be or have been amended, varied, supplemented, modified, suspended or novated;
- 1.2.11 In the event any portion or all of the Contract is held to be void or unenforceable, the Parties agree to negotiate in good faith to arrive at an amicable understanding which shall accomplish the intent of the Parties as originally set forth in the Contract;
- 1.2.12 No failure on the part of any Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, and no single or partial exercise of any such right shall preclude any other or further exercise thereof or the exercise of any other right;

1.2.13 References to recitals, Clauses or Schedules in the Contract shall, except where the context otherwise requires, be deemed to be references to recitals, Clauses and Schedules of or to the Contract; and

1.2.14 Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the immediately occurring next Business Day.

### 1.3 **Priority of Documents**

The documents forming the Contract are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Employer's Representative shall issue necessary clarifications or instructions to the Contractor, and the priority of the documents shall be as follows:

- a) SAP Work Order duly signed by Employer and Contractor
- b) Price Schedule
- c) Special Conditions of Contract and Schedules;
- d) Technical Specifications and Tender Drawing;
- e) Erection Conditions of Contract (if applicable)
- f) General Conditions of Contract;

### 1.4 **Communications**

1.4.1 Any consent, approval, authorization, certificate, report, information, notice, certificate or request from or by any Party or the Employer's Representative shall be effective and valid only when made in writing under the hand of a duly authorized representative of such Party or the Employer's Representative, as the case may be, and delivered by hand against receipt, sent by the recognized courier, registered mail or transmitted by facsimile transmission to the address for the recipient's communication as stated in the Contract. In case any notice is delivered by registered mail and/or courier, it shall be deemed to be duly served within forty eight (48) hours after posting and a notice or demand sent by facsimile shall be deemed to have been served at the time of its transmission and in proving service of the same, it will be sufficient to prove, in the case of a letter, that such letter was sent by registered airmail, addressed and placed in the post and in the case of a facsimile transmission, that such facsimile was duly transmitted to a current facsimile number of the addressee at the address referred above.

1.4.2 Where a notice is issued under the Contract (including any notice relating to termination of the Contract, Variation, suspension, resumption of Works or for the breach of any term of the Contract) by the Contractor to the Employer or the Employer's Representative, the Contractor shall contemporaneously send a copy to the Employer's Representative or the Employer, as the case may be. All other communications shall be addressed only to the Employer's Representative.

1.4.3 All communication/correspondence under or in relation to the Contract shall be in the English language.

#### **1.5 Contractor's Use of Employer's Documents**

1.5.1 The Employer shall retain the copyright and other intellectual property rights in the Employer's Requirements and other documents made by or on behalf of the Employer.

1.5.2 The Contractor shall not, without the Employer's consent, copy, use or communicate to a third party, the Employer's Requirements or part thereof or any other document to which the Employer has the copyright and other intellectual property rights, except as necessary for the purposes of the Execution of the Works.

#### **1.6 Compliance with Applicable Laws**

1.6.1 The Contractor shall fully familiarize itself and conform in all aspects with all Applicable Laws. The Contractor shall be bound to give all notices, file all returns, etc., required by Applicable Laws, as aforesaid and to pay all fees and charges in respect thereof.

1.6.2 The Contractor shall not be absolved from any of its obligations under Applicable Laws or the Contract or claim any additional amount from the Employer or seek any extension of time due to its ignorance of any Applicable Law.

1.6.3 The Contractor shall indemnify the Employer Indemnities against all costs, expenses, penalties and liabilities incurred/ suffered by any of the Employer Indemnities due to non-compliance of any Applicable Law by the Contractor in relation to the Execution of the Works.

#### **1.7 Joint and Several Liability**

If the Contractor is a joint venture, consortium, or any other group consisting of two or more Persons:

- a) All such Persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;

- b) All such Persons shall have notified the Employer of their leader from amongst themselves who shall have the authority to bind the Contractor and each of such Persons; and
- c) The Contractor shall not alter its composition or legal status without the prior consent of the Employer.

**1.8 No Joint Venture**

The Contractor shall not constitute a joint venture, consortium or other unincorporated grouping of two or more Persons, following the execution of the Contract, without the prior written approval of the Employer.

**2. The Employer**

**2.1 General Obligations**

The Employer shall provide access to and possession of the Site to the Contractor. The Contractor shall at its own cost and risk, provide for any access to the Site required by it in addition to the access provided by the Employer.

**2.2 Access to and Possession of the Site**

2.2.1 The Employer shall provide the Contractor right of access to, and possession of, the Site progressively for the Execution of the Works. The Contractor acknowledges that its possession of the Site shall not be exclusive to the Contractor and shall in addition to the restrictions as contained in the Contract be subject to the following:

- a) Any public passage or right existing over any part of the Site from time to time;
- b) The rights and obligations of persons or authorities under any Applicable Laws; and
- c) The rights of the Employer's Representative, Consultants or any other representative of the Owner or any statutory authorities to have access to the Site for inspection of the Works

2.2.2 If the Contractor foresees any delay in the Execution of the Works due to failure on the part of the Employer to provide right of access to, or possession of the Site, the Contractor shall immediately give notice to the Employer's Representative substantiating its claim for any delay in the Execution of the Works due to delay in providing the Site. After receipt of such notice, the Employer's Representative shall determine any extension of time to which the Contractor may be entitled and notify the Contractor accordingly. The Contractor acknowledges and agrees that it shall not be entitled to any monetary claim



under any circumstances whatsoever due to any delay in handing over of the Site by the Employer

2.2.3 The Contractor shall not demolish, remove or alter any structures or other facilities on the Site without the prior written approval of the Employer's Representative. The Contractor shall further ensure that all garbage resulting from the Execution of the Works is burnt or removed and disposed, in accordance with Applicable Laws.

### 2.3 **Permits Licenses or Approvals**

2.3.1 It shall be the Contractor's exclusive responsibility to obtain all requisite approvals, permits or licenses required for the Execution of the Works and performance of the Contract. However, upon the request of the Contractor, the Employer may, where it is in a position to do so, provide reasonable assistance to the Contractor, at the risk and cost of the Contractor, in applying for and obtaining such permits, licenses or approvals. Any delay in obtaining any such permits, licenses and approvals shall not relieve the Contractor from any of its obligations under the Contract.

2.3.2 The cost of obtaining the above mentioned permits, approvals and licenses and follow-up of the applications for such permits, approvals and license shall be borne by the Contractor.

### 2.4 **Assignment by the Employer**

The Work Order/Contract/Agreement, and the rights and obligations of Employer under the Work Order/Contract/Agreement shall be assignable to Affiliates, associate company, joint venture or any other company including change in Management Control and Employer's lenders without consent of the Contractor. Upon written notice issued within seven Business Days (07 days) by the Employer, the Work Order/Contract/Agreement shall deemed to be Assigned to the third party under this Clause. This Clause fulfills its meaning notwithstanding the notice is not accepted by the Contractor and Employer shall not be obliged to the Contractor after seven days (07) of issue of notice.

## 3. **The Employer's Representative**

### 3.1 **Appointment of Employer's Representative**

The Employer shall notify the Contractor in writing of the appointment and identity of the Employer's Representative and its replacement, if any, from time to time.

### 3.2 **Duties and Authorities of the Employer's Representative**

- 3.2.1 The Employer's Representative shall carry out the duties as specified in the Contract but shall have no authority to amend the Contract.
- 3.2.2 The Employer's Representative may exercise the authority specified in, or necessarily to be implied from the Contract. If the Employer's Representative is required to obtain the specific approval of the Employer before exercising such authority, such requirement shall be specifically stated in the Contract. Unless and otherwise such specific approval is required, any requisite approval shall be deemed to have been given by the Employer for any such authority exercised by the Employer's Representative.
- 3.2.3 The Employer's Representative shall have no authority to relieve the Contractor of any of its duties, obligations, or responsibilities under the Contract. Any proposal, inspection, examination, testing, consent, approval or similar act by the Employer's Representative, including absence of disapproval, shall not relieve the Contractor from any responsibility under the Contract.
- 3.2.4 Subject to the provisions of Clause 3.3 and to any specific provision of the Contract which provides to the contrary, the Contractor shall take instructions, notices, communications, decisions and approvals exclusively from the Employer's Representative.

**3.3 Employer's Representative's Authority to Delegate**

- 3.3.1 The Employer's Representative, with the prior written approval of the Employer may, from time to time, delegate certain of its functions to assistants and may also revoke such delegations. Such delegation or revocation shall be in writing and shall be applicable only after the same has been notified in writing to the Contractor, along with a copy of the Employer's approval. The Employer's Representative shall not delegate any duty or authority, and such assistants shall have no authority, to initiate any Variation or to issue any certificates, notices, instructions or decisions which may lead to any increase in the Contract Value or any extension of time.
- 3.3.2 Each assistant to whom duties have been assigned or functions have been delegated by the Employer's Representative, shall be authorized to issue instructions to the Contractor to the extent defined by the delegation. Any determination, approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by a duly appointed assistant shall have the same effect as though the act had been an act of the Employer's Representative.

3.3.3 If the Contractor questions any determination or instruction of an assistant of the Employer's Representative, the Contractor may refer the matter to the Employer's Representative within three (3) days of such decision having been given. The Employer's Representative shall have the final authority to confirm, reverse or vary such determination or instruction.

3.3.4 Any written communication between the Contractor and any assistant of the Employer's Representative shall immediately and contemporaneously be copied by the Contractor to the Employer's Representative.

3.3.5 The Parties acknowledge that the above provisions relating to the appointment of the Employer's Representative and its assistants have been provided to facilitate the interactions between the Employer and the Contractor and it is the sole responsibility of the Contractor to ensure that the Works are executed in accordance with the Contractor's obligations under the Contract.

#### **3.4 Employer's Representative's Instructions**

3.4.1 The Employer's Representative shall have full power and authority to supply drawings, designs, specifications and instructions to the Contractor for the proper and adequate design and execution of the Works. The Contractor shall carry out the execution of the Works in accordance with such drawings, designs, specifications and instructions. The Contractor shall not be entitled to any extension of time or additional payment for complying with the provisions of this Clause 3.4, unless specifically provided in the Contract and after complying with the procedure provided in the Contract.

3.4.2 The Contractor shall give reasonable notice to the Employer's Representative of any instruction which it considers necessary for the execution of the Works, to enable the Employer's Representative to issue the instruction such that the Execution of the Works is not delayed. The Employer's Representative shall not, however, be bound to issue any instruction which, in its opinion, is unnecessary. Any failure to give reasonable time to the Employer's Representative for issuance of any instruction as aforesaid shall not entitle the Contractor to claim any extension of time or any monetary claim.

3.4.3 No act or omission by the Employer's Representative or the assistants of the Employer's Representative in the performance of their duties or exercise of any of their powers under the Contract shall, in any way, operate to relieve the Contractor of any of its duties, responsibilities, obligations or liabilities under the Contract.

3.4.4 In case of any inordinate delay in receiving instructions or receipt of any communication from the Employer's Representative, the Contractor shall by written notice inform the Employer of such delay. The Employer shall, on receipt of any such communication from the Contractor, make best efforts to issue such instructions or communications to the Contractor within a reasonable period of time.

#### **4. The Contractor**

##### **4.1 General Obligations**

4.1.1 The execution of the Works as completed by the Contractor shall be wholly in accordance with the Contract and fit for the purposes for which they are intended, as defined in the Contract. The Works shall include any work which is necessary to satisfy the Employer's Requirements and Schedules, or as implied by the Contract.

4.1.2 The Contractor shall execute the Works within the Time for Completion. The Contractor shall provide all superintendence, labour, and all other things, whether of a temporary or permanent nature.

4.1.3 Without prejudice to the provisions of Clause 4.1.6, before commencing the Works, the Contractor shall satisfy itself regarding the Employer's Requirements (including design criteria and calculations, if any) The Contractor shall give notice, within forty eight (48) hours of the inspection of the Employer's Requirements, to the Employer's Representative of any error, fault or other defect in the Employer's Requirements or such items of reference.

4.1.4 The Contractor takes full responsibility for the adequacy, stability and safety of the operations carried out at the Site relating to the Execution of the Works.

4.1.5 The Contractor shall at all times endeavor to adopt best practices as is prevalent in like industry and shall always be required to achieve the desired quality and confirm to the schedule of work at no additional cost to the Employer.

4.1.6 The Contractor is deemed to have satisfied itself as to the correctness and sufficiency of the Employer's Requirements and other terms of the Contract relating to its risks, liabilities and obligations set out in or implied by the Contract and all matters and things necessary for the proper Execution of the Works.

4.1.7 The Contractor acknowledges the responsibility for ascertaining and securing at its own cost, the following during the Execution of the Works:

- a) The proper transportation, disposal, handling and storage of materials (including but not limited to hazardous toxic substances and excavated materials);
- b) Availability of electricity, water and gas and any other fuel, raw material or utility service (as may be applicable) ;
- c) Availability of skilled manpower;
- d) Compliance with the HSE Conditions;
- e) Protection of the environment and adjacent structures and taking steps for remedying any damage caused to the environment or adjacent structures during the Execution of the Works;
- f) The location of and the authorization required for and the means of diversion of any services and facilities required for the purposes of the Works; and
- g) Take all steps to cause minimum disturbance to the free movement of vehicular traffic and other movement of the public, on or in the vicinity of the Site.

4.1.8 The Contractor shall, whenever required by the Employer's Representative, submit details of the arrangement and methods which the Contractor proposes to adopt for the Execution of the Works. No alteration to these arrangements or methods shall be made without the approval of the Employer's Representative.

4.1.9 Contractor agrees to provide all preliminary data and information which may be required by the Employer within fifteen days of issuance of Work Order or as per mutually agreed timeline. Failure to do so shall result in deduction of 5% of Net Price as penalty.

4.1.10 In case the Contractor comes across any ambiguity and/ or discrepancy in the Employer's Requirements, it shall immediately communicate such ambiguity and/ or discrepancy to the Employer's Representative, for seeking appropriate instructions to resolve such ambiguities and discrepancies.

4.1.11 In case of errors, omissions and/or disagreement in the Drawings and Designs or between the Drawings and Designs and Employer's Requirements, the following principles shall be followed :

- a) As between the written description or written dimensions on the Drawing and Designs and the corresponding one in the Employer's Requirement, the former shall apply.

- b) As between the written description of the item in Bill of Quantities and the detailed description in the Employer's Requirements of the same item, the former shall prevail.
- c) The Drawings and Designs on a large scale shall take precedence over those on a smaller scale;  
and
- d) Drawings and Designs approved as constructions drawings from time to time shall supersede corresponding Drawings and Designs previously approved.

#### **4.2 Guarantee/ Undertaking**

##### **4.2.1 Performance Bank Guarantee**

4.2.1.1 Within seven (7) days of the issue of the Notice to Proceed to the Contractor, the Contractor shall furnish the Performance Bank Guarantee in favour of the Employer from a scheduled commercial bank in India acceptable to the Employer and payable in Mumbai for an amount in accordance with the Payment Terms and the Contract. The Contractor shall submit the Performance Bank Guarantee in the form set out in the Annexure 1 (Form of Performance Bank Guarantee). The Contractor shall maintain the Performance Bank Guarantee at its own expense, and shall ensure that the same shall remain valid at all times till the expiry of the Defects Liability / Warranty Period (as applicable) and for a period of three (3) months thereafter.

4.2.1.2 If the Performance Bank Guarantee is or becomes invalid for any reason (other than its expiry), the Contractor shall immediately notify the Employer's Representative and obtain within five (5) days a replacement Performance Bank Guarantee in the form set out in the Contract (Form of Performance Bank Guarantee).

4.2.1.3 No later than sixty (60) Business Days before the expiry of the Performance Bank Guarantee, the Contractor shall, upon request of the Employer's Representative obtain extension of the validity of such Performance Bank Guarantee for the period stated in such request by the Employer's Representative and provide a copy of such renewed guarantee.

4.2.1.4 The Performance Bank Guarantee shall be returned to the Contractor, after the expiry of the Defects Liability / Warranty Period (as applicable) and for a period of three (3) months thereafter. In the event of any claim or any other outstanding contractual obligations

remaining unfulfilled, the Contractor shall be required to extend the Performance Bank Guarantee till the settlement of all claims and completion of all contractual obligations.

#### **4.2.2 Parent Company Guarantee (if mentioned in SCC)**

4.2.2.1 The Contractor shall obtain and furnish the Parent Company Guarantee in favour of the Employer, for the due performance of the obligations and liabilities of the Contractor under and in accordance with the Contract, provided that if the Contractor is a joint venture or a consortium, then the Contractor shall obtain and furnish the Parent Company Guarantee from each of the members or partners of such joint venture or consortium in proportion to their participation in such joint venture or consortium. The Contractor shall ensure that the Parent Company Guarantee is effective and valid at all times till the expiry of the Defects Liability / Warranty Period /Latent Defect Period and for a period of three (3) months thereafter.

4.2.2.2 The Parent Company Guarantee shall expire and Contractor shall be released from its obligations under this Contract/Agreement at the end of three (3) months after the expiry of the Defects Liability / Warranty Period/Latent Defect Period (as applicable).

#### **4.2.3 Release of Performance Bank Guarantee / Parent Company Guarantee**

4.2.3.1 The Performance Bank Guarantee and/or the Parent Company Guarantee shall be released upon compulsory submission of the i) No Demand Certificate ii) Letter of Indemnity iii) completion of Contract Closure as mentioned in this Contract. The format of No Demand Certificate and Letter of Indemnity are attached as Annexure 2.

#### **4.2.4 Guarantees and Warranties**

4.2.4.1 Notwithstanding any other provision of the Contract:

- a) submission by the Contractor of the requisite Parent Company Undertakings and the Parent Company Guarantee (as applicable) shall be conditions precedent to any payment required to be made by the Employer to the Contractor under this Contract; and
- b) failure by the Contractor to provide the Performance Bank Guarantee, the Parent Company Undertakings and/or the Parent Company Guarantee (as applicable) within a period of seven (7) days from the execution of the Contract shall entitle the Employer to terminate the Contract forthwith by notice in writing to that effect, notwithstanding that the Contractor may have been permitted to proceed with the

Works. The Contractor shall not be entitled to any compensation whatsoever as a consequence of such termination.

#### 4.2.5 **Advance Bank Guarantee**

4.2.5.1 The Advance Payment (interest free) shall be paid to the Contractor on fulfillment of the following conditions:

- a) Execution of the Contract;
- b) Submission of invoice for the Advance Payment by the Contractor;
- c) Submission of an unconditional Advance Bank Guarantee by the Contractor equivalent to the Advance amount in the form more particularly set out in the Annexure 3 and,

4.2.5.2 The Advance Payment made to the Contractor shall be deducted by the Employer, from the Certified Amounts in respect of each Running Bills, submitted by the Contractor. If the Employer is unable to deduct an amount equal to the Advance Payment for any reasons whatsoever, then the Employer at its discretion shall be entitled to demand the repayment of the whole of the remaining balance of the Advance Payment or to deduct so much of the outstanding amount thereof from amounts due and payable to the Contractor until the whole of the Advance Payment is repaid.

4.2.5.3 Notwithstanding anything contained in the Contract, the guarantee provided by the Contractor for payment in relation to the Advance Payment shall remain valid till such advance payments have been completely adjusted from the payments due to the Contractor under the Contract. It is clarified for the avoidance of doubt that the Contractor shall not be entitled to any additional advance payment due to increase in the Contract Value for any reason whatsoever.

#### 4.3 **Representation on Works**

4.3.1 Unless the Contractor's representative is named in the Contract, the Contractor shall, within seven (7) days of the execution of the Contract, submit to the Employer's Representative for its consent, the name and details relating to qualification and experience of the person (including credible references from third parties) which the Contractor proposes to appoint as its representative. The Contractor shall not revoke the appointment of the Contractor's representative without the prior written consent of the Employer's Representative. The Contractor's representative shall have full authority to act on behalf of the Contractor. The Contractor's representative shall work full time and



shall be dedicated for the Execution of the Works. The Contractor's representative shall be entitled to receive (on behalf of the Contractor) all notices, instructions, consents, approvals, certificates, determinations and other communications as may be issued under the Contract. Whenever the Contractor's representative is to be absent from the Site, a suitable person shall be appointed as the Contractor's representative for the period of such absence, with the prior written consent of the Employer's Representative.

4.3.2 Failure on part of the Contractor to comply with the provisions of Clause 4.3.1 shall constitute a breach of the Contract and the Employer shall be entitled to exercise its rights under Clause 13.2.

4.3.3 The Contractor's representative may delegate any of its powers, functions and authorities to any competent person, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until the Employer's Representative has given its prior written consent thereto. The Contractor's representative and such persons shall be fluent in English and Hindi language for day to day communication with the Employer's Representative and the Contractor shall be bound by and fully liable for the acts or omissions of the Contractor's representatives or any of its employees and/or delegates, agents or nominees.

#### 4.4 **Facilities for and co-ordination with Consultants**

4.4.1 The Contractor acknowledges that it is of paramount importance that the execution of the Works is co-ordinated with the work to be performed by the Consultants in view of their concurrent and sequential nature and that such co-ordination is imperative for the successful integration of the Works. The Contractor shall not impede and shall afford all necessary facilities, access and/or services to the Employer's Representative, Consultants and other relevant authorities, who are carrying out on, or in the vicinity of, the Site.

4.4.2 The Contractor shall take all reasonable steps to ensure that the Works are co-ordinated and integrated with the works carried on by the Consultant and shall in particular (but without limitation):

- a) Comply with any direction which the Employer's Representative may give for the integration of the design of the Works with the design of any work carried on by the Consultant;
- b) Consult, liaise and co-operate with the authorized persons of the Consultant for preparation of the respective designs, the preparation of co-ordinated

programmes and work programmes, method statements, co-ordination drawings and specifications together with arrangements of service priorities and zoning; and

- c) Participate in integrated testing and commissioning of the Works with the Consultant and demonstrate to the satisfaction of the Employer's Representative that the Works have been constructed in a manner compatible with the works of the Consultant.
- d) The identity and details of Consultant may not be known at the time of the execution of the Contract but this shall not be a ground for the Contractor to object to the subsequent engagement of any Consultant
- e) The Contractor shall afford all reasonable access to Consultant and their respective workmen who may be engaged on or near the Site of any Works or ancillary to the Works and shall not cause any inconvenience to them.

#### 4.5 **Subcontractors**

4.5.1 The Contractor shall not subcontract the whole of the Works and unless otherwise specifically stated:

- a) The prior consent of the Employer's Representative shall be obtained for subcontracting any part of the Works.
- b) Not less than thirty (30) days before the intended date of each Subcontractor commencing work, the Contractor shall notify the Employer's Representative of such intention.

4.5.2 The Contractor shall be responsible for observance by all the Subcontractors of any Applicable Laws and all the provisions of the Contract. The Contractor shall be entirely responsible for the acts or defaults of any Subcontractor, its representatives or employees, as if they were the acts, omissions or defaults of the Contractor, its representatives or employees and nothing contained in Clause 4.5.1(a) shall constitute a waiver of the Contractor's obligations under the Contract. The Contractor shall provide to the Employer's Representative, certified true copies of all the executed Subcontracts containing complete terms and conditions, and annexures other than the price, and the provisions of Clause 4.25 shall apply to all such copies provided by the Contractor to the Employer. The Contractor shall make timely payments to the Subcontractors and resolve all matters and differences with any Subcontractor speedily, without affecting the execution of the Works in any manner. The terms and conditions of the Subcontract are

the sole prerogative of the Contractor and are deemed to be included in the Contract Value.

- 4.5.3 The terms and conditions of any Subcontract shall impose on the Subcontractor such terms and conditions of the Contract as are applicable and appropriate to the part of the Works to be executed by the Subcontractor, to enable the Contractor to comply with its obligations under the Contract.
- 4.5.4 Notwithstanding any consent to the selection of the Subcontractor given by the Employer's Representative, the Employer's Representative shall have full power to order the Contractor to terminate any Subcontract and substitute such Subcontractor with any other Subcontractor and the Contractor shall be bound to follow such order.
- 4.5.5 The Employer shall, under no circumstances be liable to any Subcontractor and the Contractor shall indemnify and keep indemnified the Employer Indemnitees against all liabilities, costs, claims and demands of whatsoever nature by any Subcontractors other than all liabilities, costs, claims and demands of the Subcontractors against the Employer arising out of any negligent act of the Employer.
- 4.5.6 Notwithstanding anything contained in the Contract, the Employer may at any time require the Contractor to procure from a Subcontractor, a warranty in favour of the Employer and/or the Owner (where required) in the form to be provided by the Employer, to the effect that in case of termination of the Contract, the Subcontractor shall enter into a direct agreement with the Employer and/or Owner to perform the works or services with regard to the Works on the terms and conditions as agreed with the Contractor under its respective Subcontract.
- 4.5.7 The Contractor shall be solely responsible for the payments to be made to the Subcontractors in accordance with their respective Subcontracts and ensure proper and uninterrupted execution of the Works. The Employer shall not interfere in the day to day management of the Subcontract between the Contractor and its Subcontractor, but if any complaint is received by the Employer (or the Employer's Representative) from any Subcontractor regarding non-payment or delay in payment by the Contractor to such Subcontractor, then the Employer may, by a written notice, require the Contractor to resolve such complaint within a reasonable period (to be specified in the notice) and provide the details of the steps taken by the Contractor to resolve the complaint, to the Employer. If the issue is not satisfactorily resolved and the details provided by the Contractor are not considered satisfactory, the Employer may, at its sole discretion, make

direct payment to the Subcontractor as per its claim and recover the same from any payment due to the Contractor.

- 4.5.8 In the event that a Change in Law, including but not limited to the introduction of GST, occurs during the term of the contract, which results in any benefit to the Subcontractor, the Subcontractors shall be bound to pass on such benefit arising out of the Change in Law to the Employer.

#### 4.6 **Assignment of Contractor's and Subcontractor's Obligations**

- 4.6.1 The Contractor shall not assign the Contract or the right, benefits and obligations under the Contract without first obtaining Employer's prior written consent.

- 4.6.2 Any assignment, transfer or Subcontract of the Works or part of the Works by the Contractor in accordance with the Contract shall not relieve or absolve the Contractor from any of its obligations and liabilities under the Contract and shall not create any kind of privity between the Employer and any assignee, transferee or Subcontractor of the Contractor.

- 4.6.3 If a Subcontractor's warranty or other obligations extend beyond the expiry date of the Defects Liability Period then the Contractor shall assign the benefits of such obligations to the Employer.

#### 4.7 **Compensation for Breach**

Breach of any provisions of Clauses 4.5 or 4.6 shall entitle the Employer to terminate the Contract under Clause 13 and also render the Contractor liable for loss or damage arising due to such termination.

#### 4.8 **Sufficiency of Contract Value**

The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Value. Unless otherwise stated in the Contract, the Contract Value and the rates and prices stated in Pricing Document shall, except as otherwise provided for in the Contract, cover all its obligations under and in relation to the Contract and all matters and all things necessary for the proper Execution of the Works. The Contract Value shall not be adjusted save as expressly provided in the Contract, and includes any and all direct, indirect and ancillary charges and costs of whatsoever nature. Provided, however that, in case of a Change in Law, an equitable adjustment to the Contract Value shall be made to take into account such Change in Law by addition to the Contract Value or deduction thereof, as the case may be. In the event that a Change in

Law, including but not limited to the introduction of GST, occurs during the term of the contract, which results in any benefit to the Contractor, the Contractor shall be bound to pass on such benefit arising out of the Change in Law to the Employer.

#### **4.9 Works Programme**

4.9.1 The Contractor shall submit a detailed Works Programme to the Employer's Representative not later than thirty (30) days from the date of receipt of the Notice to Proceed. The Contractor shall also submit a revised Works Programme whenever the Employer's Representative finds that the previous Works Programme is inconsistent with actual progress as provided in the Employer's Requirements.

4.9.2 Each Works Programme shall at least include the following:

- a) The order in which the Contractor proposes to carry out the Works.
- b) Mile Stone Schedules provided in the Contract (as applicable);
- c) All major events and activities in the production of Construction Documents; and
- d) The sequence of all Tests on Completion specified in the Contract.

4.9.3 The Works Programme and other documents specified in the Employer's Requirements shall be submitted within the period stipulated in the Contract.

4.9.4 No alteration to the Works Programme, or to such arrangements and methods specified therein, shall be made without obtaining prior written consent of the Employer's Representative. If the progress of the Works does not conform to the Works Programme, the Employer's Representative may instruct the Contractor to revise the Works Programme, showing the modifications necessary to achieve completion within the Time for Completion. Contractor shall then follow the revised Works Programme at its own cost.

#### **4.10 Progress Reports**

4.10.1 The Contractor shall submit to the Employer's Representative by the end of each calendar month its Monthly Progress Report which shall, amongst other things, highlight actual or potential departures from the Works Programme and state the measures which the Contractor proposes to take in order to make good or reduce any delay.

4.10.2 The Contractor shall continue to submit the Monthly Progress Report until the end of the Contract Period. Each Monthly Progress Report shall include:

- a) An executive summary;

- b) Charts showing the status of the Works;
- c) Records of manpower and Contractor's Equipment on the Site;
- d) Copies of quality assurance documents or reference thereto, test results and certificates (to the extent applicable)
- e) Safety statistics, including details of any hazardous incidents and non-compliance of HSE Conditions;
- f) Comparisons of actual progress against the planned progress, variance analysis and reasons for the variance and steps taken to mitigate the same, with details of any aspects which may jeopardize the completion of the Works in accordance with the Contract, and the measures being (or to be) adopted to overcome such aspects;
- g) Inspection reports of regulatory authorities;
- h) Licenses/ registrations/ approvals/ permits obtained under Applicable Laws;

4.10.3 The Contractor shall also submit to the Employer's Representative such other reports as may reasonably be required by it or any relevant authority or public body. All such reports shall conform to the Employer's Requirements.

#### 4.11 **Contractor's Equipment**

4.11.1 All Contractor's Equipment and Temporary Works provided by the Contractor or any Subcontractor shall, when brought on to the Site, be deemed to be exclusively intended for execution of the Works and not be removed without the consent, in writing, of the Employer's Representative. Such consent shall not be unreasonably withheld or delayed by the Employer's Representative.

4.11.2 Upon completion of the Works, the Contractor shall remove from the Site, all the said Contractor's Equipment and Temporary Works and its unused materials.

4.11.3 The Employer shall not at any time be liable for the loss or damage to any of the constructional plant, Temporary Works or materials.

4.11.4 The Contractor shall, upon written request by the Employer's Representative, produce to the Employer's Representative, all documents evidencing title to or the contractual arrangement giving the right to the Contractor to use the Contractor's Equipment. In the event of failure to comply with such request within seven (7) days, then without prejudice

to any other rights, the Employer shall be entitled to withhold the payments due to the Contractor under the Contract.

#### 4.12 **Safety of Works**

4.12.1 The Contractor shall throughout the Execution of the Works:

- a) Take full responsibility for the adequacy, stability, safety and security of the Works;
- b) Have full regard for the safety of all persons on or in the vicinity of the Site (including persons to whom access to the Site has been allowed by the Contractor), comply with all relevant safety regulations, including provision of safety gear. In so far as the Contractor is in occupation or otherwise is using areas of the Site, the Contractor shall keep the Site and the Works (so far as the same are not completed and occupied by the Employer) in an orderly state appropriate for the avoidance of injury or accident to all persons on and in the vicinity of the Site and shall keep the Employer Indemnitees indemnified against all costs, charges, losses and damages that may be suffered by the any of the Employer Indemnitees in any manner whatsoever as a result of any injury or accident to any person on or in the vicinity of the Site in connection with the execution of the Works;
- c) Provide and maintain all lights, guards, fences and warning signs and watchmen when and where necessary or as required by the Employer's Representative or by any Applicable Laws or by any relevant authority for the protection of the Works and for the safety and convenience of the public and all persons on or in the vicinity of the Site;
- d) Where any part of the Works would otherwise be carried out in darkness, ensure that all parts of the Site where such part of the Works is being carried out are so lighted as to ensure the safety of all persons on or in the vicinity of the Site and of such part of the Works;
- e) The Contractor shall ensure that its employees and the employees of the Subcontractors wear identification badges (cards), uniforms, helmets, gum boots and other safety/protection wear as directed by Employer's Representative, and to be provided by the Contractor. Badges shall identify the Contractor and/ or the Subcontractor, as the case may be, and show the employee's name and number and shall be worn at all times while at the Site;

- f) All vehicles used by the Contractor at the Site shall be clearly marked with the Contractor's name or identification mark; and
- g) The Contractor shall provide and maintain adequate security personnel to fulfill its obligations hereunder. The requirements of security measures shall include, but not be limited to, maintenance of law and order at the Site, provision of all lighting, guard, and all other measures necessary for protection of Works at the Site, all materials delivered to the Site and all persons employed in connection with the execution of the Works continuously throughout, including nights, Sundays and holidays, the duration of the Contract. However, in respect of parts of the Site in close proximity of traffic corridors where public and traffic are likely to come close to the work area, suitable barricading as directed by Employer's Representative shall be provided by the Contractor. It is clarified that separate payment for provision of security services shall not be made to the Contractor and shall be deemed to be included in the BOQ set out in the Pricing Document.

4.12.2 The Contractor shall take note of all the provisions of the HSE Conditions and the Contract Value shall be inclusive of all the necessary costs to meet the prescribed safety, health and Environmental Standards provided therein. In case, the Contractor fails to comply with the obligation contained herein, then the Employer shall be entitled to make the necessary arrangements and recover the costs from the Contractor. Persistent defaults or non compliance with the HSE Conditions shall be deemed to be a material breach and shall entitle the Employer to terminate the Contract pursuant to Clause 13.

4.12.3 The Contractor shall submit a detailed and comprehensive contract-specific Site safety plan and system safety assurance plan in accordance with the provisions of HSE Conditions and Employer's Requirements.

4.12.4 The Contractor shall, from time to time and as necessary or required by the Employer's Representative, produce supplements to the Site safety and system safety assurance plans such that they are at all times detailed, comprehensive and contemporaneous statements by the Contractor of its site safety measures, policies and procedures (under the laws of India) or as stated in the Contract.

4.12.5 If at any time the Site safety plan and/or system safety assurance plan is, in the opinion of the Employer's Representative, insufficient or requires revision or modification, the Employer's Representative may instruct the Contractor to revise the appropriate plan. The Contractor shall, within fourteen (14) days of receipt of communication from the Employer, submit the revised plan to the Employer's Representative for review.



4.12.6 The Employer's Representative's consent or rejection of the safety plans and/or supplements thereto shall be without prejudice to the Contractor's obligations with respect to safety measures required to be undertaken or implemented and shall not excuse any failure by the Contractor to adopt proper and recognized safety practices throughout the execution of the Works.

4.12.7 The Contractor shall provide all necessary access, assistance and facilities to enable the Employer's Representative or any other third party safety audit agency to carry out inspections to verify that the safety plans are being properly and fully implemented.

4.12.8 The Contractor shall ensure that the execution of the Works is carried out in such manner that there is no damage to or interference with :

- a) watercourses and drainage systems on and in the vicinity of the Site;
- b) utility services on and in the vicinity of the Site;
- c) structures (including foundations), roads, street fixtures, etc. on and in the vicinity of the Site;
- d) public or private, vehicular or pedestrian access routes and roads on and in the vicinity of the Site;

4.12.9 Items which are damaged or interfered with during the execution of the Works and items which are removed or diverted to enable the execution of the Works shall be reinstated to the satisfaction of the Employer's Representative to at least the same condition as existed before the execution of the Works. Any claims by utility agencies for damage of utilities by the Contractor shall be borne by the Contractor.

#### 4.13 **Protection of Environment and Ecological Balance**

4.13.1 The Contractor shall comply with all environmental and safety requirements stipulated in the Employer's Requirements and with all Applicable Laws applicable to the Project, including standards for noise and vibration levels and airborne and waterborne pollutants and the HSE Conditions. In the event of conflict or inconsistency among the standards stipulated in the Applicable Laws, HSE Conditions and those stipulated in the Contract, the more stringent of such standards shall apply.

4.13.2 The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to avoid injury, damage and nuisance to people and property resulting from pollution, noise and other effects of its operations in relation to the execution of the Works. The Contractor shall ensure that air emissions, surface and effluent discharges

from the Site during the execution of the Works shall not exceed the standards indicated in the Employer's Requirements, and shall not exceed the values prescribed by Applicable Laws. The Contractor shall be responsible and liable for any stoppage, closure or suspension of the Works due to any contravention of Applicable Laws relating to protection of environment and the Contractor shall indemnify and keep the Employer Indemnitees indemnified against all costs, expenses, charges, losses and damages that the any of the Employer Indemnitees may incur in this regard.

4.13.3 The Contractor shall prepare and develop the Site environmental plan in accordance with the HSE Conditions.

4.13.4 The Contractor shall prepare and develop an outline environmental plan in accordance with the provisions of the HSE Conditions and shall include in summary form, the Contractor's proposed means of complying with its obligations in relation to:

- a) The Site environment ; and
- b) System environment as described in Employer's Requirements.

4.13.5 Within thirty (30) days of the date of the Notice to Proceed, the Contractor shall submit a detailed and comprehensive environmental plan based on the outline environmental plan. The environmental plan shall include detailed policies, procedures and applicable regulations as per Employer's Requirements.

4.13.6 The Contractor shall provide all necessary access, assistance and facilities to enable the Employer's Representative or a third party such as environment auditor to monitor and conduct tests at Site to verify that the environmental plan is being properly and fully implemented.

4.13.7 In the event of the occurrence or suspected occurrence of an incident caused by the execution of the Works or otherwise by the activities of the Contractor which could, at any time, result in any environmental damage or damage to the Works, the Contractor shall:

- a) Immediately notify the Employer's Representative of such incident and shall comply with any instruction of the Employer's Representative relating to the incident;
- b) Take and complete promptly whatever action is required to prevent, mitigate or remedy any such environmental damage; and

- c) Investigate the incident, and following such investigation, report to the Employer's Representative the details of the incident and the cause and results of such incident.

4.13.8 The Contractor shall at its own cost and without any claim for monetary compensation or extension of time, comply with all the obligations under this Clause and with the instruction of the Employer's Representative for the protection of the environment.

4.13.9 The Contractor shall save harmless and indemnify and keep indemnified the Employer Indemnities in respect of all claims, proceedings, damages, costs, charges or expenses of whatsoever nature arising out of claims for environmental damage caused by the Execution of the Works or otherwise by the Contractor or in relation to any breach by the Contractor of its obligations under this Clause.

4.13.10 The Contractor shall maintain ecological balance by preventing deforestation, water pollution and defacing of natural landscape. The Contractor shall ensure execution of the Works in such manner so as to prevent any avoidable destruction, scarring or defacing of natural surrounding in the vicinity of the Site. In respect of ecological balance, the Contractor shall observe the following conditions:

- a) Where destruction, scarring, damage or defacing may occur as a result of the execution of the Works, the same shall be repaired, replanted or otherwise corrected at the Contractor's expense. The Site shall be smoothed and graded to conform to natural appearance of the landscape as directed by the Employer's Representative.
- b) All trees and shrubs, which are not specifically required to be cleared or removed for the Execution of the Works, shall be preserved and shall be protected from any damage that may be caused due to the execution of the Works. Special care shall be exercised where trees or shrubs are exposed to injuries by construction equipment, blasting, excavating, dumping, chemical damage, etc. The Contractor shall adequately protect such trees by use of protective barriers or other methods approved by the Employer's Representative. Trees shall not be used for anchorage and all injured trees and shrubs shall be restored, as nearly as practicable, without delay, to their original condition at Contractor's expenses.
- c) Excessive emission of dust into the atmosphere will not be permitted during manufacture, handling and storage of concrete aggregates materials and the Contractor shall use such methods and equipment as are necessary for collection

and disposal or prevention of dust during the execution of the Works. The Contractor's method of storing and handling cement shall also include means of eliminating atmospheric discharge of dust. Equipment and vehicles that give objectionable emission of exhaust gases shall not be operated at the Site by the Contractor.

**4.13.11 Bore Holes and Exploratory Excavations (if applicable)**

If the Employer's Representative so instructs in writing, the Contractor shall make bore holes and/or carry out exploratory excavations. The Contractor shall be paid for such work in accordance with the prices specified in the BOQ.

**4.13.12 Tools, Plants and Equipment**

Except for any specific items such as tools, plants and equipments mentioned in the Employer's Requirements, the Contractor shall provide and arrange for all tools, plants and equipment as may be required for the Execution of the Works. In respect of the items to be provided by the Employer, the Contractor shall satisfy itself that such items are in good working order and suitable for performing the work for which they are designed. The Contractor shall take all reasonable care of such items and shall be responsible for all damages or loss caused by it, its representatives, Subcontractors or its workmen or others while such items are in Contractor's possession.

4.13.13 On completion of the Works, the Contractor shall hand over the unused balance of the tools, plants and equipments, which were provided by the Employer, if any, to the Employer in good order and repair, fair wear and tear expected, and shall be responsible for any failure to account for such items or any damage done thereto. The decision of the Employer's Representative as to the amount recoverable from the Contractor for any such damage shall be final and binding.

**4.14 Employer's Materials**

Except for the materials to be provided by the Employer which are specifically mentioned in the Employer's Requirements, the Contractor shall provide all materials for the execution of the Works. Material if any, to be provided by Employer shall be provided only in a phased manner as per the Works Programme. The Contractor shall ensure that it complies with the terms and conditions relating to issue, upkeep, usage, return and recovery (if applicable) of unused materials as contained in the Contract or specified at the time of issuance of such material.

**4.15 Free Issue Materials & Material Accounting**

**4.16 Free Issue Materials**

Where Employer issues material/equipment 'Free of Charge' (i.e. Free Issue Items) to Contractor in order that Contractor may fulfill its obligations under the Contract, such material / equipment shall be, and shall remain, the property of Employer and shall be clearly labelled as such by Contractor until delivery of the completed Works in accordance with the terms of the Contract. The risk of loss in respect of all such Free Issue Items shall pass to Contractor upon receipt of such items by Contractor and remain with Contractor until delivery of the completed Works to Employer in accordance with the terms of the Contract. Contractor shall maintain all such Free Issue Items in good condition and shall use them solely in connection with the requirements of the Contract. Disposal of surplus items shall be in accordance with written instructions from Employer. Loss or damage to such items whilst in the possession of Contractor shall be made good at the expense of Contractor. Contractor shall insure all such Free Issue Items at their full replacement value against loss or damage for the period that such items are in the possession of Contractor and at Contractor's risk as detailed above. Contractor shall provide certificates of insurance showing Goods are insured at full replacement value.

Periodic accounting and reconciliation of Free Issue Items shall be undertaken by Contractor and reports furnished to Employer to ensure that material quantities, specifications and tolerances meet the overall requirements of the Contract.

Taxes, as applicable, will be paid by the Employer on the supply of free issues of material and / or equipment to the Contractor and such taxes would be recovered from the Contractor without any recourse to changes in the prices agreed.

**4.17 Material Accounting**

The Contractor shall reconcile all delivered Goods/Equipment as per BOQ with Employer. Any deficiency in quantity shall be supplied as per BOQ in schedule time under this Contract.

On completion of scope of Work under this Contract/Agreement, the Employer and Contractor agrees that the surplus Goods/Equipment are no longer required, provided quantity of such Goods/Equipment specifically stipulated under this Contract/Agreement shall be the property of the Employer whether or not incorporated in the commissioning of Project.

The Contractor shall remove from the Site such surplus Goods/Equipment sold by him in persuasion of the Contract, subject to the Contractor producing the necessary clearance from Employer and competent statutory authorities (GST, Customs, etc), if required by law, in respect of re-export/purchase of the surplus Goods/Equipment. The Contractor shall make the payment as per Contract or on advise by Employer for surplus Goods/Equipment The liability for the payment of the applicable Taxes/Duties including reversal of fiscal benefits if any, on the surplus Goods/Equipment so re exported / purchased shall be on part of the Contractor.

In case the laws require the Employer to take prior permission of the relevant authorities before handing over the surplus Goods/Equipment to the Contractor, the same shall be obtained by the Contractor at his own cost and risk, on behalf of the Employer.

The Contractor shall also indemnify the Employer harmless from any act of omission or negligence on the part of the Contractor in following the statutory requirements with regard to re export/purchase of surplus Goods/Equipment. The bank guarantee shall be furnished by the Contractor as per the format given by Employer.

In the event the Contractor is not able to procure and produce necessary clearance from the competent statutory authorities (GST, Customs, etc) in respect of re-export / purchase of the surplus Goods/Equipment, such surplus Goods/Equipment shall be handed over to the Employer and deposited at the Employers' stores at the Site.

#### 4.18 **Sheds, Stores, Yards**

It shall be the responsibility of the Contractor to provide at its own expense the required sheds, store houses, and yards for both Permanent and Temporary Works and provide free access to the Employer's Representative and the Employer's Representative's assistants who shall have the mright of inspection including that of instructing the Contractor to remove a particular Material from the stores and not to use the same for the Execution of the Works.

#### 4.19 **Temporary Works**

All Temporary Works necessary for the proper execution of the Works shall be provided and maintained by the Contractor at its own cost and subject to the consent of the Employer's Representative, shall be removed by the Contractor at its own expense when such Works are no longer required and in such manner as the Employer's Representative shall direct. In case the Contractor fails to remove the Temporary Works

on completion of the Works, the Employer's Representative is authorized to get such Temporary Works removed and recover the cost thereof from the Contractor or deduct such costs from the payments to be made to the Contractor.

#### **4.20 Unforeseeable Physical Conditions**

4.20.1 In this Clause, "physical conditions" means natural physical conditions, which the Contractor encounters at the Site while executing the Works excluding climatic conditions.

4.20.2 If, during the execution of the Works, the Contractor shall encounter physical conditions, which, in its opinion, could not have been reasonably foreseen by acting in accordance with Good Industry Practice, the Contractor shall forthwith give written notice thereof to the Employer's Representative and if, in the sole opinion of the Employer's Representative, such conditions could not have been reasonably foreseen by acting in accordance with Good Industry Practice, then the Employer's Representative shall grant reasonable extension of time for completion of the Works in accordance with Clause 9.4 if the situation remains unchanged for fifteen (15) days from the date of written notice to the Employer's Representative and during such fifteen (15) days, the Contractor shall have complied with the following:

- a) Any instruction which the Employer's Representative may issue to the Contractor in connection therewith; and
- b) Implement proper and reasonable measures which the Contractor may take in accordance with Good Industry Practice in the absence of specific instructions from the Employer's Representative, as a result of such conditions or obstructions being encountered.

4.20.3 It is clarified that any extension of time to be allowed to the Contractor shall be determined by the Employer's Representative in accordance with the provisions of Clause 9.4. The decision of the Employer's Representative as to any extension of time or any additional cost shall be final and binding.

#### **4.21 Access for Employer's Representative**

The Contractor shall allow the Employer's Representative or its assistant or any other person authorized by the Employer's Representative, access to the Site at all times, and to any place where work in connection with the Contract is being carried out or is intended to be carried out and to any place where Materials or Plant are being manufactured, fabricated, constructed and/or assembled for the Works, during usual

working hours and beyond usual working hours, upon prior intimation. The Contractor shall ensure that the Subcontracts, if any, shall contain provisions entitling the Employer's Representative or any person authorized by him to have such access.

#### **4.22 Contractor to keep Site Clear**

4.22.1 During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction. The Contractor shall clear away and remove from the Site any wreckage, debris or rubbish no longer required for the execution of the Works. After the execution of the Works, the Contractor shall restore the Site to the original condition existing before the commencement of the Works.

4.22.2 The Contractor should leave the whole of the Site and the Works in a clean, tidy and workman like condition to the satisfaction of the Employer's Representative.

4.22.3 On completion of the Works, the Contractor shall also clear away the labour camps, hutments and other related installations and restore the Site to its original condition to the satisfaction of the Employer's Representative within forty five (45) days of the physical completion of the Works. The cost on account of delay in return of Site and reinstatement of original condition within the stipulated time as determined by Employer's Representative shall be recovered and adjusted from the Contractor's dues.

4.22.4 No final payment in settlement of the accounts for the Works shall be made or held to be due to the Contractor, till, in addition to any other condition necessary for such final payment, Site clearance and clearances of labour camps, etc., shall have been carried out by the Contractor. Such clearance may be made by the Employer's Representative through any other agency at the expense of the Contractor in the event of the Contractor's failure to comply with the above provision within seven (7) days after receiving notice to that effect from the Employer's Representative. All expenses on such removal/clearance shall be recovered from the Contractor as debt due from the Contractor to the Employer, and the Employer shall be competent to recover the same from Contractor's Running Bill or from performance bank guarantee amount or from any other amount payable to the Contractor in any other contract.

#### **4.23 Security of the Site**

4.23.1 The Contractor shall be wholly responsible for security of the Site and the Works. Unless otherwise stated in the Contract:

- (a) The Contractor shall be responsible for keeping unauthorized persons off the Site;
- and (b) Authorized persons shall be limited to the employees, workmen or consultant or



representative of the Contractor and its Subcontractor or persons authorized by the Employer's Representative.

**4.24 Contractor's Operations on Site**

4.24.1 The Contractor shall confine its operations to the Site, and to any additional area which may be provided to the Contractor and agreed by the Employer's Representative as working area. The Contractor shall take all necessary precautions to keep its personnel and equipment within the Site and such additional areas, and restrain itself from encroaching on adjacent land.

**4.25 Publicity**

The Contractor shall not publish or otherwise circulate alone or in conjunction with any other person, any articles, photographs or other materials relating to the Contract, the Site, the Works, the Project or any part thereof, nor impart to the press, or any radio or television network or any electronic media agency, any information relating thereto, nor allow any representative of the media access to the Site, Contractor's Works areas, or off-Site place of manufacture, or storage except with the prior permission, in writing, of the Employer's Representative. The Contractor shall ensure that its Subcontractors of any tier shall be bound by a like obligation and shall, if so required by the Employer, enforce the same at its own expense. The provisions of this Clause shall not exempt the Contractor from complying with Applicable Laws with respect to taking and publishing photographs. The Contractor shall not display or put any notice board on or near the Site except as required under the Employer's Requirements and with the prior written approval of the Employer's Representative.

**4.26 Disclosure of Relationship**

The Contractor acknowledges that the Contractor or any partner of the Contractor or director of the Contractor is not related to any of the officers of the Employer or the Employer's Representative, or alternatively, is a close relative of an officer of the Employer or the Employer's Representative and has no financial interest/stake in the Employer's business. The Parties agree that breach of the above provisions shall entitle the Employer to terminate the Contract under Clause 13, without payment of any compensation to the Contractor. The Contractor agrees and acknowledges and shall ensure that its employees, directors and partners do not develop any such interest during the Contract Period.

#### 4.27 Confidentiality /Secrecy

4.27.1 The Contractor shall hold in strict confidence, all know-how, data, information and records received by it from the Employer or the Employer's Representative, and marked or identified as such and shall not disclose any such information to third parties without the prior written approval of the Employer's Representative or render any service to a third party based on such know-how, data, information and records received by it under the Contract.

4.27.2 The Contractor shall bind its affiliate, Subcontractor, its officers, directors, employees, agents, consultants and representatives and shall take all measures to observe the obligations of nondisclosure of data, information and records received by it from Employer or Employer's Representative to third parties.

4.27.3 The obligations of non-disclosure under this Clause shall not apply to such data, information and records which at the time of the disclosure or thereafter:

(a) Become a part of public knowledge or literature through no act or omission by the Contractor or Subcontractor or their employees, officers, directors, consultants or representatives; or (b) Had been independently prepared by the Contractor or were otherwise in the Contractor's lawful possession prior to the disclosure as shown by written records; or

(c) Are hereafter disclosed to the Contractor by a third party who has the lawful right to disclose such information to the Contractor; or (d) Required to be disclosed to comply with Applicable Laws or the direction/ order of any competent Court of law provided that the Contractor shall immediately inform the Employer of such disclosure obligation and disclose only such part of the information as may be reasonably required and necessary.

4.27.4 The Employer's obligation in respect of non-disclosure of confidential know-how, data, information and records received by the Employer from the Contractor and identified as such, shall mutatis mutandis, be the same as provided in Clause 4.25.1, Clause 4.25.2 and Clause 4.25.3. The Contractor shall have the right to use its own procedures, data, information and records (other than those received by it or from the Employer or developed by it specifically for the Employer), for its other clients.

4.27.5 The Contract or any part thereof or any subject matter covered thereby shall not be disclosed by the Contractor except with the prior written consent of the Employer. However, the Contractor may disclose the Contract or any part thereof covered thereby

and/or required by Applicable Law, to governmental agencies for the purpose of receiving necessary permits or tax rebates.

4.27.6 The provisions of this Clause 4.25 shall survive termination of the Contract and be in force for a period of three (3) years after the termination/expiry of the Contract. In addition to any other remedy hereunder, the Employer shall be entitled to seek equitable remedies, including injunctive relief, in the event of any breach of the obligations of this Clause by the Contractor.

#### 4.28 **Corrupt or fraudulent practices**

4.28.1 The Employer requires that the Contractor observe the highest standards of ethics during the execution of the Works and performance of the Contract. In pursuance with this policy, the Employer defines, for the purpose of this Clause 4.26, the terms set forth below as follows:

- a) “**corrupt practice**” means the offering, giving, receiving or soliciting of any thing of value to the Employer, Employer’s Representative or any of their employees, in relation to the performance of the Contract; and
- b) “**fraudulent practice**” means a misrepresentation of facts in order to influence a procurement process or the performance of the Contract to the detriment of the Employer, and includes collusive practice among tenderers (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

4.28.2 The Employer may forthwith terminate the Contract under Clause 13 if the Employer determines that the Contractor has engaged in corrupt or fraudulent practices.

4.28.3 In the event of termination of the Contract under Clause 13, the Contractor shall not be entitled to any compensation whatsoever, except for the Works done up to the date of termination of the Contract.

#### 4.29 **Liability of Contractors**

4.29.1 Subject to the due discharge of its obligations under the Contract and except in case of gross negligence or willful misconduct on the part of the Contractor or on the part of any person acting on behalf of the Contractor, with respect to any loss or damage caused by the Contractor to the Employer’s property or the Site, the Contractors shall not be liable to the Employer for the following:

- a) For any indirect or consequential loss or damage; and

- b) For any direct loss or damage that exceeds:
  - (i) The total payments made and expected to be made to the Contractor under the Contract including reimbursements, if any; or
  - (ii) The insurance claim proceeds which the Contractor may be entitled to receive from any insurance purchased by the Contractor to cover such a liability, whichever is higher.

4.29.2 This limitation of liability shall not affect the Contractor's liability, if any, for damage to any third party, caused by the Contractor or any Person or firm acting on behalf of the Contractor in executing the Works.

4.29.3 Notwithstanding anything contained in the Contract, the Contractor shall not be liable for any gross negligence or willful misconduct on the part of the Employer or any of its affiliates, any Contractor, or any party, other than Contractor and/or, its directors, officers, agents or representatives or its affiliates, or Subcontractor, or the Contractor or any third party engaged by it.

4.29.4 Notwithstanding anything contained in the Contract, including but not limited to approval by the Employer of any drawings, documents, Contractor list, supply of information or data or the participation of the Employer in any meeting and/or discussion or otherwise, shall not absolve the Contractor from any of its liabilities or responsibilities arising in relation to or under the Contract.

#### 4.30 **Accounting, Inspection and Auditing**

4.30.1 The Contractor shall:

- a) Maintain wherever required, accurate and systematic accounts and records in respect of the Works hereunder, in accordance with internationally accepted accounting principles and in such form and detail as shall clearly identify all relevant time, charges and cost, and basis thereof, and
- b) If required by the Employer's Representative, permit the Employer or Employer's Representative or its designated representative, periodically, and up to one (1) year from the expiration or termination of the Contract, to inspect the same and make copies thereof.
- c) whenever required by the Employer's Representative produce for examination any invoice, quotation, cost or other account books, vouchers, receipts, letters,

memoranda or any copy or extract from any such document and also furnish information and returns as may be required relating to the execution of the Works.

**4.31 Contractor's actions requiring Employer's prior approval**

The Contractor shall obtain the Employer's prior written approval before taking any of the following actions:

- a) Removal of members of staff as provided in Clause 7.16;
- b) Subject to Clause 4.5.1(a), entering into a subcontract for the execution of any part of the Works it being understood:
  - (i) That the selection of the Subcontractor and the terms and conditions of the Subcontract shall have been approved in writing by the Employer prior to the execution of the part of the Works by the Subcontractor; and
  - (ii) That the Contractor shall remain fully liable for the execution of the Works by the Subcontractor and its personnel pursuant to the Contract.

**4.32 Documents prepared by the Contractors**

4.32.1 The Contractor acknowledges and agrees that all plans, drawings, specifications, designs, reports and other documents prepared by the Contractor in relation to the execution of the Works shall be and shall remain the property of the Employer and the Contractors shall before the expiry or termination of the Contract (whichever is earlier) deliver all such documents to the Employer, together with a detailed inventory thereof.

4.32.2 The Contractor may retain a copy of such documents subject to the restrictions as may be placed by the Employer with regard to the future use of the documents. For the sake of clarity, it is expressly agreed between the Parties that the Contractor shall not use these documents as specified in this Clause 4.30.2 for any purpose unrelated to the Contract without the prior written approval of the Employer.

**4.33 Good Faith**

4.33.1 The Parties undertake to act in good faith with respect to each other's rights under the Contract and to adopt all reasonable measures to ensure that the Project is completed within the Time for Completion.

4.33.2 The Parties recognize that it is impractical in the Contract to provide for every contingency, which may arise during the Contract Period, and the Parties hereby agree

that it is their intention that the Contract shall operate fairly as between them, and without detriment to the interest of either of them.

#### 4.34 **Avoidance of Damage**

4.34.1 While transporting any Plant and Material or any other equipment, the Contractor shall comply with Applicable Laws and take all steps necessary to ensure that roads, viaducts and bridges on any route leading to the Site, including access and link roads to the Site as well as any third party properties, are not damaged.

4.34.2 In case transportation of any Plant, Material or equipment by the Contractor is likely to cause damage to any road, viaduct or bridge on any route leading to the Site, including access and link roads to the Site and any third party property, it shall inform the concerned statutory authorities before transporting such Plant, Material or equipment and obtain all necessary approvals and permits from the relevant statutory authorities as may be required, or give its proposal for strengthening such roads, viaducts or bridges. Any cost incurred in this regard shall be borne by the Contractor.

#### 4.35 **Spare Parts for Critical Equipments**

The Contractor shall at all times ensure that the spare parts, backup and contingency plans are there in place for all the critical equipments/plants/vehicles to ensure that the Execution of the Works is not delayed or suffered due to any breakdown or defect in such equipment/ plant/vehicles.

#### 4.36 **Contractor's Office**

The Contractor shall establish an office at Site in consultation with the Employer's Representative for planning, designs, co-ordination and monitoring the progress of the Execution of the Works and intimate the same in writing to Employer's Representative. The office shall be headed by a qualified person whose credentials shall be approved by the Employer's Representative.

#### 4.37 **Cash Flow Estimate**

The Contractor shall furnish to the Employer's Representative, a detailed cash flow estimate in respect of the Execution of the Works within one (1) week from the date of execution of the Contract for the ensuing two months of execution of the Works, in advance, showing the details of cash outflow towards material, cement, steel, fuel/ lubricants, labour, rent/lease of machinery, consultancy services, capital expenditure, financial charges, etc. and any other miscellaneous overheads payments in relation to

the execution of the Works. The detailed cash flow estimate shall also reflect the source of cash inflow for funding the expenses set out in the cash flow estimate. The detailed cash flow estimate shall be up-dated and submitted to the Employer's Representative every two (2) months thereafter till the completion of the Works.

#### **4.38 Cutting and Transplanting of Trees**

The Contractor shall be handed over the Site, free of trees which could obstruct the execution of the Works. However, if during the course of the execution of the Works, any trees are required to be cut to facilitate the execution of the Works, then the Contractor shall be responsible for the cutting of such trees in accordance with Applicable Laws. If the Contractor is required to cut any trees as aforesaid, the Contractor shall be entitled to be paid in respect thereof as per the rates set out in the BOQ.

#### **4.39 Site Laboratories**

The Contractor shall provide, erect and maintain in a clean, stable and secure condition, a laboratory, equipped for the routine testing of concrete, soil and rock samples and for the storage and curing of concrete cubes or cylinders. This laboratory shall be located at a location agreed to by the Employer's Representative and the requirements of such laboratory shall be in conformity with the Employer's Requirements.

#### **4.40 Provision and Disposal of Earthwork and Materials**

4.40.1 The Contractor shall be responsible for the provision of all classes of earthworks material required in relation to the execution of the Works, whether sourced from the excavations of the Contractor or obtained from any other source located outside the Site, for which the Employer's Representative has given its written consent.

4.40.2 Within thirty (30) from the date of issue of the Notice to Proceed, the Contractor shall identify and present to the Employer's Representative approval, one or more suitable filling and/or dumping site for the purpose of dumping and/or filling of excavated materials from the Site. The Contractor shall prepare a land plan in relation to those filling and/ or dumping sites, with details of surface drainage requirements, final formation levels and arrangements for spreading and compaction of the fill during dumping as acceptable to the Employer's Representative. The Contractor shall also provide appropriate security for such fill and dumping sites.

4.40.3 All excavated materials from the Site, excluding waste material, bentonite fluid and bentonite contaminated material, shall be disposed off at the dumping/filling Sites specifically approved by the Employer's Representative, in writing. Such material shall be

placed and compacted in accordance with the Employer's Requirements or as otherwise directed by the Employer's Representative. The disposal of waste material, bentonite fluid and material contaminated with bentonite shall be the full responsibility of the Contractor and these materials shall be disposed of by the Contractor only at the locations approved by the Employer's Representative in writing and in accordance with the provisions of all Applicable Laws. It is clarified that it shall be the responsibility of the Contractor to identify the necessary dumping/filling site(s) and obtain all approvals, permits, licenses, etc. as may be required under Applicable Laws in respect of such dumping/filling site(s) and no additional costs shall be payable to the Contractor in this regard.

4.40.4 The Contractor shall ensure that the rock deposited as fill material at the dumping sites shall be capable of compaction with single pieces no larger than 300 mm.

**4.41 Record of Works**

The Contractor shall make requisite provisions for recording progress of the execution of the Works and provide a detailed record (as per Employers requirement) covering all aspects of the execution of the Works from the Commencement Date till the completion of the Works.

4.42 The Contractor will pass on all benefits accruing to the Employer, at no additional cost, on account of value engineering done during the course of contract

**4.43 Training (Wherever Applicable)**

Contractor shall provide training to Employer's personnel according to a mutually agreed training program. Such training services shall be provided at no additional cost, including but not limited to boarding and lodging costs for trainers, to Employer. The scope and nature of the training services shall be agreed between the Parties at the relevant time.

Contractor shall also provide study material and comprehensive question bank relating to AMC services. Based on the study material and question bank provided by the Contractor, the Contractor shall conduct online tests as per pre agreed schedule to assess learning of the Employer's employees/representatives. Failure to provide study material/question bank and conduct online tests shall result in deduction of 20% of Net Price as penalty.

**4.44 Contractor Code of Conduct**



Contractor shall be liable to adhere to the Contractor Code of Conduct, attached hereto as Annexure 1 (“Contractor Code of Conduct” and hereinafter referred to as “Code”) of the Contract and shall be liable to comply with the following procedure/ mechanism in regard to the said Code.

## **5. Employer’s Support**

- 5.1 The Employer shall review the Contractor's Documents and provide all access and information required by the Contractor, with respect to the execution of the Works within a reasonable period of time under the circumstances, so as not to cause any delay to the Contractor for executing the Works, provided that the Contractor has provided to the Employer, all necessary Contractor's Documents and reasonable time for their review.
- 5.2 The Employer shall review the Contractor's Documents, in a timely manner so as not to delay the execution of the Works and shall not unreasonably delay or withhold its approval wherever the Contract requires the Contractor to obtain such approval for any of the Contractor's Documents.

## **6. Design**

### **6.1 General Obligations**

- 6.1.1 One (1) copy of the Employer's Requirements along with "good for construction" drawings in relation to the Works shall be supplied to the Contractor by the Employer prior to the commencement of the Execution of the Works. Detailed working drawings for the execution of the Works shall be provided to the Contractor during the execution of the Works.
- 6.1.2 All Temporary Works (such as formwork, false work, staging, launching girder, cantilever form, traveler scheme, etc.) shall be designed by the Contractor. The permissible stresses in materials of framework, false work, staging, launching girder and cantilever form traveler shall be the same as for Permanent Works. All calculations and Drawings and Designs of the same, including construction sequence shall be checked and verified by the Contractor through an independent agency appointed by the Contractor. After the verification of all calculations and Drawings and Designs as aforesaid, the calculations and Drawings and Designs shall be submitted to Employer's Representative for its approval well in advance of the commencement of the execution of the Works. All Temporary Works shall be also inspected by the independent agency appointed by the Contractor who shall then submit an independent report to the Employer's Representative. All Temporary Works shall be constructed in such manner so as to

ensure that concrete can be properly placed and thoroughly compacted to obtain the required shape, position and level, subject to specified tolerances. It is the responsibility of the Contractor to obtain the results required by the Employer's Representative, irrespective of the fact that some part(s) of the Works will be executed by Subcontractors. Approval of any Temporary Works by the Employer's Representative shall not absolve the Contractor of its responsibility for the satisfactory execution of the Works, nor for the safety and co-ordination of all operations in relation to the execution of the Works.

6.1.3 All Drawings and Designs, assumptions, calculations, schedules, patterns, models and other relevant information provided by the Contractor or as may be required under the Employer's Requirements or as may be required by the Contractor for the execution of the Works, shall be submitted to the Employer's Representative for acceptance prior to implementation. Any acceptance by the Employer's Representative shall not however relieve the Contractor of any of his responsibilities for the accuracy, suitability, adequacy, performance and practicality of any such Design and Drawings, assumptions, calculations, schedules, patterns, etc. and any subsequent amendment thereof. The cost of all necessary remedial works in relation to any Temporary Works and/ or Permanent Works required as a result of any inaccuracy, inadequacy or impracticality in the Contractor's proposals and any subsequent amendments at any time during and after the execution of the Works, shall be the entire responsibility of and shall be borne by the Contractor.

## 6.2 **Contractor's Documents**

6.2.1 The Contractor's Documents shall be in the custody and care of the Contractor during the Contract. The Contractor shall keep on the Site, one (1) complete set of all relevant documents, including the Contract and all documents relating to Variations, other communications given or issued from time to time under the Contract and all Contractor's Documents approved by the Employer's Representative. The Employer, the Employer's Representative and his assistants shall have the right to access these documents at all reasonable times.

6.2.2 On discovery of any technical error or defect in a document intended to be used for the purpose of the Contract, the Contractor shall promptly give notice to the Employer's Representative of such error or defect. The Employer's Representative shall, if required, issue necessary instructions and the Contractor shall rectify such error or defect upon such instructions of the Employer's Representative.

- 6.2.3 The Contractor's Documents shall be prepared in sufficient detail and shall satisfy all regulatory approvals. The Employer's Representative shall have the right to inspect the preparation of the Drawings and Designs, wherever they are being prepared.
- 6.2.4 Each of the Contractor's Documents shall, when considered ready for use, be submitted to the Employer's Representative for his review. Unless otherwise stated in the Employer's Requirements or elsewhere in the Contract, each review by the Employer's Representative shall not exceed thirty five (35) days, calculated from the date on which the Employer's Representative receives the Contractor's Documents ("**Review Period**"). Provided that where any approval of such documents is contingent on receipt of approval from OWNER or the Consultant and the same is not received within the Review Period, the Review Period shall be extended. It is clarified for the avoidance of doubt that the Contractor shall not be entitled to any extension of time or any additional costs for the delay in approving any of the Contractor's Documents as aforesaid.
- 6.2.5 If the Employer's Representative during the Review Period, gives notice to the Contractor that a Contractor's Document fails (to the extent stated) to comply with the Employer's Requirements, it shall be rectified, resubmitted and reviewed (and if specified, approved) by the Employer's Representative, at the Contractor's cost within such time as the Employer's Representative may specify to the Contractor.
- 6.2.6 In the case of a Contractor's Document which has been submitted for the Employer's Representative's review:
- a) The Employer's Representative shall communicate to the Contractor, any of the following remarks in relation to each of the Contractor's Documents: (i) comments, (ii) no comments, and (iii) resubmit;
  - b) The remarks "no comments" and/ or "comments" shall enable the Contractor to proceed on the basis of the Contractor's Document if the Contractor fully addresses the comments made by the Employer's Representative. Where any Contractor's Document is marked "resubmit", the Contractor shall revise and modify such Contractor's Document on the basis of the comments provided by the Employer's Representative and resubmit such revised and modified Contractor's Document; and (c) Unless the Employer's Representative has communicated its remarks during the Review Period, the Employer's Representative shall be deemed to have provided its no objection to the Contractor's Documents upon the expiry of the Review Period.

- 6.2.7 Construction and/or installation of such part of the Works shall not commence prior to the expiry of the Review Period for Contractor's Documents which are relevant for the execution of the Works;
- 6.2.8 If the Contractor wishes to modify any Contractor's Document which has previously been submitted for such pre-construction review, the Contractor shall immediately notify the Employer's Representative, and based on Employer's Representative's approval, shall subsequently submit revised Contractor's Documents to the Employer's Representative.
- 6.2.9 If the Employer's Representative instructs that further Contractor's Documents are required to be submitted by the Contractor which are necessary for carrying out the Works, the Contractor shall promptly and at Contractor's cost prepare such documents.
- 6.2.10 If any errors, omissions, ambiguities, inconsistencies, inadequacies and other defects are found in the Contractor's Documents at any time, then such errors, omissions, ambiguities, inadequacies or other defects shall be rectified by the Contractor at its own cost and any approval or consent or review by the Employer's Representative of the Contractor's Documents shall not relieve the Contractor from any obligations or responsibility under the Contract.
- 6.2.11 Notwithstanding anything contained in this Contract in relation to the Contractor's Documents, the Contractor shall be fully responsible for the adequacy of the Contractor's Documents for the execution of the Works, any failure of the Contractor to comply with the Contract, or otherwise, for any ambiguity, inconsistency, deficiency, lack of fitness for purpose, errors and/ or omissions in such Contractor's Documents.

**6.3 Technical Standards and Regulations**

- 6.3.1 The Contractor's Documents (including Drawing and Designs) shall comply with the specifications, technical standards, building construction, safety and environmental regulations and other standards specified in the Employer's Requirements applicable to the Works and/or defined by the Applicable Laws.

**6.4 As-Built Drawings and Documents**

- 6.4.1 The Contractor shall prepare, and keep up to date, a complete set of "as-built" records of the execution of the Works, showing the exact "as-built" locations, sizes and details of the Works as executed, with cross references to relevant specifications and data sheets. These records shall be kept on the Site and shall be used exclusively for the purposes of this Contract. Six (6) hard copies of such "as built" records, along with a soft copy of such "as built" records shall be submitted to the Employer's Representative prior to the

commencement of the Tests on Completion to be carried out in accordance with the Contract.

6.4.2 In addition, the Contractor shall prepare and submit to the Employer's Representative "as-built drawings" of the Works, showing all Works as executed by the Contractor. The drawings shall be prepared as the Works proceed, and shall be submitted to the Employer's Representative for his review and inspection. The Contractor shall obtain the consent of the Employer's Representative as to their size, the referencing system, and other pertinent details.

6.4.3 Prior to the issue of any Provisional Taking Over Certificate, the Contractor shall submit to the Employer's Representative one soft copy, one full-size original copy and six (6) printed copies of the relevant "as-built drawings", and any further Contractor's Documents specified in the Employer's Requirements. The Works shall not be considered to be completed and the Provisional Taking Over Certificate shall not be issued until the documents referred above have been submitted to the Employer's Representative.

#### 6.5 **Maintenance Manuals (if applicable)**

6.5.1 The Contractor shall prepare and submit to the Employer's Representative, the Maintenance Manuals in accordance with the Employer's Requirements and in sufficient detail for the Employer to maintain, adjust and repair the Works. The Contractor shall not be entitled to receive any Provisional Taking Over Certificate unless the Maintenance Manuals have been submitted to the Employer's Representative and received his consent.

6.5.2 The Maintenance Manuals submitted by the Contractor shall, if required, be updated by the Contractor during the Defects Liability Period and re-submitted for review by the Employer's Representative.

#### 6.6 **Intellectual Property Rights and Royalties**

6.6.1 The Contractor shall indemnify the Employer Indemnitees from and against all claims and proceedings on account of infringement (or alleged infringement) of any patent rights, registered designs, copyright, design, trademark, trade name, know-how or other intellectual property rights (hereinafter collectively referred to as "**Intellectual Property Rights**") in respect of the Works, Contractor's Equipment, machines, Works method, Plant, Materials, or anything whatsoever required for the execution of the Works and from and against all claims, demands, proceedings, damages, costs, charges and expenses

whatsoever in respect thereof or in relation thereto. In the event of infringement of any Intellectual Property Rights of any third party as a result of the execution of the Works (or any part thereof) by the Contractor, the Contractor shall rectify, modify or replace, at its own cost, the Works, Plant or Materials or anything whatsoever required for the Works so that infringement ceases to exist or, in the alternative, the Contractor shall procure necessary rights/ licenses from the affected third party so that there is no infringement of Intellectual Property Rights.

6.6.2 The Contractor shall be promptly notified of any claim made against any Employer Indemnatee. The Contractor shall, at its cost, conduct negotiations for the settlement of such claim, and any litigation or arbitration that may arise from it. The Employer Indemnitees shall not make any admission which might be prejudicial to the Contractor, unless the Contractor has failed to take over the conduct of the negotiations, litigation or arbitration within a reasonable time after having been so requested. In the event of Contractor failing to act at the Employer's Representative's notice, the Employer shall be at full liberty to deduct any such amount of pending claim from any amount due to the Contractor under the Contract or any other contract and the balance portion of claim shall be treated as debt due from the Contractor.

6.6.3 All Intellectual Property Rights in respect of any Plant, Materials, Drawings and Designs, plans, documents, specifications, data, materials, know how, charts, information, etc., provided to the Contractor by the Employer pursuant to this Contract for the execution of the Works, belongs to and shall continue to belong to the Employer and the Contractor shall not have any rights in the same other than the limited right for its use for the purpose of execution of the Works.

6.6.4 Intellectual Property Rights in respect of any Plant, Materials, Drawings and Designs, plans, calculations, drawings, documents, know-how and information relating to the Works which are proprietary to the Contractor and/ or its third party licensors ("**Contractor's IPR**") shall continue to vest with the Contractor and/ or its third party licensors and the Contractor shall grant and/ or procure from its third party licensors, at its own cost, a worldwide, perpetual, royalty free, nonexclusive license (along with the right to sub-license) to use and reproduce such Contractor's IPR for the use, operation, maintenance and repair of the Works.

6.6.5 If any patent, trademark, trade name, registered design or software is developed by the Contractor or its Subcontractor specifically for the execution of the Works, then all Intellectual Property Rights in respect of such design, trademark, trade name or software

shall be the absolute property of the Employer and shall not be utilized or retained by the Contractor (or its Subcontractors) for any purpose other than with the prior written consent of the Employer.

- 6.6.6 If the Contractor uses proprietary software (whether customized or off the shelf) for the purpose of design, construction, reconstruction, manufacture, installation, completion, reinstatement, extension, repair, storing or utilizing records, and operation of the Works, the Contractor shall obtain at its own expense, the grant of a worldwide, royalty-free, perpetual licence or sublicense (including the right to sublicense) to use such software, in favour of the Employer provided that the use of such software under the licence or the sublicense may be restricted to use any such software only for the design, construction, reconstruction, manufacture, installation, completion, reinstatement, extension, repair and operation of the Works or any part thereof.
- 6.6.7 If any software is used by the Contractor for the execution of the Works over which the Contractor or a third party holds pre-existing title or other rights, the Contractor shall obtain for the Employer, a worldwide, royalty free, perpetual license for the right to use and apply that software (together with any modifications, improvements and developments thereof).

## **7. Staff and Labour**

### **7.1 Engagement of Staff and Labour**

- 7.1.1 The Contractor shall at its own cost make arrangements for the engagement of staff and labour for the execution of the Works and shall as a part of the Quality Plan provide them with training on the execution methodology before deploying them at site.
- 7.1.2 The Contractor shall provide the aforesaid training to the staff and labour by showing them movie clips on regular basis, the scope and quality of which should be such as ensure that the workmen have a comprehensive understanding of the execution methodology.
- 7.1.3 The Contractor shall, if required by the Employer's Representative, deliver to the Employer's Representative or his assistant, a report in detail, in such form and at such intervals as the Employer's Representative may prescribe, showing the number of labour employed in different categories by the Contractor on the Site.

### **7.2 Rates of Wages and Conditions of Labour**

7.2.1 The Contractor shall comply with all Applicable Laws in relation to workers employed by it and ensure the same for labour employed by its Subcontractor. The Contractor shall pay rates of wages and observe conditions of labour not less favourable than those established for the trade or the industry where work similar to the Works is carried out.

7.2.2 The Contractor shall make itself aware of all labour regulations and their impact on the cost and build up the same in the Contract Value. Subject to Clause 12 and Clause 20, during the Contract Period no extra amount in this regard shall be payable to the Contractor, for whatsoever reason including any revision of rates payable to the labourers due to revision of rates payable under the Minimum Wages Act, 1948.

7.2.3 In the event of default being made in the payment of any money in respect of wages of any person employed by the Contractor or any of its Subcontractor of any tier in and for carrying out of the Contract and if a claim thereof is filed in the office of the labour authorities and proof thereof is furnished to the satisfaction of the labour authorities, the Employer may, failing payment of the said money by the Contractor or the Subcontractor, as the case may be, make payment of such claim on behalf of the Contractor, to the said labour authorities and any sums so paid shall be recoverable by the Employer from the Contractor.

### 7.3 **Persons in the service/ retired of Employer/ Employer's Representative**

7.3.1 The Contractor shall not recruit or attempt to recruit, staff and labour who are in service/retired from the Employer and the Employer's Representative's personnel.

7.3.2 Any non compliance of the provisions of Clause 7 shall entitle the Employer to terminate the Contract and the Contractor shall have no claim whatsoever against the Employer except for actual value of the Works executed till the date of termination as calculated in accordance with the provisions of this Contract.

### 7.4 **Labour Laws**

7.4.1 In dealing with labour and employees, the Contractor and its Subcontractors (including piece rate and petty contractors) shall comply fully with all Applicable Laws as may be applicable for the employment of labour.

### 7.5 **Working Hours**

The Contractor, if required by the Employer, shall carry out the execution of the Works for all twenty four (24) hours in a day, seven days a week, in up to three shifts a day and in all weather conditions (other than weather conditions which would amount to Force



Majeure) and the Contractor shall take all such steps as may be necessary to prevent damage to the Works due to any such weather conditions. No increase in rates or extra payments shall be admissible in case the Employer requires the Contractor to carry out the execution of the Works for all twenty four (24) hours of the day. The Contractor shall provide adequate lighting and safety arrangements and shall comply with all Applicable Laws in this regard.

## **7.6 Facilities for Staff and Labour**

7.6.1 The Contractor shall provide and maintain all necessary accommodation and welfare facilities (including drinking water and canteens) as stipulated in the Employer's Requirements and/or Applicable Laws for its (and its Subcontractor's) staff and labour. The Contractor shall also provide the facilities specified in the Employer's Requirements, for the Employer and Employer's Representative's personnel. All accommodation shall be maintained in a clean and sanitary condition, by the Contractor at its own cost.

7.6.2 The Contractor shall provide latrines and wash places for the use of its personnel and for the use of all persons on the Site. The size and number of latrines and wash places shall be in proportion with the numbers of persons entitled to be on the Site, with separate facilities for women and men. The capacities and layout of latrines and wash places shall be subject to the written approval of the Employer's Representative. The Contractor shall arrange regular disposal of effluent and sludge in accordance with Applicable Laws.

7.6.3 The Contractor shall be responsible for maintaining all latrines and wash places on the Site in a clean and hygienic condition and for ensuring that they do not pose a nuisance or a health threat on the Site. The Contractor shall also take such steps and make such provisions as may be necessary or directed by the Employer's Representative to ensure that vermin, mosquito breeding etc. are controlled at all times.

7.6.4 The Contractor shall as a part of equal labour facility program provide housing, crèche facility, schooling for children, clinic and other facilities, for all the labourers working for the Project and such other facilities as may be stipulated by the Employer.

7.6.5 The Contractor shall make arrangements for all daily need items/ house-hold items required by its staff, labour and workmen to be provided within the close vicinity of the project in order to achieve optimum output from the resources/ specific nature tools & plan deployed at site.

7.6.6 The Contractor in order to bring right motivation in the staff and labour engaged for the works shall make necessary arrangements at its own cost for such audio and visual

media including playing or encouraging motivational songs in the labour colonies/camps to ensure that the motivation and morale of the staff and labour shall be such that it will enhance their efficiency and productivity.

## **7.7 Health and Safety**

7.7.1 Utmost precaution shall be taken by the Contractor to ensure the health and safety of its staff and labour. The Contractor shall, in collaboration with and in compliance with the requirements of the local health authorities, ensure that medical staff, first aid facilities, sick bay and ambulance service are available on the Site at all times, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as per the Employer's Representative's requirement and shall ensure complete compliance with relevant provisions of HSE Conditions.

7.7.2 The Contractor's Site safety plan shall be developed from the outline safety plan submitted by the Contractor along with the Tender and shall comply with the Employer's Requirements and the HSE Conditions.

7.7.3 As required under the HSE Conditions, the Contractor shall appoint a qualified health and safety officer at the Site to be responsible for maintaining the safety, and protection against accidents, of personnel on the Site. Such person shall be qualified for his work, have necessary experience with no track record of any major accident and shall have the authority to issue instructions and take protective measures to prevent accidents.

7.7.4 The Contractor shall provide and maintain adequate fire fighting equipment and take adequate precaution from the risk of fire at the Site, for the safety of all personnel, Temporary Works and Permanent Works. The Contractor shall also take all necessary precautions to prevent damage to or destruction of trees and shrubs on the Site.

## **7.8 Contractor's Superintendence**

The Contractor shall provide all necessary superintendence during the execution of the Works, and for as long as the Employer's Representative may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. Such superintendence shall be provided by sufficient persons having adequate knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) for the satisfactory and safe execution of the Works.

## 7.9 **Provision of Efficient and Competent Staff**

7.9.1 The Contractor shall employ (or cause to be employed) only persons who are appropriately qualified, skilled and experienced in their respective trades or occupations. The Employer's Representative may require the Contractor to remove (or cause to be removed) any person employed on the Site or the Works, including the Contractor's representative, who in the opinion of the Employer's Representative:

- a) Persists in any misconduct;
- b) Is incompetent or negligent in the performance of his duties;
- c) Fails to conform with any provisions of the Contract; or
- d) Persists in any conduct which is prejudicial to safety, health or the protection of the environment.

## 7.10 **Preservation of Peace and orderly conduct**

7.10.1 The Contractor shall be responsible for preservation of peace and orderly conduct at the Site and its vicinity by the Contractor's employees, representatives, petty contractors, Subcontractors, etc. 7.10.2 The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its staff and labour, and to preserve peace and protection of persons and property in the vicinity of the Site against such conduct.

## 7.11 **Labour to be Contractor's Employee**

If, the Contractor directly or through petty contractors or Subcontractors supplies any labour to be used wholly or partly under the direct orders and control of the Employer's Representative or the Employer, whether in connection with any work being executed by the Contractor or otherwise for the purposes of the Employer, such labour shall, for the purpose of this clause, be deemed to be persons employed by the Contractor.

## 7.12 **Report of Accidents**

The Contractor shall be responsible for safety of all employees, employed by it for the execution of the Works, directly or through petty contractors or Subcontractors, and shall immediately report accidents to the Employer's Representative and shall make every arrangement to provide all possible assistance and to provide prompt and proper medical attention. The compensation for affected workers or their relatives shall be paid by the Contractor in such cases with utmost expedition in accordance with Applicable Laws (including the Workmen's Compensation Act, 1973).

### 7.13 **Claim on account of violation of Labour laws**

The Contractor shall be solely responsible and accountable for non-compliance with the Applicable Laws relating to labour employment and welfare, either by itself, its petty contractors or Subcontractors and shall pay all claims, damages and/ or penalties as may be payable in respect of such non-compliance(s) to the relevant statutory authorities forthwith on demand. If, as a result of any non-compliance with the Applicable Laws relating to labour employment and welfare as aforesaid, an Employer is required to make any payments to the relevant statutory authorities then any amount paid by the said Employer Indemnitee in this regard shall be deemed to be moneys payable to the Employer by the Contractor and the Contractor shall pay the same to the Employer forthwith on demand, without demur and without asking for any reasons/explanations from the Employer. If the Contractor fails to pay any amount required to be paid to the Employer as aforesaid, within seven (7) days of its demand, the Employer shall be entitled to recover the amount from any moneys due or accruing to the Contractor under this or any other Contract with the Employer.

### 7.14 **Site records and returns**

7.14.1 The Contractor shall, to the satisfaction of the Employer's Representative, keep at the Site, wage books and time sheets showing the wages paid to and time worked by the workmen at the Site for the execution of the Works or any part thereof and, whenever required, the Contractor shall produce such wages books and time sheets for inspection by the Employer's Representative or any person authorised by him. The Contractor shall deliver to the Employer's Representative at his office, a return in such form and at such intervals as the Employer's Representative may require, showing the supervisory staff and the numbers of the several classes of labour employed in India by the Contractor and its Subcontractors together with such information concerning materials and Contractor's Equipment and other such matters as the Employer's Representative may require.

### 7.15 **Compliance with Statutes and Statutory Declaration**

7.15.1 Without prejudice to the responsibility of the Contractor to comply with Applicable Laws under the Contract, the Contractor shall, in relation to the execution of the Works, comply and shall ensure that the Subcontractors comply with all Applicable Laws, including but not limited to the Building and other Construction Workers Welfare Cess Act 1996, The Workmen's Compensation Act 1923, The Payment of Wages Act 1936, the Minimum Wages Act 1948, The Weekly Holidays Act 1942, The Employees State Insurance Act

1948, The Employees Provident Funds Scheme 1952, the Employees Provident Funds and Miscellaneous Provisions Act 1952, The Maternity Benefit Act 1962, The Contract Labour (Regulation and Abolition) Act 1970, The Equal Remuneration Act 1976, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service Act) 1979, The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act 1988 , The Children (Pledging of Labour) Act 1933, The Child Labour Prohibition and Regulation Act 1951, the provisions of the Income Tax Act, 1961 and any other law relating to the employment of workmen or any subsequent modification or re-enactment thereof.

7.15.2 By the seventh (7) day of each month, the Contractor shall deliver to the Employer's Representative either:

- a) A statement of payments made by the Contractor; or
- b) A certificate signed by or on behalf of the Commissioner of Labour, stating that the workmen who have been employed by the Contractor in carrying out the Works, including the workmen employed by the Subcontractor of the Contractor, have received all wages, salaries and emoluments due to them for the previous months in connection with such employment and that all dues under any Applicable Laws have been paid in respect thereof. If the Contractor fails to comply with the provision of Clause 7.15.1 and upon receipt of any claim in this regard, from any statutory authority and/or any workmen engaged by the Contractor or its Subcontractor, the Employer may, at its sole discretion, directly satisfy such claim and recover the amount paid by the Employer from the dues to the Contractor under the Contract or recover the same as debt due from the Contractor to the Employer.

7.15.3 Without prejudice to any other Clause herein, the Contractor shall at all times, hold harmless and indemnify the Employer Indemnitees from and against all claims, liabilities, expenses, costs and losses suffered or incurred by the Employer Indemnitee which may arise out of or in connection with the employment of workmen and/or personnel as employed/engaged by the Contractor in connection with the execution of the Works.

7.15.4 The Parties hereto agree that the employment of the personnel and/or workmen by the Contractor, Subcontractor in relation to the execution of the Works shall not constitute any employer-employee relationship between the Employer and such personnel and/or workmen as employed by the Contractor and the Subcontractor in relation to the execution of the Works.

#### 7.16 **Restrictions on Representatives**

The project manager, construction superintendent, design co-ordinator, quality assurance manager ("**Key Personnel**") and all the sub-representatives of the Contractor shall:

- a) Be approved by the Employer's Representative in writing (which approval may at any time be withdrawn without the Employer's Representative being required to state any reason thereof in which event the relevant Key Personnel shall be replaced immediately by another representative authorized and approved as aforesaid);
- b) Not be replaced without the prior written approval of the Employer's Representative;
- c) Be fluent in the English and Hindi language;
- d) Be competent and experienced. Without limiting the generality of the word "competent", a representative or person shall not be regarded as competent unless he is qualified by appropriate professional qualifications and experience.

#### 7.17 **Change of personnel**

Should the Contractor intend to make any change in Key Personnel appointed pursuant to Clauses 7.16, it shall immediately notify the Employer's Representative of such intended change and seek approval for replacement of such Key Personnel.

#### 7.18 **Technical Assistants and Labour**

7.18.1 The Contractor and where appropriate any Subcontractor, shall provide and employ in connection with the execution of the Works:

- a) Only such employees and technical assistants as are skilled, licensed, if required under the Applicable Law and experienced in their respective callings and such Contractor's representatives, managers, sub-representatives, foremen and leading hands as are competent to give proper supervision in relation to the Works they are required to supervise; and
- b) Such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Works.

7.18.2 All the Contractor's representatives and technical assistants and other personnel, who are required to deal directly with the Employer's Representative or any delegate or

assistant of the Employer's Representative, or their respective senior staff in relation to the execution of the Works shall:

- a) Not be transferred without the prior written approval of the Employer's Representative;
- b) Be named and listed in an organization chart to be produced by the Contractor; and
- c) Be fluent in the English language, and when appropriate in the Employer's Representative opinion, in the predominant language of the labour force.

#### **7.19 Removal of the Contractor's Employees**

The Employer's Representative may after prior consultation with the Contractor object to and require the Contractor to remove forthwith at the Contractor's expense any person employed by the Contractor or its Subcontractor for the execution of the Works and such person shall not be employed again for the execution of the Works. Any person so removed from the Works, unless the Employer's Representative specifies otherwise, shall be replaced, at the Contractor's expense as soon as possible by a competent substitute approved by the Employer's Representative.

#### **7.20 No extension of time**

The Contractor shall not be entitled to any claim, any extension of time or payment whatsoever incurred by it in respect of any direction given by the Employer's Representative under Clause 7.19.

### **8. Quality Control**

#### **8.1 Manner of Execution**

All Plant and Materials to be supplied under the Contract shall be manufactured/constructed, and all Works shall be executed by the Contractor, in the manner set out in the Contract. Where the manner of construction and the execution is not set out in the Contract, the Works shall be executed in a proper, workman like and careful manner, with properly equipped facilities and nonhazardous materials, and in accordance with recognized and internationally accepted industrial standards and Good Industry Practice. The successful execution of the Works is the sole responsibility of the Contractor.

#### **8.2 Delivery to the Site**

The Contractor shall be responsible for procurement, transport, receiving, unloading and safe keeping of all Plant, Materials, Contractor's Equipment and other things at the Site required for the successful execution of the Works.

### 8.3 **Inspection**

8.3.1 The Employer, the Employer's Representative or any other Person authorised by the Employer or the Employer's Representative, as the case may be, shall:

- a) Have full access to all parts of the Site at all times; and
- b) During production, fabrication construction and installation (whether in India or outside India either at the Contractor's premises or its Subcontractor or supplier's premises), be entitled to inspect, examine, measure and test the materials and workmanship, and to check the progress of construction, of all Plant and Materials to be supplied under the Contract during usual working hours and upon prior notice if access is required after usual working hours. It is clarified that where any production, fabrication, construction and installation is being undertaken at the Site, then the Employer's Representative or any other Person authorised by the Employer or the Employer's Representative shall have the right to access the Site at all times.

8.3.2 The Contractor shall give the Employer's Representative full opportunity (including providing access, facilities, permissions and safety equipments) to carry out these activities. No such activity/inspection shall relieve the Contractor from any of its obligations or responsibilities.

### 8.4 **Testing**

8.4.1 This Clause 8.4 shall apply to all tests specified in the Contract other than the Tests on Completion.

8.4.2 The Contractor shall provide all documents and other information necessary for all types of testing and such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as are necessary to carry out such tests efficiently.

8.4.3 The Contractor shall agree with the Employer's Representative, the time and place for the testing of any Plant, Materials and other parts of the Works as specified in the Contract.



- 8.4.4 The Employer's Representative shall give the Contractor not less than twenty four (24) hours notice of its intention to attend any tests to be carried out in India and seventy two (72) hours notice in case of tests which are to be carried out in places other than India.
- 8.4.5 If the Employer's Representative does not attend at the time and place agreed, or if the Contractor and the Employer's Representative agree that the Employer's Representative shall not attend, the Contractor may proceed with the tests, unless the Employer's Representative instructs the Contractor otherwise, such tests shall be deemed to have been made in the Employer's Representative's presence.
- 8.4.6 The Contractor shall promptly forward to the Employer's Representative duly certified reports of the tests. If the Employer's Representative has not attended the tests, he shall accept the readings as accurate, except where there is a manifest error. When the tests have been successfully completed, the Employer's Representative shall endorse the Contractor's test certificate, or issue a certificate to the Contractor, to that effect.
- 8.4.7 The expense of conducting such tests shall be borne by the Contractor.

## 8.5 Rejection

- 8.5.1 If, as a result of inspection, examination or testing, any Plant, Material, design or workmanship is found to be defective or otherwise not in accordance with the Contract, the Employer's Representative may reject the same within fifteen (15) days of such inspection, examination or testing by giving notice to the Contractor with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item after rectification complies with the Contract.
- 8.5.2 If the Employer's Representative requires such Plant, Material, design or workmanship to be retested in accordance with Clause 8.5.1, the tests shall be repeated under the same terms and conditions. If such rejection and retesting causes the Employer to incur additional costs, such costs shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies payable to the Contractor under the Contract.

## 8.6 Liability after Inspection and Testing

The Contractor shall not be released from any of its liability or obligation under the Contract by reason of any such inspection or testing or witnessing of testing, or by the submission of reports of inspection or testing to the Employer's Representative.

## 8.7 Ownership of Plant and Materials

Each item of Plant and Material shall become the property of the Employer, when it is delivered to the Site or payment thereof, either in part or full, has been made. The Contractor shall however continue to bear the risk and responsibility in respect of such items which continue to remain in its possession.

## 8.8 Tests on Completion

Contractor's Obligations

8.8.1 The Contractor shall carry out the Tests on Completion at its own cost in accordance with the Contract after providing all necessary documents to the Employer's Representative in respect thereof. The Contractor shall give, to the Employer's Representative, twenty one (21) days' notice of the date after which the Contractor shall be ready to carry out the Tests on Completion. Unless otherwise agreed, such Tests on Completion shall be carried out within fourteen (14) days after the expiry of such twenty one (21) days, on such day or days as the Employer's Representative shall instruct.

8.8.2 Unless otherwise stated in the Contract, the Tests on Completion shall be carried out in the following sequence:

- a) Pre-commissioning test, which shall include appropriate instructions and ("dry" or "cold") functional tests to demonstrate that each item of the Plant and the Works can safely undertake the next stage of testing; and
- b) Commissioning test which shall include the specified operational tests to demonstrate Works or Stages can be operated safely and as specified in the Employer's Requirements under all available operating condition.

8.8.3 Except as otherwise stated specifically in the Contract, the Contractor shall at its own cost arrange for all tools, equipments, gadgets, facilities or other things as deemed necessary by the Employer's Representative for carrying the Tests on Completion. As soon as the Works, or a Stage, has passed the Tests on Completion described in subparagraphs (a) or (b) above, the Contractor shall provide the Employer's Representative and the Employer with a certified report of the results of all such Tests on Completion.

## 8.9 Snag List / Punch List

Contractor along with the Employer's representative shall prepare a snag list and the Contractor shall attend to the defects identified with top-most priority. Contractor agrees

that part of the works which are already handed over to internal/ external customer of the Employer, the Contractor has to work out a schedule considering the limited availability of time to attend to the items mentioned in the snag list. The Contractor shall not be entitled under any circumstances whatsoever to claim any extra amount for attending the items mentioned to in the snag list. In the event of failure by the Contractor to attend to items mentioned in the snag list, the Employer reserves the right to get the work done either on his own or by engaging any other competent r agency, at the sole risk and cost of the contractor plus 20% on the overheads.

#### **8.10 Delayed Tests**

8.10.1 If the Employer's Representative opines that any of the Tests on Completion are being unduly delayed by the Contractor, the Employer's Representative may by notice, require the Contractor to carry out such Tests on Completion within twenty one (21) days after the delivery of the notice. The Contractor shall carry out such Tests on Completion on such day or days as the Contractor may fix and for which it shall give sufficient notice to the Employer's Representative.

8.10.2 If the Contractor fails to carry out the Tests on Completion within twenty one (21) days of the notice, the Employer's Representative may proceed with such Tests on Completion at the risk and cost of the Contractor. The Tests on Completion then shall be deemed to have been carried out in the presence of the Contractor and the results of such Tests on Completion shall be accepted as accurate. The failure of the Contractor to carry Tests on Completion shall be treated as a breach of the Contract and carrying of such Tests on Completion by the Employer's Representative shall not absolve the Contractor of its obligations under the Contract.

#### **8.11 Retesting**

If the Works, or a part thereof, or a Stage, fail to pass the Tests on Completion, the Employer's Representative may require the Contractor to repeat such Tests on Completion or may require such Tests on Completion to be carried by any third party. The costs for such retests shall be borne by the Contractor.

#### **8.12 Failure to Pass Tests on Completion**

If the Works, or a part thereof, or a Stage, fail to pass the Tests on Completion repeated under Clause 8.10, the Employer's Representative shall be entitled to:

- a) Order further repetition of Tests on Completion;

- b) Reject the Works, or a part thereof, or a Stage (as the case may be), in which event the Employer shall have the same remedies against the Contractor as are provided under Clause 13.2.; or
- c) Issue a Provisional Taking Over Certificate or Final Taking Over Certificate, as the case may be, if the Employer so requires. The Contract Value shall then be reduced by such amount as determined by the Employer's Representative and as shall be appropriate to cover the reduced value to the Employer as a result of such failure. The Contractor shall then proceed in accordance with its other obligations under the Contract.

## **9. Time Management**

### **9.1 Commencement of Works**

9.1.1 The Contract shall be effective and binding on the Parties from the date of execution of the Contract. However, the Contractor shall not commence the execution of the Works and the Employer shall not be liable to make any payments whatsoever to the Contractor unless the Notice to Proceed has been issued to the Contractor in accordance with Clause 9.1.2.

9.1.2 Subject to the Contractor furnishing the Performance Bank Guarantee and the Parent Company Undertaking (as may be applicable) under this Contract/Agreement, the Employer shall issue the Notice to Proceed to the Contractor. Pursuant to the issuance of the Notice to Proceed by the Employer, the Contractor shall commence execution of the Works with due diligence, without delay, and in accordance with the preliminary Works Programme as modified and accepted by the Employer and in any event not later than seven (7) days from the date of issue of the Notice to Proceed.

9.1.3 After the issuance of the Notice to Proceed, the Contractor shall submit to the Employer or Employer's Representative:

- a) the Works Programme and other plans and documents as required under the Employer's Requirements; and (b) the following:
  - (i) Evidence of full compliance of its insurance obligations; and
  - (ii) The Bank Guarantees (Advance/Performance)

9.1.4 It shall be a condition precedent for the entitlement of the Contractor to any payments to be made under the Contract that the Contractor has provided all the above documents set out in Clause 9.1.3.

## 9.2 **Completion**

The Contractor shall ensure defect free completion and passing of the Tests on Completion to the satisfaction of the Employer's Representative, of any Stage, Works or any part of the Works and approval of competent authorities (including Owner and Consultant) is obtained before such Stage, Works or any part of the Works is taken over by the Employer.

## 9.3 **Delay**

9.3.1 In case of delay on the part of the Contractor to complete the Works required to meet Milestone Schedules, the Contractor shall be liable to pay Liquidated Damages in addition to any other compensation for the damages suffered by the Employer in relation to the Contract. This is without prejudice to the right of the Employer to terminate the Contract in accordance with the provisions of Clause 13.

9.3.2 Failure or delay by the Employer's Representative to provide necessary drawings, designs or instructions or clarifications or to supply any material, plant or machinery, which under the Contract, is the responsibility of the Employer, shall in no way affect or vitiate the Contract or alter the character thereof; or entitle the Contractor to damages or compensation thereof but in any such case, the Employer's Representative shall extend the time period or periods for the completion of those parts of the Works required to meet any Milestone Schedules as in its opinion is / are reasonable.

9.3.3 Employer reserves its right to impose Penalty / Liquidated Damages through notice or debit note without consent/approval/acceptance of the Contractor. The quantum of Penalty / Liquidated damages on Contractor shall depend on as that imposed by Owner/Client on the Employer or non fulfillment of Contractual obligation by the Contractor.

## 9.4 **Extension of Time for Completion**

### 9.4.1 **Extension of Time**

The Contractor may apply for an extension of time for completion of the Works if the Works are or shall be delayed by any of the following causes:

- a) Occurrence of Force Majeure;
- b) The Contractor's work held up for not being given possession of or access to the Site by the Employer;

- c) Instruction of the Employer's Representative to suspend the Works and the Contractor not being in default as to reasons of suspension;
- d) Any order of Court restraining the performance of the Contract in full or in any part thereof;
- e) Any other event or occurrence which, according to the Employer is not due to the Contractor's failure or fault, and is beyond its control without the Employer being responsible for the same;
- f) An Employer's Variation; and
- g) Acts or omissions of other Consultants in executing their works not forming part of the Contract and on whose performance, the performance of the Contractor necessarily depend.

9.4.2 Except as mentioned above, the Contractor shall not be entitled to any extension of time for any reason whatsoever including:

- a) The Contractor shall not be entitled to any extension of time where the instructions or acts of the Employer or the Employer's Representative are necessitated by or intended to cure any default of or breach of the terms of the Contract committed by the Contractor;
- b) The Contractor shall also not be entitled to any extension of time where any delay is due to:
  - (i) The failure of its Subcontractor, to commence or to carry out the part of the Works in due time; or
  - (ii) Non-availability, or shortage of Contractor's equipment, labour, utility services, Plant and Materials;

or

  - (iii) Inclement weather conditions except in case of Force Majeure; or
  - (iv) The Contractor not fulfilling its obligations under Clause 4.4.

9.4.3 The Contractor shall, immediately and in any case not later than seven (7) days, inform the Employer by a written notice, after it comes to the knowledge of the Contractor or the Contractor ought to have reasonably known of the occurrence of any of the events specified in Clause 9.4.1 and the probable Material Adverse Effect that such event is likely to have on the performance of its obligations under the Contract.

9.4.4 Any such notice shall include full particulars of:

- a) The nature and extent of each such event which is the subject of any claim for relief with evidence in support thereof;
- b) The estimated duration and the effect or probable effect which such event is having or shall have on the Contractor's performance of its obligations under the Contract;
- c) The measures which the Contractor is taking or proposes to take, to alleviate the impact of such event; and
- d) Any other information relevant to the Contractor's claim.

**9.5 Extension of time for delays due to Contractor**

If the delay in the completion of the whole of the Works or a portion of the Works, for which an earlier completion period is stipulated, is due to the Contractor's failure or fault, and the Employer's Representative is of the view that the remaining Works or the portions of Works can be completed by the Contractor in a reasonable and acceptable short time, then, the Employer's Representative may allow the Contractor extension or further extension of time at its discretion with or without Liquidated Damages, for completion, as he may decide. Such extension of time granted by the Employer shall be without prejudice to the rights of Employer to recover Liquidated Damages. Such extension of time shall not be construed by the Contractor as waiver of right to levy Liquidated Damages, unless specifically waived by the Employer in writing.

**9.6 Liquidated Damages for Delay**

9.6.1 If the Contractor fails to complete the Works in accordance with the Mile Stone Schedules as per the Contract, then the Employer shall be entitled to alter / modify the price agreed under the contract by deducting an amount, at the rates specified in Special Conditions of Contract (Liquidated Damages). The total amount of Liquidated Damages in respect of the Works shall not exceed the limit more particularly stated in Special Conditions of Contract (Liquidated Damages).

9.6.2 The aforesaid Liquidated Damages shall not include the sums payable by the Employer to the Consultants on account of delay caused by the Contractor, which sums shall be recoverable from the Contractor in addition to any Liquidated Damages under Clause 9.6.1. The limit specified in the Special Conditions of Contract applies only to Liquidated

Damages and not to the sums recoverable on account of the delay caused by the Contractor to the work of the Consultants.

- 9.6.3 The Liquidated Damages are recoverable by the Employer from the Contractor for the loss and damages that would be caused to the Employer as a result of (a) delay in the Execution and completion of the Works and achievement of the relevant Milestone Schedules, and/ or (b) non achievement of the targets set out in Mile Stone Schedule (Special Conditions of Contract), and not as penalty. The Parties acknowledge that the Liquidated Damages are a genuine pre-estimation of and reasonable compensation for the loss and damage that shall be suffered by the Employer in the event of any such failure on the part of the Contractor and the Contractor irrevocably undertakes that it shall not, whether by legal proceedings or otherwise, contend that the levels of Liquidated Damages are not reasonable nor shall it put the Employer to the proof thereof, nor further contend that its agreement to such sum and undertaking as aforesaid were arrived at by force, duress, coercion, mistake or misrepresentation on the part of the Employer.
- 9.6.4 The Employer may, without prejudice to any other method of recovery, deduct the amount of any Liquidated Damages from any monies due, or to become due, to the Contractor. The payment or deduction of such Liquidated Damages shall not relieve the Contractor from its obligations to complete the Works, or from any of its other duties, obligations or responsibilities under the Contract. The Contractor shall use and continue to use its best endeavors to avoid or reduce further delay to the Works, or the achievement of any subsequent Milestone Schedules.
- 9.6.5 At any time after the Employer has become entitled to levy Liquidated Damages on the Contractor, the Employer/Employer's Representative may give notice to the Contractor, requiring the Contractor to complete the Works within a specified reasonable time. Such action shall not prejudice the Employer's entitlements to levy Liquidated Damages, and to terminate the Contract under Clause 13.

## 9.7 **Rate of Progress**

- 9.7.1 If for any reason the Contractor is not entitled to extension of time and the rate of progress of the execution of the Works is at any time, in the opinion of the Employer's Representative, too slow to ensure timely completion of the Works or achievement of any Stage by the relevant Milestone Schedule, the Employer's Representative may notify its opinion to the Contractor in writing. The Contractor shall thereupon take such steps as are necessary, or in default of taking such steps, shall take such steps as the Employer's Representative may reasonably instruct in writing, to expedite progress of the execution



of the Works so as to complete the Works in time or achieve any Stage by the relevant Milestone Schedule as per the Contract. However, it is clarified that the Contractor shall continue to be liable and responsible for the completion of the Works in a timely manner and achievement of the Stages by the relevant Milestone Schedules and any steps taken by the Contractor pursuant to this Clause 9.7.1 shall not, in any way, limit or reduce the Contractor's liability in this regard.

9.7.2 The Contractor shall not be entitled to any additional payment for taking such steps to expedite the execution of the Works as set out in Clause 9.7.1. If any step taken by the Contractor in meeting its obligations under this Clause 9.7 causes the Employer to incur additional costs, such costs shall be recoverable from the Contractor by the Employer, and shall be deducted by the Employer from any monies due, or to become due, to the Contractor.

## 9.8 **Suspension of Works**

9.8.1 The Employer's Representative may at any time by issuing a written order ("**Suspension Order**") to the Contractor (with a copy to the Employer) suspend the execution of part or all of the Works.

9.8.2 The Suspension Order may be issued by the Employer's Representative under the following circumstances:

a) Due to Contractor's default under the following circumstances:

(i) Any act, default, omission or breach by the Contractor or for some default or breach by the Contractor reasonably anticipated by the Employer's Representative; or

(ii) For the improper execution of the Works; or

(iii) Failure on the part of the Contractor to co-ordinate with Consultants; or

(iv) Existence of any emergency on the Site or at any place where the Works (or any part thereof) are being executed leading to unsafe conditions; or

(v) Consequence of any action by a statutory authority; or

(vi) Failure to furnish Performance Bank Guarantee or Advance Bank Guarantee or renewal of such guarantees.

b) For any other reason which the Employer's Representative thinks reasonable.

- 9.8.3 Upon issuance of any Suspension Order under Clause 9.8.2, the Contractor shall protect, store and secure such part or whole of the Works or any Plant or Contractor's Equipment to which the Suspension Order relates to, against any deterioration, loss or damage and shall not remove any goods or equipment from the Site without the prior written consent of the Employer's Representative, during the entire suspension period. The Contractor shall take all steps to minimize cost and losses to the Employer due to suspension and shall meet the Employer's Representative on regular basis.
- 9.8.4 On issuance of the Suspension Order due to events specified in Clause 9.8.2(a), the Contractor shall within ten (10) days undertake all necessary steps (including such steps as instructed by the Employer's Representative) to remedy the circumstances leading to Suspension Order and immediately inform the Employer's Representative on completion of such actions. Within seven (7) days of receipt of such intimation from the Contractor, if the Employer's Representative is satisfied that his instructions above have been fulfilled and complied with, issue a letter instructing the Contractor to resume the Works or such part of the Works that are subject of a Suspension Order. If the Employer's Representative is of the view that such instructions have not been complied, the Employer's Representative identify by means of further written notice the additional action required to be taken by the Contractor before any instruction to resume can be given.
- 9.8.5 The Employer's Representative may at any time instruct the Contractor to resume the Works or such part of the Works that are subject of a Suspension Order, in which case the Contractor shall do so as soon as is reasonably practicable and in any event within three (3) days of receiving such instructions. The Contractor shall, after notice to the Employer's Representative, and together with the Employer's Representative, examine the Works, Plant and Materials affected by Suspension Order. The Contractor shall make good any deterioration or defect in or loss of/ to the Works, Plant and Materials, which has occurred during the suspension.
- 9.8.6 The Contractor shall under no circumstances whatsoever be entitled to any extension of time or claim for any monetary compensation where Suspension Order has been issued by the Employer in the circumstances specified in Clause 9.8.2(a).
- 9.8.7 Where the Suspension Order has been issued by the Employer under Clause 9.8.2(b) the Contractor shall in addition to entitlement for extension of time and compensation as provided in the table below shall also be entitle to cost towards protecting, storing and securing the Works or part of the Works, as may be mutually determined by the Parties.

Suspension Period (starting from date of Suspension Order)	Extension of Time	Compensation for the Suspension Period	Remarks
Upto to 14 days	NO	NO	Employer's Representative may at his sole discretion give extension of time in exceptional circumstances
Upto 15 to 90 days	YES	NO	Extension of time as considered proper by the Employer's Representative in his sole discrete Extension of time as considered proper by the Employer's Representative in his sole discretion. Compensation as assessed by the Employer's Representative only for mobilization and demobilization expenses incurred by the Contractor on submission of documentary proof by the Contractor to Employer's Representative's satisfaction.
Above 90 days	YES	To be mutually decided between Employer and the Contractor	

9.8.8 Suspension Order shall be final, conclusive and binding on the Contractor and on receipt of the Suspension Order, the Contractor shall immediately suspend any delivery, erection or any part or all of the Works as the case may be, for such time and in such manner as the Employer's Representative may consider necessary. The Contractor shall take all steps to protecting, storing and securing the Works in safe custody during the suspension period.

## 9.9 Employer's Taking Over

### 9.9.1 Provisional Taking Over Certificate

The Employer may issue provisional taking over certificate ("**Provisional Taking Over Certificate**") to the Contractor when the Works have been completed in accordance with the Contract and the Contractor shall have successfully carried out all the Tests on Completion, even though certain minor works, which do not affect the use and safety of the Works or Stage or any part of the Works for their intended purposes, are outstanding and are to be completed by the Contractor ("**Punch List Items**"). The Employer may issue Provisional Taking Over Certificate for a Stage, Works or any part of the Works.

9.9.2 The Contractor may apply by notice to the Employer's Representative for a Provisional Taking Over Certificate not earlier than fourteen (14) days before the Stage, Works or any part of the Works (as the case may be) shall, in the Contractor's opinion, be complete (except Punch List Items) and ready for taking over. The Employer's Representative may, within thirty (30) days of the receipt of the Contractor's application:

- a) Issue the Provisional Taking Over Certificate to the Contractor, stating the date on which the Stage, Works or any part of the Works were completed, including the Tests on Completion, in accordance with the Contract (except for Punch List Items); or
- b) Reject the application, giving his reasons and specifying the Works required to be done by the Contractor to enable the Provisional Taking Over Certificate to be issued. The Contractor shall then complete such work before making a further application for the issuance of the Provisional Taking Over Certificate. The decision of the Employer's Representative shall be final and binding upon the Contractor.

9.9.3 Notwithstanding anything contained in this Clause 9.9, if the Employer Representative is of the opinion that the Stage, Works or any part of the Works (as the case may be) is complete (except Punch List Items) and that all tests have been successfully carried out and such Stage, Works or any part of the Works is ready for taking over, then the Employer's Representative may issue a notice to the Contractor for handing of such Stage, Works or any part of the Works. After receiving notice from the Employer's Representative the Contractor shall apply within seven (7) days for the issue of the Provisional Taking Over Certificate in respect of the Stage, Works or any part of the Works, in accordance with the procedure provided in Clause 9.9.2.

9.9.4 The acceptance and use by the Employer of any or all of the Works for Revenue service shall not absolve the Contractor from the fulfillment of other obligations under the Contract including without limitation, any liability for payment of Liquidated Damages.

#### 9.9.5 Final Taking Over Certificate

Once Punch List Items for the entire Works are completed by the Contractor, the Contractor shall apply for final taking over certificate for the entire Works ("**Final Taking Over Certificate**") to the Employer's Representative who may issue such certificate by following the provisions of Clause 9.9.2.

### 10. Warranty and Defects Liability

10.1 Contractor warrants that the Works or any part thereof shall be

- a) Free from defects and deficiencies
- b) Of the quality as specified in the in the Technical Specifications or applicable standards (if no quality is specified) and;
- c) Conform to and comply with in all respects to the terms of this Contract
- d) Free from any liens or any other encumbrances.

10.2 This Contract is awarded to achieve the intent of Contract/ work mentioned in Tender and hence the Contractor irrevocably commits and undertakes to the Employer its unequivocal intent to fulfill the terms of the Contract with respect to the requirement set in the Tender besides adhering to quality and performance parameters given in the Contract.

### 10.3 **Completion of Outstanding Work and Remedying Defects**

“**Defects Liability Period**” shall mean minimum period of twelve (12) months calculated from the date of issuance of each Final Taking Over Certificate for the Stage or mentioned in this Contract/Agreement, Works or any part of the Works. Provided that, if any part of the Works or subsystems or part or component of that part of the Works has been replaced, renewed or repaired during the Defects Liability Period, the Defects Liability Period in respect of such part or subsystem or components of that part shall again start for a period of twelve (12) months from the date of such replacement, renewal or repair has been completed to the satisfaction of the Employer’s Representative.

### 10.4 **Scope of Work during the Defects Liability Period**

During the Defects Liability Period, the Contractor shall be solely responsible for carrying out and completing the Rectification Work. The Employer's Representative shall also have the right but not the obligation to instruct the Contractor to complete certain Rectification Works set out in such instructions. The Contractor shall in addition to Rectification Works listed out by it, shall also carry out the Rectification Works instructed by the Employer's Representative and for carrying on such work the Contractor shall at its own cost provide competent and skilled personnel and maintain adequate stock of spares so as to promptly fulfill its obligations during the Defects Liability Period. The Contractor shall if required by the Employer's Representative carry out such searches, tests or trials as may be necessary to determine the cause of any defect, imperfection or fault. The Rectification Works must be carried out at all times and in all respects to meet the Employer's Requirements throughout the Defects Liability Period. *In case the Contractor performs corrective action, and/or repairs, modifies, rebuilds and/or replaces any part of the Work/facility performed pursuant to its obligations under this Contract, the Warranty Period in respect of the part so corrected, repaired, modified, rebuilt and/or replaced shall be extended by period equals to the period during which the Work/facility or such part could not be used by the Employer because of any aforesaid reasons or equals to Work originally performed by the Contractor.*

### 10.5 **Cost of Remedying Defects**

10.5.1 All Rectification Works referred to in Clause 10.4 shall be executed by the Contractor at its own cost, if the necessity for such work is due to:

- a) The defect or shortcoming in Drawings and Designs for the Works or any pattern failure;

- b) Plant, Materials or workmanship not being in accordance with the Employer's Requirements; or
- c) Failure by the Contractor to comply with any of its obligations under the Contract.

10.5.2 If in the opinion of the Employer's Representative, any Rectification Work is required to be carried out due to reasons other than as set out in Clause 10.5.1 above, the Employer's Representative may, in consultation with the Employer, require the Contractor to carry out such rectification works for which a reasonable amount as determined by the Employer's Representative shall be payable.

10.5.3 If the Contractor fails to complete the Rectification Works during the Defect Liability Period, the Employer (at its sole discretion) may:

- a) Carry out the work itself or by others, at the risk and cost of the Contractor;
- b) Require the Employer's Representative to determine and certify a reasonable reduction to the Contract Value;
- c) If the defect or damage is such that the Employer has been deprived of substantially the whole of the benefit of the Works or part of the Works, terminate the Contract in respect of such parts of the Works as cannot be put to the intended use, the Employer shall then be entitled to recover all sums paid for such parts of the Works together with the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

**10.6 Removal of Defective Work**

If the defect or damage is such that it can not be remedied expeditiously on the Site and if the Employer gives consent, the Contractor may, remove from the Site for the purpose of repair any part of the works, which is defective or damaged. The consent may require the Contractor to increase the amount of Performance Bank Guarantee by the full replacement cost of items which are to be replaced or to provide other appropriate security acceptable to the Employer.

**10.7 Further Tests**

If remedying of any defect or damage is such that it may affect the performance of the Works, the Employer's Representative may require that certain tests be repeated to the extent necessary. The requirement shall be made by notice within twenty eight (28) days after the defect or damage is remedied.

## 10.8 Contractor to Search

The Contractor shall, if required by the Employer's Representative, search for the defect (if any), under the direction of the Employer's Representative. Unless the defect is one for which the Contractor is liable, the cost of such search shall be separately determined and reimbursed by the Employer's Representative.

## 10.9 Performance Certificate

10.9.1 The Contract shall not be considered completed until the Performance Certificate has been signed by the Employer and delivered to the Contractor, stating the date on which the Contractor completed its obligations under the Contract. The Performance Certificate to be issued to the Contractor as aforesaid shall be issued after the expiry of the last of the Defects Liability Period in relation to the Stage, Works or any part of the Works. Only the Performance Certificate shall be deemed to constitute approval and acceptance of the Works by the Employer.

10.9.2 The Contractor shall apply to the Employer's Representative after the expiry of the Defects Liability Period, for issuance of the Performance Certificate. The Employer's Representative shall, upon receipt of the application from the Contractor, carry out inspection of the Works with the Contractor and send its inspection report to the Employer along with the Contractor's application. The Employer shall, if satisfied by the inspection report of the Employer's Representative, issue the Performance Certificate to the Contractor. If the Employer is not satisfied with the Works and requires the Contractor to carry out any necessary work or rectification, then the Contractor shall, upon being so notified in writing, carry out such work and/or rectification and reapply to the Employer's Representative for the issuance of the Performance Certificate.

## 10.10 Unfulfilled Obligations

After the Performance Certificate has been issued, the Contractor shall remain liable for the fulfillment of any obligation, which remains unperformed at the time of issuance of the Performance Certificate. For the purposes of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force.

## 10.11 Emergency Defect Rectification

10.11.1 If during the Contract Period any defect or damage requires immediate attention from safety, environmental or operational viewpoint, the Employer's Representative has the right to proceed with rectification in any manner and deduct such sums from the Contract Value.



10.11.2 If such damage or defect is rectified by the Contractor at the request of the Employer's Representative, the Contractor shall rectify such defects or damage in a responsible manner and notify the Employer's Representative of its action. The cost for carrying out such work shall be paid to the Contractor by the Employer's Representative, unless such damage or defect was caused due to any act, omission or default of the Contractor.

## **11. Contractual Value and Payment**

### **11.1 Contract Value**

Subject to the provisions of this Clause 11 and Clause 1.1.9, the Contract Value shall remain firm for entire duration of the Contract Period. Escalation on any account (if applicable) shall be payable to the Contractor in accordance with the specific terms of the Contract. The Contract Value shall be paid by the Employer to the Contractor in accordance with the Payment Terms.

As the Contractor considers the Employer as priority customer, it shall ensure the rates offered by the Contractor are the least rates offered by them to any of their clients under similar set of conditions. In case it is found that contractor has offered higher rates to the Employer, then the Employer will be entitled to recover the differences for the entire Contract Period.

### **11.2 BOQ and Measurement**

11.2.1 The quantities set out in the BOQ, are the estimated quantities for the execution of the Works and such quantities shall not be taken as the actual and correct quantities required for the execution of the Works.

11.2.2 The Contractor shall be paid for the execution of the Works, at the rates provided in the BOQ in accordance with the Payment Terms and the provisions of the Contract and any additional items of work carried on by the Contractor, not previously included in the BOQ, shall be paid in accordance with the provisions of Clause 12, on the measurement taken by the Contractor in the presence of the Employer's Representative.

11.2.3 The Contractor shall take measurements of the Construction Works executed by the Contractor from time to time, and at such intervals, as in the opinion of the Employer's Representative, shall be proper, having regard to the progress of the Works. At the time of taking measurement of the Construction Works, the Contractor or its authorized agent shall take on-account or final measurements, as the case may be, of the Construction Works executed by the Contractor in the presence of the Employer's Representative, in

the Measurement Book to be provided by the Employer's Representative. Except as otherwise specified in the Contract (i) measurement shall be undertaken on the basis of the net actual quantity of each item of the Permanent Works. (ii) the method of measurement shall be in accordance with the Bill of Quantities or other applicable schedules. The Contractor or its authorized agent shall sign the result of the measurements, which shall also be signed by the Employer's Representative as an acknowledgement and acceptance of the accuracy thereof.

11.2.4 For the purpose of measuring of the Construction Works executed by the Contractor that are required to be measured by records and drawings, the Contractor shall prepare records and drawings on a month by month basis, or such other intervals as may be required by the Employer's Representative, of such Construction Works, and submit the same to the Employer's Representative for his approval. Notwithstanding the provisions of Clause 11.2.3, the Employer's Representative shall have the right to delete or correct any measurement in the Measurement Book if it is found at a later stage that such Construction Works is incomplete, defective and/or not conforming to the Employer's Requirements.

11.2.5 The Employer's Representative reserves the right not to record the measurements, and/or not to accept a Running Bill, when the Works Executed during the period is insignificant or is less than twenty five percent (25%) of the Works to be executed for the period as per the Works Programme.

### 11.3 **Changes in Quantity**

11.3.1 The quantities of items set out in the BOQ are estimates, and liable to vary during the execution of the Works. The Contractor shall be obliged to execute the Works, irrespective of the variations in quantities of individual items or Group of Items. The Contractor shall further mention the reason for variance of actual quantity from the theoretical/ BOQ/ Order quantity in measurement book, and the same is to be duly approved by the Employer.

11.3.2 The variation in the quantities of the items set out in the BOQ shall be paid for by the Employer in the following manner:

- a) There shall be no variation in the rates of the items mentioned in the BOQ as a result of any increase or decrease in the quantities of such items up to twenty five percent (25%). It is clarified that the aforesaid variation limits shall apply to the

Contract Value, wherever applicable, and not to individual items mentioned in the BOQ.

- b) In case the increase or decrease in the quantities of any individual item or group of items mentioned in the BOQ is more than twenty five percent (25%) then the rates for the additional or reduced quantities, as the case may be, shall be mutually agreed between the Employer and the Contractor duly accounting for all savings that may be available to the Contractor in case of increased quantities.

## **12. Variation**

### **12.1 Right to Variation**

All Variations must follow the Variation procedure and shall be recorded in a written instruction from the Employer's Representative either as a Contractor's Variation or as an Employer's Variation, and shall not be implemented by the Contractor without such an instruction in writing from the Employer's Representative. No Variation shall in any way vitiate or invalidate the Contract. The Contractor shall not make any alteration and/or modification to the Works, unless and until the Employer's Representative instructs or gives consent to a Variation. If the Contractor's Documents or Works are not in accordance with the Contract, the rectification shall not constitute a Variation. On receipt of an order for Variation ("**Variation Order**"), the Contractor must immediately proceed to carry out the Variation.

### **12.2 Contractor to carry out Variation**

The Employer has the right to initiate variation either by issuing a Variation Order to the Contractor to carry out the variation or by asking the Contractor to submit its proposal for carrying out a variation.

### **12.3 Supplemental Agreement**

Any supplemental agreement between the Employer and the Contractor as to the terms upon which a Variation Order shall be implemented shall have no contractual or other legal effect, until it is in writing and is signed by the Contractor and the Employer. The terms of the supplemental agreement shall be binding upon the Contractor and the Employer. All terms and conditions of the Contract shall also be applicable to the Supplemental Agreement unless otherwise specified.

#### 12.4 Determination of Costs

The costs payable to the Contractor for executing the Works covered under any Variation Order shall be determined in accordance with the provisions of this Clause.

12.4.1 If as a result of any Variation Order, only the quantities mentioned in the BOQ are being varied and no extra items, which are not already covered in the BOQ, are required for the execution of the Works covered under the Variation Order, then the price of such varied quantities payable to the Contractor as a result of the Variation Order shall be determined in accordance with Clause 12.4.2.

12.4.2 If as a result of any Variation Order, any extra items, which are not already covered in the BOQ, are required for the execution of the Works covered under the Variation Order, then the price of such extra items shall be determined as follows:

- a) The price of such extra items at the current market rates, as utilized in the executed Permanent Works, including a reasonable percentage for wastage and transportation.
- b) Cost of enabling works if any (unless provided for separately) worked out on the above basis but with less stringent quality specification, minus salvage value of serviceable material released after completion of the Works and cost of material released as scrap.
- c) Cost of labour actually used at the Site for the execution of the Works for the extra items under the Variation Order at rates specified under the Minimum Wages Act, 1948 for the area where the Works are being executed for each category of workers utilized by the Contractor, further enhanced by a mutually agreeable percentage of the aforesaid rates to account for labour not directly utilized at the Site and other ancillary and incidental expenses on labour.
- d) Hire charges for plant and machinery, scaffolding, shuttering, forms, etc. required to be used at the Site in respect of the extra items included in the Variation Order. The tools used for the implementation of the Variation Order shall not be counted as plant and machinery for this purpose.
- e) An amount of 15% of items (a), (b), (c), and (d) above to allow for Contractors overheads, Taxes and profits. This percentage shall also apply to estimated cost of materials supplied free, if any, to the Contractors.

- a) In all cases where extra items for the execution of the Works under the Variation Order are required for which there are no rates in the BOQ, the Contractor shall give notice to the Employer's Representative, of at least seven (7) days before the need for their execution arises.
- b) Such a notice shall not however be necessary if the Employer's Representative has already instructed the Contractor in writing to execute the Works under the Variation Order requiring such extra items. To determine the rates of the extra items for the execution of the Works, the Employer's Representative may require the Contractor to furnish details and analysis of the new rates on the lines mentioned in the Clause 12.4.2 and/ or attend a meeting with the Employer's Representative to settle the rates. Upon being required to do so by the Employer's Representative, the Contractor shall be bound to furnish the requisite details and/ or attend the meeting with Employer's Representative.

12.4.3 In case the Contractor fails to so notify the Employer's Representative in advance wherever required, or having notified, fails to attend the meeting with the Employer's Representative for settlement of revised rates and/or the revised rates are not agreed at between the Employer's Representative and the Contractor, the Contractor shall be bound to execute the Works in respect of such extra items at rates to be decided by the Employer's Representative. In the absence of finalized rates for such new items, the Employer's Representative shall be free to certify payment to the Contractor based on a provisional rate for the Works executed in respect of such extra items. This shall be subject to upward or downward adjustment after the rate is finalized by the Employer's Representative for that item. Normally, no price variation clause shall be applicable to new rates not originally included in the bill of quantities. It shall, however, be open to the Employer's Representative to accept price variation clause in such cases where the rates are not based on the actuals and such Work is likely to continue for more than one year.

12.4.4 The Employer's Representative may however alternatively decide to allow payment for the extra items not included in the BOQ on the basis of the actual expenditure incurred on day work basis. In such a case, the Contractor shall furnish to the Employer's Representative, vouchers as proof of the expenditure incurred by the Contractor in executing the Works in respect of such extra items. Before ordering any Material or buying any Plants, etc., for the execution of the Works in respect of such extra items, the Contractor shall get the quotations and rates of all such Material, Plants, etc., approved by the Employer's Representative. The Contractor shall furnish to the Employer's

Representative, a daily list (with name, occupation and shift time) of all workmen deployed for the execution of the Works in respect of the extra items, in duplicate for its verification and approval by the Employer's Representative. One copy of the list, after verification, shall be signed by the Employer's Representative and returned to the Contractor. The Contractor shall submit to the Employer's Representative, a priced statement of labour, Material, Plant, etc., actually used for the execution of the Works in respect of the extra items, daily list (as mentioned above) duly acknowledged by the Employer's Representative together with the measurement of such Works at the end of each calendar month and/or as soon as such Works is completed, whichever is earlier. The payment for the extra items shall be certified by the Employer's Representative based on the submission, duly providing for Contractor's overhead, Taxes and profit as indicated in Clause 12.4.2. It is clarified that if the Contractor fails to submit any of the documents as are required to be furnished by the Contractor to the Employer's Representative, whether for his record, verification or approval, then the Contractor shall not be entitled for any payment in respect of the execution of the Works for the extra items by the Contractor on day work basis and any payment to be made to the Contractor in this regard shall be made at such rates which the Employer's Representative may consider as reasonable and fair.

### **13. Termination**

#### **13.1 Termination by Employer for Convenience**

The Employer shall, in addition to any other right enabling it to terminate the Contract, have the right to terminate the Contract at any time by giving a written notice to the Contractor. The Contract shall stand terminated on receipt of such notice but such termination shall be without prejudice to the rights of the Parties accrued on and before the date of termination and to the operation of the provisions of Clause 13.

#### **13.2 Conditions Leading to termination of Contract**

13.2.1 Upon occurrence of any one or more of the following events committed by the Contractor, the Employer may without prejudice to any other right which it may have under the Contract, issue a notice intending to terminate of the Contract ("**Employer's Preliminary Notice**"):

- a) Commits a material breach of its obligations under the Contract ;or
- b) Abandons or repudiates the Contract or suspends the execution of the Works during the subsistence of any dispute under the Contract, whether or not such

dispute is being resolved under the dispute resolution provisions of this Contract under Clause 18; or

- c) Without Reasonable Excuse acceptable to the Employer's Representative, fails to commence the Works or Variation in accordance with the Contract; or
- d) Fails to adhere to the Employer's Requirements and/or Variations in terms of the Contract; or
- e) Subcontracts whole of the Works or Subcontract without the approval of the Employer or assigns the Contract without approval of the Employer; or
- f) A petition for the winding up of the Contractor has been admitted and a liquidator or provisional liquidator has been appointed or an order of bankruptcy or an order for the winding up or dissolution of the Contractor has been made by a Court of competent jurisdiction, except voluntary liquidation for the purpose of amalgamation or reconstruction with the prior written consent of the Employer to the extent possible. Provided always that as part of any such amalgamation or reconstruction, the property, assets and undertakings of the Contractor are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Contractor under the Contract and any Subcontracts and further that:
  - (i) The amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under the Contract and any Subcontracts;
  - (ii) The amalgamated or reconstructed entity has the financial standing to perform its obligations under the Contract and the Subcontracts and has a credit worthiness at least as good as that of the Contractor as at the date of signing of the Contract; and
  - (iii) Each of the Subcontracts remain in full force and effect; or
- g) Persistently disregards instructions of the Employer's Representative or contravenes any provisions of the Contract; or
- h) Fails to achieve Time of Completion or any extension of time granted for the completion of the Works to the Contractor in accordance with the Contract; or
- i) Gives any warranty or has made any representation under the Contract which is found to be false or misleading; or

- j) Creates any encumbrance on the Site or part thereof in favour of any person save as otherwise expressly permitted under this Agreement; or
  - k) Abandons the Site; or
  - l) Suffers an attachment levied on any of the assets located or comprised in the Site, causing a material adverse effect of the Works and such attachment has continued for a period exceeding ninety (90) days; or
  - m) Fails to adhere to the Works Programme by margin of five percent (5%) of the stipulated period or thirty (30) days, whichever is earlier, or fails to complete the Works or parts of the Works within the stipulated or extended period of completion, or is unlikely to complete the whole of the Works or part thereof within time because of poor record of progress; or
  - n) Fails to remove Materials from the Site, or pull down and replace the Works, after receiving notice from the Employer's Representative to the effect that the said Materials or Works have been condemned or rejected; or
  - o) Fails to take steps to employ competent and/or additional staff and labour; or
  - p) Fails to afford the Employer's Representative or his representative proper facilities for inspecting the Works or any part thereof; or
  - q) Indulges in corrupt or fraudulent practices; or
  - r) Admits in writing of its failure or inability to pay debts as they become due; or
  - s) Fails to furnish or renew the Performance Bank Guarantee and/or Advance Bank Guarantees;
- or
- t) Commit default under any Applicable Laws; or
  - u) The Contractor has failed to resume work in accordance with this Contract; or
  - v) Fails to obtain and/or maintain insurance in accordance with its obligations under the Contract;
- or
- w) The Contractor's liability for Liquidated Damages under the Contract exceeds the maximum limit as specified in the Contract and the default or defect (committed by the Contractor) for which Liquidated Damages are/were charged continues to exist.



13.2.2 If the Contractor fails to remedy or rectify the default stated in the Employer's Preliminary Notice within twenty one (21) days of receipt of the Preliminary Notice, the Employer shall be entitled to terminate the Contractor's employment under the Contract by issuing a termination notice and expel the Contractor from the Site (but without thereby releasing the Contractor from any of its obligations or liabilities under the Contract, or affecting the rights and powers conferred on the Employer or the Employer's Representative under the Contract up to the date of termination).

However, in case of events specified in Clause 14.2.1 (b), (f) and (r) the Employer shall be entitled to immediately terminate the Contract without giving any Employer's Preliminary Notice. Notwithstanding anything in the Contract, if the Contractor suspends the execution of the Works during the subsistence of any dispute under the Contract, whether or not such dispute is being resolved under the dispute resolution provisions of this Contract under Clause 18, the Employer shall be entitled to continue the execution of the Works through any third party at the sole cost and risk of the Contractor.

13.2.3 After termination of the Contract under Clause 14.2.2, the Employer may complete the Works and/or arrange for other entities to do so at the risk and cost of the Contractor. The Employer and its entities may then use the access roads, the Contractor's Documents and all other facilities made by or on behalf of the Contractor.

13.2.4 Upon termination of the Contract under Clause 14.2.2, the Employer shall also be entitled to:

- a) Call the whole or such portion of the Performance Bank Guarantee amount as the Employer may consider fit; and
- b) Recover from the Contractor the cost of carrying out the balance Works in excess of the sum which the Contractor would have been paid according to the certificate of the Employer's Representative, if the works had been carried out and completed by the Contractor under the terms of the Contract. Such certificate shall be final and binding upon the Contractor. The amount to be recovered may be deducted by the Employer from any monies then due or which, at any time thereafter, may become due to the Contractor alone or jointly under this or any other Contract or otherwise. Any amount outstanding to the Employer under this Clause 13.2.4 shall be recovered from the Contractor as debt due.

### 13.3 Valuation at the date of Termination

The Employer's Representative shall, as soon as possible after termination determine and inform the Contractor of the value of the Contractor's Documents, Plant, Materials, Contractor's Equipment and Works and all sums then due to the Contractor as at the date of termination.

### 13.4 Payment after Termination

After termination under Clause 13.1 or 13.2.2, the Employer shall not be liable to make any further payments to the Contractor until the costs of design, manufacture, supply, construction, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been determined and the Employer shall use its best efforts to ensure that such determination and payment is completed at the earliest.

### 13.5 Non-exercise of power not to constitute waiver

Provided always that in case any of the rights and powers conferred upon the Employer by Clause 13.2.1 or 13.2.2 above, shall have become exercisable, and the same may not have been exercised, the non-exercise thereof shall not constitute waiver of any of the conditions thereof.

### 13.6 Default of Employer

13.6.1 The Contractor shall issue a notice intending termination of the Contract and setting out the default ("**Contractor's Preliminary Notice**"), upon occurrence of any one or more of the following events:

- a) Failing to pay the Contractor, without reasonable cause, the amount due under any certificate of the Employer's Representative within ninety (90) days after the expiry of the time provided in terms of Clause 11 within which payment has to be made, subject to any deduction that the Employer is entitled to make under the Contract, or
- b) A petition for the winding up of the Employer has been admitted and a liquidator or provisional liquidator has been appointed or an order of bankruptcy or an order for the winding up or dissolution of the Employer has been made by a Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction. Any act, default, omission caused or contributed by the Contractor in relation to

any of the provisions of the Contract shall be construed as a “reasonable cause” for the purposes of Clause 13.6.1.

13.6.2 If the Employer fails to remedy or rectify the default or propose steps reasonably acceptable to the Contractor within ninety (90) days of receipt of Contractor's Preliminary Notice, the Contractor may terminate the Contract after issue of fourteen (14) days notice to the Employer with a copy to the Employer's Representative. In case of termination of the Contract under this Clause 13.6.2, the Contractor shall be compensated in terms of provisions of Clause 13.3 plus the amount of any direct loss which the Contractor may have suffered in consequence of termination. The decision of the Employer's Representative in this regard shall be final.

13.6.3 Upon termination of the Contract under Clause 13.6.2 the Employer shall return the Performance Bank Guarantee.

### 13.7 **Mutual Termination**

Each Party shall have the right to terminate the Contract by giving a notice to the other Party, if the Notice to Proceed has not been issued by the Employer within six (6) months of the execution of the Contract.

### 13.8 **Upon Termination**

Upon termination of the Contract for any reason whatsoever, the Contractor shall to the extent instructed by the Employer's Representative:

- a) Cease all further work and the Contractor shall carry out works for the sole purpose of securing, preserving and protecting that part of the Works already executed and any work required to leave the Site and the Works in a clean and safe condition; (b) remove all the Contractor's Equipment and Temporary Works and all other things from the Site whether or not they were for incorporation into the Works;
- b) Remove any debris or rubbish and clean the Site;
- c) The termination or transfer of any Subcontracts and contracts (including those for the hire of plant, services and insurance) entered into by the Contractor for the purposes of or in connection with the execution of the Works;
- d) Repatriate the Contractor's and Subcontractor's personnel from any part of the Site;

- e) Deliver to the Employer all drawings showing all work carried out since the commencement of the Works;
- f) Deliver to the Employer all documents relating to the Works which are for the time being under the control of the Contractor;
- g) Deliver all Contractor's Documents and the Drawings and Designs made by or on behalf of it in relation to the execution of the Works;
- h) Transfer all the warranties on Plant and Materials in favour of the Employer for the balance warranty and extend requisite cooperation as may be required; or
- i) Any other matter arising out of the Contract with regard to which the Employer's Representative (whose decision on the matter shall be final and conclusive) decides that directions are necessary or expedient.

## **14. Risk and Responsibility**

### **14.1 Indemnity**

The Contractor shall indemnify and hold harmless the Employer Indemnitees from and against all actions, suits, proceedings, claims, damages, losses, expenses and demands of every nature and description, by reasons of any breach of the provisions of the Contract by the Contractor or any act or omissions of the Contractor, his representative or his employees in the execution of the Works, including any professional services provided by the Contractor. These indemnification obligations shall include but not be limited to claims, damages, losses, damage proceedings, charges and expenses which are attributable to:

- a) Sickness, disease or death of, or injury to any person; and
- b) Loss of, or damage to, or destruction of any property; and
- c) Loss, damage or costs arising from the carriage of Plant and Materials.

All sums payable by way of compensation under these conditions shall be considered reasonable compensation payable to the Employer with reference to the actual loss or damage sustained by the Employer. The decision of the Employer's Representative as to compensation claimed shall be final and binding.

### **14.2 Contractor's Care of the Works**

The Contractor shall take full risk and responsibility for the care of the Works, or any part thereof, including full risk and responsibility for the care of any Works being

manufactured/constructed/installed, or stored off-Site for inclusion in the Works, or in the course of transportation to the Site, and for the care of Contractor's Equipment, Temporary Works, Plant and any other Material, whatsoever, on the Site or delivered to or placed on the Site in connection with, or for the purpose of the Works. The Contractor shall take this risk and responsibility from the Commencement Date until the date of issue of the Final Taking Over Certificate, when risk and responsibility shall pass to the Employer. If the Employer's Representative issues a Final Taking Over Certificate for the Works, the Contractor shall cease to be responsible for the care of the Works from the date of issue of such Final Taking Over Certificate when risk and responsibility shall pass to the Employer. The Contractor shall take risk and responsibility for the care of any outstanding Works which is required to be completed prior to the expiry of the Contract Period, until the Employer's Representative confirms in writing that such outstanding work has been completed. If any loss or damage to the Works or any other property or person, arises from any cause, the Contractor shall rectify such loss or damage, at its cost, so that the Works conform with the Contract or at the option of the Employer, shall pay or allow to the Employer the cost of rectifying such loss or damage. Notwithstanding such loss or damage, the Contractor shall proceed with the execution of Works in all respects in accordance with the Contract and the Employer's Representative's instructions. The Contractor shall also be liable for any loss or damage to the Works caused by any operations carried out by the Contractor after the date of issue of the Provisional Taking Over Certificate till the issuance of Final Taking Over Certificate. The Contractor shall bear the risk and remain responsible and liable at all times for Plant, Material or any part of the Works, from the place of the manufacture till the Final Taking Over Certificate is issued to the Contractor in respect of such Plant, Material or any part of the Works. The Contractor recognises and acknowledges that although it is Employer's obligation to obtain customs clearance in respect of the Supply Works, the Contractor shall continue to be responsible for its obligations under this Clause.

#### 14.3 **Limitation of Liability**

Except as provided otherwise in the Contract and except for willful misconduct or gross negligence, neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or any other indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract. The total liability of the Contractor to the Employer under the Contract shall not exceed the Contract Value. Except that this Clause shall not limit the liability of the Contractor:

(a) Under any other provisions of the Contract which expressly impose a greater liability, (b) In cases of fraud, willful misconduct or illegal or unlawful acts, or (c) In cases of acts or omissions of the Contractor which are contrary to the most elementary rules of diligence which a conscientious Contractor would have followed in similar circumstances.

**15. Levy and Collection of Fee**

15.1 The Contractor shall not be permitted or allowed any advertisement/hoarding or other commercial activity at or near the Site and shall not allow any third party to put any advertisement/hoarding at the Site and charge, collect or receive any sums on account of any such activity or any other fee in any other form.

15.2 Notwithstanding anything inconsistent contained in the Contract, the Contractor acknowledges and accepts that the Employer shall have the sole authority to levy fee in respect of hoarding/advertisements and to demand, collect, retain and appropriate such fees in accordance with the Applicable Laws.

**16. Insurance**

**16.1 “Construction All Risks” Insurance**

Without limiting the Contractor’s obligations and responsibilities under Clauses 14 (Risk and Responsibility) and 17 (Force Majeure) or elsewhere in the Contract, the Employer shall effect and maintain for the benefit and in the joint names of the Employer, Owner, the Contractor and Subcontractor(s) of any level and others as deemed necessary by the Employer “Construction All Risks” insurance covering loss of or damage to the Works (including any Temporary Works) and loss of or damage to any Plant and Materials for incorporation into the Works, at the Site during the period of execution of the Works and Testing and also covering loss of and/or damage to such property arising prior to the issue of the Provisional Taking Over Certificate from a cause occurring during the period of construction and testing on the Site or occasioned by the Contractor in the course of any operations carried out by it for the purpose of complying with its obligations under the Contract.

**16.2 Third Party Liability Insurance**

Without limiting the Contractor’s obligations and responsibilities under Clause 14 (Risk and Responsibility) or elsewhere in this Agreement, the Employer shall effect and maintain for the benefit and in the joint names of the Employer, the Contractor and Subcontractor(s) of any level on the Site and others as deemed necessary by the Employer, insurance covering the legal liability of each of them for accidental injury to

persons or accidental loss of or damage to property arising out of the execution of the Works and happening anywhere in India where the Site is located. The policy in respect of such insurance shall include a cross-liability clause to the effect that the insurance shall apply to the Employer, the Contractor and Subcontractor(s) of any level and others as deemed necessary by the Employer, as separate insureds. Such insurance shall remain in force for the full period until receipt by the Contractor of a Provisional Taking Over Certificate or a copy thereof and be for an indemnity for each and every occurrence of a sum not less than that specified by the Employer.

### **16.3 Contractor's Obligations**

The insurances referred to in Clauses 16.1 and 16.2 shall be effected with insurers of the Employer's choosing and the Employer shall upon the Contractor's request provide the Contractor with the terms and conditions thereof. The Contractor shall conform to the conditions of such insurance and all reasonable requirements of insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents and shall bear at its own cost the consequences of any failure so to do. The Employer may deduct any amounts payable by the Contractor under this Clause 16.3 from any monies due or which may become due to the Contractor. The Contractor shall not take or omit to take any step the taking or omission of which may result in any insurance policy or the cover under such policy becoming void or voidable.

### **16.4 Contractor's Equipment Insurance**

The Contractor shall effect and maintain insurance in the joint names of the Employer and the Contractor against all loss or damage from whatever cause arising in respect of all Contractor's Equipment brought onto and destined for the Site for use in the execution of the Works to the full value of such Contractor's Equipment.

### **16.5 Insurance against Accidents to Contractor's Personnel**

The Contractor shall insure its liability under Applicable Laws during the whole time that any persons are employed by it or by its Subcontractor(s) or suppliers in connection with the Works.

### **16.6 Other Insurance**

The Contractor shall at all material times keep in force the following additional insurances in so far as they may be applicable:

Policies of motor insurance in respect of all mechanically propelled vehicles used on public highways or in any circumstances such as to be eligible for compulsory motor insurance in accordance with Applicable Laws.

#### 16.7 **Insurance-Materials**

The Contractor shall effect and maintain insurance cover to the Employer's satisfaction on any Materials in course of manufacture/ construction off Site against all perils normally insured until such Materials become insured under the policies referred to in Clause 16.1 and 16.2.

#### 16.8 **Indemnity to Employer**

All insurances referred to in Clause 16 shall be endorsed to note the interest of the Employer and to indemnify the Employer Indemnitees fully in respect of claims that may be made against any of the Employer Indemnitees arising out of the execution of the Works and shall cover all liabilities usually and reasonably insurable for which the Contractor is responsible under the terms of the Contract.

#### 16.9 **Production of Policies**

The insurances referred to in Clause 16 shall be effected with insurers and on terms approved by the Employer (which approval shall not be unreasonably withheld) and the Contractor shall whenever required produce to the Employer the policies of insurance and the receipts for payment of the current premiums.

#### 16.10 **Remedy on Failure to Insure**

If the Contractor fails to effect and keep in force the insurances referred to in Clause 16 then in such case, the Employer may effect and keep in force any such insurances and pay such premium or premiums as may be necessary for that purpose and from time to time and deduct, the amount so paid from or to any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.

### 17. **Force Majeure**

#### 17.1 **Definition of Force Majeure**

In this Clause, "**Force Majeure**" means an event beyond the control of the Employer and the Contractor, which makes it impossible or illegal for the party claiming Force Majeure ("**Affected Party**") to perform its obligations under the Contract and which act or event is: (i) beyond the reasonable control and not arising out of the fault of the Affected Party; (ii) the Affected Party has been unable to overcome such act or event by the exercise of due



diligence and reasonable efforts, skill and care; and (iii) has a Material Adverse Effect on the Works. For the purpose of this Clause 17.1 a Force Majeure event shall mean:

- a) Act of God or events beyond the reasonable control of the Affected Party and against which an experienced party could not be reasonably expected to take precautions, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption or fire to the extent originating from a source external to the Site or beyond design specification for the construction Works;
- b) Contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such an assembly;
- c) Riot, commotion or disorder, strikes or boycotts which interrupt supplies and services to the Works for a period exceeding a continuous period of seven (7) days in a year, unless solely restricted to employees of the Contractor or of his Subcontractors currently or formerly engaged on the Works;
- d) Any discoveries or archaeological finding that prevents a party from discharging its obligations;
- e) Any events/Act due to Political Event such as amendment in Constitutional Law of State or National which has impact or consequence in execution scope of Work under this Contract.
- f) Expropriation or compulsory acquisition by any governmental agency of any assets or rights of the Employer or the Contractor;
- g) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, insurrection, terrorist or military invasion or civil commotion which interrupt supplies and services to the Works for a period exceeding a continuous period of (7) days in a year ; and
- h) Industry wide, city wide, state wide or India wide strikes or industrial action or any public agitation.
- i) If a Party considers that it may be affected by a Force Majeure event, the Party shall promptly notify the other Party and Employer's Representative of such Force Majeure event within seven (7) days of such occurrence. If neither Party issues any notice regarding the event within seven (7) days of its occurrence, the said

event shall be deemed not to have occurred and the Contract shall continue to have effect as such.

**17.2 Effect of Force Majeure Event**

Neither the Employer nor the Contractor shall be considered in default or in contractual breach to the extent that performance of their obligations is prevented by a Force Majeure event which arises after the date of Notice to Proceed. Upon the occurrence of such Force Majeure, the Affected Party shall endeavour to continue to perform its obligations as far as reasonably practicable.

**17.3 Contractor's Responsibility**

If affected by such Force Majeure event, the Contractor shall within a period of seven (7) days, promptly notify the Employer's Representative of any proposals for overcoming the consequences of the Force Majeure event, including any reasonable alternative means for performance, but shall not carry out these proposals without the consent of the Employer's Representative.

**17.4 Employer's Responsibility**

If affected by such Force Majeure event, the Employer shall within a period of seven (7) days, promptly notify the Employer's Representative and the Contractor of any proposals for overcoming the consequences of the Force Majeure event.

**17.5 Payment to Contractor**

The Works that have already been measured shall be paid for by the Employer even if the same is subsequently destroyed or damaged as a result of the Force Majeure event. The cost of rebuilding or replacing any part of the Works that has been measured shall be borne by the Employer.

**17.6 Resumption of Work**

The obligations under the Contract shall be resumed as soon as practicable after the Force Majeure event has come to an end or ceased to exist. In case of doubt or dispute, whether a particular occurrence should be considered a Force Majeure event as defined under this clause, the decision of the Employer's Representative shall be final and binding.

**17.7 Optional Termination, Payment, Release and mitigate the effects**

17.7.1 Irrespective of any extension of time, if a Force Majeure event occurs and its effect continues for a period of one hundred and eighty (180) days or more in a continuous period of three sixty five days (365) days, after notice has been given under this Force Majeure Clause the Employer may give to the Contractor a notice of termination of the Contract which shall take effect thirty five (35) days after the notice is given.

17.7.2 The Contractor shall be paid fully for the Works done under the Contract, but not for any defective work or Works done. The Employer shall have the option to take over any Plant and Materials lying at site, at rates provided for in the Contract, failing that, as per rates, which are determined to be fair and reasonable by the Employer's Representative.

17.7.3 The affected Party shall use all reasonable efforts to mitigate the effects of a Force Majeure, including but not limited to, the payment of all reasonable sums of money by or on behalf of the affected Party, which sums are reasonable in light of the likely efficacy of the mitigation measures. Save as expressly provided above, the Employer/Owner shall not be liable to make any payments in respect of a period of or for consequences arising out of a Force Majeure.

**18. Claims, Disputes, Conciliation and Arbitration**  
**27.1 Procedure for Claims**

**18.1 Procedure for claims**

(a) If the Vendor intends to claim any additional payment in addition to the Contract Price on the occurrence of any event entitling the Vendor to any additional payment, the Vendor shall give notice to the Purchaser as soon as possible and in any event within ten (10) days of the start of the event giving rise to the claim.

(b) The Vendor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at any other location acceptable to the Purchaser. Without admitting the Purchaser's liability, the Purchaser shall, on receipt of such notice, inspect such records and may instruct the Vendor to produce and maintain further contemporary records. The Vendor shall permit the Purchaser to inspect all such records, and shall submit copies to the Purchaser on request.

(c) Within thirty (30) days of such notice, or such other time as may be agreed by the Purchaser , the Vendor shall send to the Purchaser an account, giving detailed particulars of the amount and basis of the claim.

(d) Where the event giving rise to the claim has a continuing effect, such amount shall be considered as interim. The Vendor shall then, at such intervals as the Purchaser may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further particulars. Where interim accounts are sent to the Purchaser, the Vendor shall send a final account within thirty (30) days of the end of the effects resulting from the event.

(e) If the Vendor fails to comply with this Clause 27.1, the Vendor shall not be entitled to claim any additional payment.

(f) Notwithstanding anything contained in the Contract, the Purchaser shall not be liable for any claim for any matter, arising out of or in connection with the Contract or the performance of the Works, unless the Vendor shall have given a notice to the Purchaser in respect thereof, in writing, within sixty (60) days from the date of Acceptance Certificate. It is clarified for the avoidance of doubt for any such claim under this Clause 27.1(f), the Vendor shall still be required to comply with the procedure set out under Clause 27.1(a) to 27.1(e).

#### 18.2 **Payment for Claims**

The Vendor shall be entitled to additional costs as the Purchaser considers due, after taking approval from the Purchaser. If the documents or information supplied by Vendor as requested by Purchaser clearly in support of claim are insufficient to substantiate the whole of the claim, the Vendor shall be entitled for payment for such part of the claim as agreed by the Purchaser.

#### 18.3 **No legal action till Dispute settlement procedure is exhausted**

Any Dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to the Contract shall be settled in accordance with the provisions of Clause 27 (other than Clause 27.1 and 27.2). No action at law concerning or arising out of any such Dispute, differences or controversy shall be commenced unless and until all applicable Dispute resolution procedures set out in Clause 27 (other than Clause 27.1 and 27.2) shall have been finally exhausted in relation to that Dispute, difference or controversy.

#### 18.4 **Notice of Dispute**

For the purpose of Clause 27, a "Dispute" shall be deemed to arise when one Party serves on the other Party a notice in writing (hereinafter called a "**Notice of Dispute**") stating the nature of the Dispute, differences or controversy provided that no such notice shall be served later than sixty (60) days after the date of issue of Acceptance Certificate by the Purchaser.

#### 18.5 **Two Stages for Dispute Resolution**

Disputes shall be settled through two stages

- (a) Negotiations between the Vendor and Purchaser; and
- (b) Arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (as amended from time to time) and in accordance with this Clause 27.

**18.6 Negotiation**

The Parties shall first endeavour to settle amicably any Dispute arising out of or in connection with the Contract, including without limitation, their existence, interpretation, performance, or termination, by negotiation in accordance with this Clause 27.6, as follows

- (a) The Party raising the Dispute shall address to the other Party a notice requesting a negotiation of the Dispute within fifteen (15) days of notification.
- (b) The Dispute shall then be referred for resolution between an authorized officer or director of the Vendor and the Purchaser or any other authorised officer of Purchaser. The Vendor and the Purchaser shall attempt to resolve such Dispute by negotiation, and document any settlement that may be agreed, within a further period of thirty (30) days

**18.7 Arbitration**

If the efforts to resolve all or any of the Dispute, differences or controversy through negotiation fails, then such Dispute or differences, whatsoever arising between the Parties, arising out of or relating to performance of Works or effect of the Contract or the breach thereof shall be referred to arbitration in accordance with the following provisions.

- (a) Matters to be arbitrated upon shall be referred to a sole arbitrator if the total value of the claim is upto Rupees ten (10) million and to a panel of three (3) arbitrators if total value of claims is more than Rs. 10 million. The sole arbitrator shall be appointed mutually by the Parties and in case the Parties fail to agree on the sole arbitrator, then the sole arbitrator shall be appointed in accordance with the provisions of the Arbitration and Conciliation Act, 1996. In the arbitration panel, each Party shall nominate one (1) arbitrator each and the third arbitrator shall be chosen by the two (2) arbitrators nominated by the Parties. The arbitrator(s) shall be appointed within a period of thirty (30) days from the date of receipt of written notice/ demand of appointment of arbitrator from either Party.
- (b) The arbitration proceedings shall be held in Mumbai. The language of proceedings, documents and communication shall be English.

(c) The award of the sole arbitrator or the award by majority of three arbitrators as the case may be shall be binding on all Parties.

**18.8 Interest on Arbitration Award**

Where the arbitral award is for the payment of money, no interest or charges or taxes or cess shall be payable on whole or any part of the money for any period, until the date on which the award is made.

**18.9 Cost of Arbitration**

The cost of arbitration shall be borne by the respective Parties. The cost shall, *inter alia*, include the fees of the arbitrator(s) as per rates fixed by the Purchaser from time to time.

**18.10 Jurisdiction of Courts**

Where recourse to a Court is to be made in respect of any matter, the courts at Mumbai shall have exclusive jurisdiction.

**18.11 Suspension of Work on Account of Arbitration**

The reference to negotiation/arbitration shall proceed notwithstanding that the Works shall not then be or be alleged to be complete, provided always that the obligations of the Purchaser, the Purchaser and the Vendor shall not be altered by reasons of arbitration being conducted during the progress of the Works. In no event shall the Vendor be entitled to suspend the Execution of the Works or part of the Works to which the Dispute relates on account of arbitration and payments to the Vendor shall continue to be made in terms of the Contract.

**19. Representation and Warranties of the Contractor**

The Contractor represents and warrants to the Employer that:

- a) It is duly organized, validly existing and in good standing under the laws of India;
- b) It has full power and authority to execute, deliver and perform its obligations under the Contract;
- c) It has taken all necessary corporate and other approvals under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of the Contract;
- d) It has the financial standing and capacity to execute the Works;
- e) The Contract constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

- f) It is subject to the Applicable Laws with respect to the Contract and expressly waives any immunity in any jurisdiction in respect thereof;
- g) The execution, delivery and performance of the Contract shall not conflict with, result in the breach of, constitute a default under Contractor's constitutional documents or any Applicable Laws or any covenant, contract, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- h) There are no actions, suits, proceedings or investigations pending or to the Contractor's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute a termination event or which individually or in the aggregate may result in a Material Adverse Effect upon the Works;
- i) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any statutory authority which may result in a Material Adverse Effect upon the Works;
- j) No bribe or illegal gratification has been paid or shall be paid in cash or kind by or on behalf of the Contractor to any person to procure the Contract or to procure other contracts in relation to which the Contractor may be a party in relation to the Project.
- k) Without prejudice to any express provision contained in the Contract, the Contractor acknowledges that prior to the execution of the Contract, the Contractor has after a complete and careful examination made an independent evaluation of the Site, the Employer's Requirements and any information provided by or on behalf of the Employer and has made an inspection of the Site and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Contractor in the course of performance of its obligations hereunder.

**20. SET OFF/ RECOVERIES:**

Whenever under this Agreement any money is recoverable from and payable by the Contractor, Employer shall be entitled to recover such sum by appropriating in part or in whole by deducting any sum which at any time thereafter may become due from the Contractor in this or any other Agreement(s). Should the sum be not sufficient to cover the full amount recoverable the Contractor shall pay to the

Employer on demand the remaining balance immediately without further request by Employer. Vendor shall not be entitled for any interest or charges or taxes/cess etc., on account of any delay from the Employer.

## **21. Payment and Taxes**

### **21.1 Payment**

21.1.1 Subject to the Contractor fulfilling its obligations under the Contract, the Employer shall pay to the Contractor, the Contract Value. While the payment of Supply Price and Construction Price shall be governed by the Payment Terms and the Contract Agreement. The Employer shall, notwithstanding any provision to the contrary included in the Contract, be entitled to deduct from and/or set off against any amount due to the Contractor under the Contract, any and all amounts which the Contractor is liable to pay to the Employer under the Contract and any sums due and payable by the Contractor to satisfy any obligations or liabilities of the Contractor to the Employer pursuant to any contract to which the Employer and the Contractor are parties other than the Contract.

21.1.2 Subject to the provisions of Clause 11.2.5, the Contractor shall submit to the Employer's Representative, monthly on-account bills on or before the 10th of every month ("**Running Bills**") in respect of the Construction Works executed by the Contractor in the preceding month. If the Contractor fails to submit any Running Bill by the 10th of any month, then the Employer shall have the right to consider such Running Bill only in the immediately succeeding month. The Running Bills shall only be for such Construction Works, as, in the opinion of the Employer's Representative, the Contractor has executed in accordance with the Contract, based on the measurements recorded in the Measurement Book in accordance with Clause 11.2.

21.1.3 The Running Bills to be submitted by the Contractor shall be in the format approved by the Employer. Each Running Bill submitted by the Contractor under the Contract shall be supported with measurements, jointly acknowledged and accepted by the Contractor and Employer's Representative (or his duly appointed assistant) in the Measurement Book in accordance with the provisions of Clause 11.2. Upon receipt of the Running Bill by the Employer's Representative, the Employer's Representative shall scrutinize the same to check for any errors and to verify that the amount claimed under the Running Bill is in conformity with the BOQ. If the Employer's Representative discovers any errors in the Running Bill or determines that the amount claimed under the Running Bill and/or the measurements set out therein are not accurate or the amount does not conform to the



BOQ, or if the Employer's Representative determines that any amount claimed under the Running Bill is not payable for any reason(s), then the Employer's Representative shall determine the amount payable to the Contractor in respect of such Running Bill ("**Certified Amount** ") within the stipulated period as provided in the special terms and conditions of the Contract from the receipt of such Running Bill. The balance amount (i.e. the amount claimed under the Running Bill less the Certified Amount) shall be treated as disputed and shall be determined in accordance with Clause 18 (other than Clause 18.1 and 18.2). After determination of the Certified Amount, the Employer adjust the Certified Amount for all statutory deductions (such as service tax, income tax, etc.), recoveries for any advances made to the Contractor (subject to the Payment Terms) and any amounts due from the Contractor to the Employer under the Contract. Thereafter, the Certified Amount shall be paid to the Contractor within the stipulated period as provided in the special terms and conditions of the Contract from the determination of the Certified Amount.

21.1.4 Contractor or its Affiliates or Subcontractor shall issue the invoices (in the prescribed format) within the time limit prescribed under the relevant laws. Payment shall be released only when the Contractor or its Affiliates or Subcontractor furnish appropriate documents evidencing payment of applicable taxes and fulfill all compliances prescribed by relevant laws prevalent at the time of supply, payment or raising of invoice. Any change in the prices agreed between the Parties due to reasons including but not limited to discounts, price adjustments etc. shall be clearly recorded on the face of the invoice. Contractors or its Affiliates or Subcontractors shall duly comply with the prescribed laws in order to enable the Employer to avail appropriate credit of the taxes discharged by the Contractors or its Affiliates or Subcontractors. Any loss of credit arising on account of any reason including but not limited to negligence, fault, etc. of the Contractors or its Affiliates or Subcontractors shall be deducted from any monies due or that may become due to Contractor or if such monies are insufficient, Contractors shall forthwith pay the deficient amount within forty five (45) days of written request.

21.1.5 After the issue of the Final Taking Over Certificate, the Employer's Representative shall have the final measurements of the Construction Works, executed by the Contractor, taken which shall be recorded in the Measurement Book and signed by the Contractor and the Employer's Representative, as provided in Clause 11.2. A joint account of any Plant, equipment and Material issued by the Employer to the Contractor, if any, for the execution of the Construction Works shall also be prepared and signed jointly by the Contractor and the Employer's Representative as aforesaid. Based on the final

measurements and joint Material, Plant and equipment statements, the Contractors shall submit a draft final bill with such supporting documentation as may be required, in the pro-forma prescribed by the Employer's Representative. Within the stipulated period as provided in the special terms and conditions of the Contract of receipt of the draft final bill from the Contractor and of all necessary documentation required for its verification, the Employer's Representative shall determine the value of the Construction Works and issue his draft final bill to the Employer and the Contractor. The Contractor shall sign the Employer's Representative's copy of the draft final bill as token of its acknowledgment and acceptance of the full and final value of the Construction Works executed under the Contract and specified in the Employer's Representative's draft final bill, and based on that, promptly submit the final bill, duly signed by the Contractor, to the Employer's Representative in the format provided by the Employer's Representative, together with a contract payment register duly reconciled between the Employer and the Contractor. On receipt of the final bill, the Employer's Representative shall promptly prepare and issue to the Employer, the certificate of final payment, confirming the amount due to the Contractor under the Contract. The Employer shall, on receipt of the certificate of final payment, make payment of the amount specified in the certificate of final payment, if any, subject always to any deductions of any sum owed by the Contractor to the Employer under the Contract.

21.1.6 The Employer shall make payment of the amount specified in the certificate of final payment upon submission of No Demand Certificate and Letter of Indemnity as per Clause 4.2.3.1.

## 21.2 **Taxes**

21.2.1 All taxes that are applicable under CGST, SGST, UGST, IGST and GST Compensation Cess shall be payable extra.

21.2.2 The Contractor shall give reconciliation account of the Free Issue Materials/ Free of Cost Materials (FIM / FOC) that the Employer may issue from time to time, with each Tax Invoice / monthly RA Bill duly certified by the authorized person of the company. Such material reconciliation statement to contain gross quantity of each material issued free of cost, quantity of material consumed in the work and balance quantity of material physically available with him. At the end of contract , if any shortfall in FIM / FOC is found, same shall be recovered from the contractor at prevailing purchase prices along with applicable SGST, CGST, IGST, UTGST GST Compensation Cess thereon plus 15% overhead.

- 21.2.3 The Contractor shall carefully examine the labor laws applicable to his transactions especially Minimum Wages Act, PF Act, ESIC, Payment of Bonus Act, BOCW Act, Workmen Compensation Act and other such laws as may be applicable. Employer shall deduct Labour Cess under BOCW (Building and Other Construction Workers) Cess Act, against each running invoices as per rate prevalent under BOCW law and will obtain the relevant NOC from labour department. The Company will seek compliance for each of such Acts including registration and payments. Any liability that the Company may face on any violation by the Contractor shall be debited to the Contractor and recovered from him.
- 21.2.4 Contractor shall submit the royalty slip / challan for the minerals that are used in the contract, along each RA Bill. Failure of the Contractor to submit the royalty slips shall entitle the Employer to hold an equivalent amount payable to the Contractor. Such hold amount shall be released as and when the Contractor submits the proof of royalty payment.
- 21.2.5 Contractor shall obtain GST registration in the States as per GST laws. Contractor shall have a valid GST registration number and shall submit GST Tax Invoice and other documents as per SGST Act, CGST Act, IGST Act, UTGST Act, GST Compensation Cess Act and Rules made there under. Failure to submit GST Tax Invoice by the Contractor shall be liable for withholding SGST, CGST, IGST, UTGST, GST Compensation Cess amount by the Employer while releasing the payment.
- 21.2.6 Contractor must compulsorily register at the Employer's Contractor Portal "gstportal.relianceada.com".
- 21.2.7 Contractor shall login into the Contractor Portal and enter invoice details. Contractor should upload the copy invoices and other documents in the portal and forward the original copies to the address mentioned in the Work Order.
- 21.2.8 Contractor Invoice should contain all information as required under GST Invoice, Debit Note and Credit Rules. (sample format provided in SCC)
- 21.2.9 Contractor to carefully examine and charge relevant CGST / SGST, UGST, IGST or GST Compensation Cess as applicable to the transactions.
- 21.2.10 It is agreed that the invoices will be paid in two stages (a) Base Amount (b) Tax Amount. Tax Amount will be paid only after Contractor provides sufficient proof that the GST amount charged in its invoice is declared in GSTR-1 and GSTR-3 returns and payment of taxes has been made.

- 21.2.11 SAC for services shall be mandatorily included to avoid disagreement on classification at a later stage.
- 21.2.12 Employer has the right to recover tax loss, interest and penalty suffered due to any non-compliance of tax laws by the Contractor.
- 21.2.13 In the event, Employer is not able to avail any tax credit due to any short coming on the part of the Contractor (which otherwise should have been available to Employer in the normal course), then the Contractor at his own cost and effort will get the short coming rectified. If for any reason the same is not possible, then the Contractor will make 'good' the loss suffered by Employer due to the tax credit it lost in that transaction. In such event any amount paid to the Contractors shall be first attributable to the tax (GST) charged in the invoice and the balance shall be considered towards the 'value' of supply of goods/ services.
- 21.2.14 Employer shall deduct "Tax Deducted at Source' wherever applicable and at the rate prescribed under the GST law or any other Indian law and remit the same to the government. Necessary TDS certificates as per law shall be issued by the Employer to the Contractor.
- 21.2.15 Any local levies and or other charges levied by any Central/state/local authorities wherever applicable shall be extra and Contractor shall be liable to discharge the same.
- 21.2.16 Any liability arising out of dispute on the tax rate, classification under SAC, calculation and payment of tax to the Government will be to the Contractor's account
- 21.2.17 Wherever the applicable services are liable to GST under reverse charge mechanism, then the supplier should clearly mention the category under which it has been registered and also that "the liability of payment of GST is on the Recipient of Services".
- 21.2.18 The invoice should clearly specify any abatement, if any claimed or otherwise from the Taxable Value while calculating the GST.
- 21.2.19 The Work Order shall be void, if at any point of time the Contractor is found be to a black listed dealer as per GSTN rating system and further no payment shall be entertained.
- 21.2.20 The Employer shall charge SGST, CGST, IGST, UTGST, SGST Compensation Cess on the value net of discount agreed in the Contract even if the discount is given subsequently.

**Timely provision of invoices/ Debit Notes / Credit Notes :**

- 21.2.21 Contractor to timely provide invoice/ Debit note/ Credit note to enable Employer to claim tax benefit on or before stipulated time period. All necessary adjustment entries (Credit Note, Purchase Returns, Debit Notes) shall be made within the timelines provided under the GST laws.
- 21.2.22 In case of receipt of advance, the Contractor undertakes to raise the Tax Invoice. Employer upon payment of advance shall issue payment voucher as per applicable GST laws and rules.
- 21.2.23 Three copies of the invoices need to be provided by suppliers and wherever the law requires, an Electronic Reference Number for each invoice.

**Tax Indemnity Clause**

- 21.2.24 Contractor (along with its affiliates in India or overseas including any agent/ third party contractor or any other person appointed by such affiliates for the purpose of this agreement) agrees that it will be solely responsible for performing all compliances and making payments of all taxes (direct tax or indirect tax including but not limited to income-tax, transfer pricing, value added tax, SGST, CGST, IGST, UTGST, GST Compensation Cess custom duty, excise duty, Research and Development Cess, etc.), cesses, interest, penalties or any other tax/ duty/ amount/ charge/ liability arising either out of laws/ regulations applicable in India and overseas or because of a demand/ recovery initiated by any revenue authority under laws/ regulations applicable in India or overseas.
- 21.2.25 In case any tax liability (including but not limited to income-tax, transfer pricing, value added tax, SGST, CGST, IGST, UTGST, GST Compensation Cess custom duty, excise duty, Research and Development Cess, etc.), cesses, interest, penalties or any other tax/ duty/ amount/ charge/ liability becomes payable by Employer due to failure of the Contractor, or any of its affiliates in India or overseas including any agent/ third party contractor or any other person appointed by such affiliates for the purpose of this agreement, to comply with the relevant laws/ regulations applicable in India or overseas, Contractor undertakes to indemnify Employer for an amount equal to amount payable by Employer.
- 21.2.26 Further, Contractor undertakes to keep Employer indemnified at all times against and from all other actions, proceedings, claims, loss, damage, costs and expenses which may be brought against Employer or suffered or incurred by Employer and which shall have arisen either directly or indirectly out of or in connection with failure of The

Contractor, or any of its affiliates in India or overseas including any agent/ third party contractor or any other person appointed by such affiliates for the purpose of this agreement, to comply with relevant obligations/ compliance under any law/ regulations applicable in India and overseas.

21.2.27 The parties agree to follow the following process in case any communication of demand, arising out non-compliance by Contractor (along with its affiliates in India or overseas including any agent/ third party contractor or any other person appointed by such affiliates for the purpose of this agreement), is received by Employer :

21.2.28 On Employer receiving any communication from a competent authority demanding tax liability (including but not limited to income-tax, transfer pricing, value added tax, SGST, CGST, IGST, UTGST, GST Compensation Cess custom duty, excise duty, Research and Development Cess, etc.), cesses, interest, penalties or any other tax/ duty/ amount/ charge/ liability, Employer shall, within 5 common working days from the date of receipt of such communication (save where the period to respond to the relevant authority is less than five days, in which case, as soon as reasonably possible) inform Contractor in writing of such communication.

21.2.29 Pursuant to receiving communication from Employer, Contractor shall suggest to accept the communication and pay the demand amount to the competent authority. In such an event, Contractor shall reimburse such amount paid to Employer within 5 working days from the date of payment by Employer to the competent authority.

21.2.30 If Contractor advises in writing and Employer agrees to dispute the demand, then Employer shall dispute the matter with competent authority as per due process prescribed under the regulations and Employer shall not pay the Tax Demand. In such scenario, cost of litigation including but not limited to Counsel cost, filing fees, other related charges, should be reimbursed by Contractor to Employer. Additionally, If any coercive steps of recovery are initiated by the department, then Employer would pay such amount (including by way of adjustment of refunds due to it) and the same would be reimbursed by Contractor within 5 working days from date of such recovery from Employer. Employer will take all necessary steps to avoid such recovery measures.

21.2.31 On determination of the demand through an Order issued by a Tribunal or any other similar Authority, by whatever name called, under any law applicable in India or overseas, if the demand or any part thereof becomes payable and is paid by Employer, then Contractor undertakes to reimburse such amount to Employer within 10 days from the date of payment. Alternatively, if on determination of the demand through an Order,

no amount is payable by Employer then the order, then any refund arising to Employer due to such an Order shall be passed on to Contractor within 10 days from the date of receipt of refund.

### **Ant-profiteering clause**

21.2.32 Under the GST Law, any economic or tax benefit arising out of the implementation of GST is mandatorily required to be passed on to the Employer by the Contractor. Similarly, the benefits enjoyed by your sub contractors and other players in the supply chain are also required to be passed on to you by them, which in turn shall be passed on to us by way of price reductions. Accordingly, you are expected to pass on any direct or indirect benefits arising thereon. The responsibility to pass on the above benefits vests with you, as our 'responsible Contractors' and we reserve our right to understand and seek the manner/ mechanism in which such benefits are passed on to us.

### **Tax Invoice and associated documents**

21.2.33 Contractor to submit Tax Invoice as per Annexure 5 and associated documents as per Annexure -8.

## **22. Miscellaneous**

### **22.1 Exclusive Remedies**

The liabilities and remedies under the Contract are exclusive. Neither Party shall bring any claim against the directors, officers and employees of the other Party or any affiliate or Subcontractor in respect of any claim, loss or damage which could be recovered under the Contract.

### **22.2 Entire Agreement**

The Contract contains all covenants stipulations and provisions agreed by the Parties, and constitutes the entire Contract between the Parties hereto and supersedes any oral or written representations, understandings, proposals, or communications heretofore entered into by or on account of the Parties and may not be changed, modified, or amended except in writing and signed by the Parties hereto.

## **23. Reservation of Rights**

No forbearance, indulgence, relaxation or inaction by the Employer at any time to require performance of any of the provisions of the Contract shall in any way affect, diminish or prejudice the right of the Employer to require performance of that provision, and no delay in exercising or omission to exercise any right, power or remedy accruing to the Employer upon any default or otherwise under the Contract shall impair any such right, power or remedy or shall be construed to be a waiver thereof or any acquiescence in such default, nor shall the action or inaction of the Employer in respect of any default or any acquiescence by it in any default, affect or impair any right, power or remedy of the Employer in respect of any other default.

**24. Partial Validity**

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Any invalid or unenforceable provision of this Agreement shall be replaced with a provision, which is valid and enforceable and most nearly reflects the original intent of the unenforceable provision.

**25. Partnership**

Nothing contained or implied in Contract shall constitute or be deemed to constitute a partnership or agency between the Parties and none of the Parties shall have any authority to bind, commit or make any representations on behalf of the other Party.

**26. Severability**

If any provision of the Contract shall be determined to be invalid, illegal or unenforceable under Applicable Laws, all other provisions of the Contract shall continue in full force and effect unless such invalidity or unenforceability adversely affects the underlying intent of the Contract or unless the invalid or unenforceable provision comprises an integral part of, or is inseparable from the remainder of the Contract. In such circumstances the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, illegal or unenforceable provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Contract or otherwise.

**27. Stamp Duty**



Stamp duty payable on the Agreement/Contract or any part thereof shall be paid and borne by the Contractor . In the event of default by the Contractor to pay such stamp duty, or if the Employer is required by any Government Authority to pay such duty, the Contractor shall reimburse the duty and indemnify the Employer against all claims, penalties, fees, expenses and charges arising due to failure of the Contractor to pay or reimburse such payment to the Employer.

**28. Agency**

28.1 Contractor represents and warrants and agrees that no broker, finder, intermediary, representative or investment banker (including any government official or employee) is, directly or indirectly, entitled or will be entitled to, or has been paid, any brokerage, finder's or other similar fee or commission or payment of any kind in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Contractor or any of its affiliates and no such person, directly or indirectly has been or will be engaged by Contractor and/or any of its affiliates in respect of this Agreement or the transactions contemplated hereby or in respect of any other contract or agreement related to this Agreement.

28.2 Contractor also represents and warrants that, to the best of its knowledge, no officer, director, employee, agent or representative of Contractor or any of its affiliates has, directly or indirectly, either engaged or has given any commission, payment, kickback, gift or other benefit or consideration to anyone for the purpose of any contract between the Parties (or their respective affiliates) Contractor agrees that it shall not, and shall not cause its affiliates to make any such payment. Contractor also acknowledges and agrees that any breach of this provision is a strict violation of Reliance Group's policies on conflicts of interest and business practices, and that in the event of any such breach of this provision Contractor shall be liable to pay Employer, and at the request of Employer Contractor shall pay Employer as a penalty an amount equal to twenty times the amount of any such commission, payment, kickback or other benefit and Employer may, in sole discretion, cancel and terminate this Agreement and any or all other contracts between the Parties and/or withhold any payments, whether due or not.

28.3 Contractor represents and warrants that it has (and its affiliates have) not given and agrees that it will not (and it will cause its affiliates not to) give any commission, payment, kickback, gift, or other consideration (whether in the form of entertainment (other than business meals of a customary expenditure and in the ordinary course of conducting business) or otherwise) or other similar inducement to any employee of Reliance Group

in connection with this Agreement or any agreement or contract related hereto. Contractor also represents and warrants that, to the best of its knowledge, no officer, director, employee, agent or representative of Contractor or any of its affiliate has given, made or conducted any such payment, gift, entertainment, inducement or other consideration of value to any employee of Reliance Group. Contractor agrees and acknowledges that a breach of this provision is a strict violation of Reliance Group's policies on conflicts of interest and business practices, and in the event of any such breach of this provision Employer may in its sole discretion cancel and terminate this Agreement this Agreement and any or all other contracts between the Parties and/or withhold any payments, whether due or not.

28.4 Contractor represents and warrants that it has not (and none of its affiliates have) given, and Contractor agrees that it will not (and will cause its affiliates not to) give an offer of employment to any employee of Reliance Group. Contractor also represents and warrants that, to the best of its knowledge, no officer, director, employee, agent or representative of Contractor (or its affiliates) has given any offer of direct or indirect employment to any employee of Reliance Group.

## **29. Contract Closure**

Contract shall be closed on completion of following formalities

1. Material reconciliation with Contractor including Free Issue Materials. Submission and verifications that reconciliation of payment toward statutory provisions like /GST Customs/Cess/fees, any other dues etc.
2. Certification from Contractor regarding payment of dues to its,
  - i. Sub-Contractors
  - ii. Workers/ contract labourers,
  - iii. Payment of statutory dues toward Provident Funds, wages etc as required.

Payment shall be made in cashless mode. Payment documents shall be submitted to the Employer along with invoice/bill in due course. Payment reconciliation bills/invoice wise with the Contractor. Under terms and condition of this Purchase Order/Contract/Agreement, Contractor to accept debits upon Communication by the Employer.

3. No demand certificate issued by Contractor in format provided by Employer.
4. Indemnity Bond/Bank Guarantee in format suggested by the Employer.
5. Final payment shall be released on successful completion of Sr no (1) to (5) as above.
6. Performance Guarantee/ Security Bond shall be released and return to Contractor on successful completion of Contract closure to the satisfaction of Employer and after certificate about completion of Defect Liability Period/Latent Defect Liability period as case may be by Employer.

Employer to Communicate Contract Closure documents/information after submission of final invoice by the Contractor.



## ANNEXURE 1

### CONTRACTOR CODE OF CONDUCT

Employer is committed to conducting its business in an ethical, legal and socially responsible manner. To encourage compliance with all legal requirements and ethical business practices, Employer has established this Contractor Code of Conduct (the "Code") for Employer's Contractors. For the purposes of this document, "Contractor" means any company, corporation or other entity that sells, or seeks to sell goods or services, to Employer, including the Contractor's employees, agents and other representatives.

Fundamental to adopting the Code is the understanding that a business, in all of its activities, must operate in full compliance with the laws, rules and regulations of the countries in which it operates. This Code encourages Contractors to go beyond legal compliance, drawing upon internationally recognized standards, in order to advance social and environmental responsibility.

#### I. Labor and Human Rights

Contractors must uphold the human rights of workers, and treat them with dignity and respect as understood by the international community.

- Fair Treatment - Contractors must be committed to a workplace free of harassment. Contractors shall not threaten workers with or subject them to harsh or inhumane treatment, including sexual harassment, sexual abuse, corporal punishment, mental coercion, physical coercion, verbal abuse or unreasonable restrictions on entering or exiting company provided facilities.
- Antidiscrimination - Contractors shall not discriminate against any worker based on race, color, age, gender, sexual orientation, ethnicity, disability, religion, political affiliation, union membership, national origin, or marital status in hiring and employment practices such as applications for employment, promotions, rewards, access to training, job assignments, wages, benefits, discipline, and termination. Contractors shall not require a pregnancy test or discriminate against pregnant workers except where required by applicable laws or regulations or prudent for workplace safety. In addition, Contractors shall not require workers or potential workers to undergo medical tests that could be used in a discriminatory way except where required by applicable law or regulation or prudent for workplace safety.

- Freely Chosen Employment - Forced, bonded or indentured labor or involuntary prison labor is not to be used. All work will be voluntary, and workers should be free to leave upon reasonable notice. Workers shall not be required to hand over government-issued identification, passports or work permits as a condition of employment.
- Prevention of Under Age Labor - Child labor is strictly prohibited. Contractors shall not employ children. The minimum age for employment or work shall be 15 years of age, the minimum age for employment in that country, or the age for completing compulsory education in that country, whichever is higher. This Code does not prohibit participation in legitimate workplace apprenticeship programs that are consistent with Clause 6 of ILO Minimum Age Convention No. 138 or light work consistent with Clause 7 of ILO Minimum Age Convention No. 138.
- Juvenile Labor - Contractors may employ juveniles who are older than the applicable legal minimum age for employment but are younger than 18 years of age, provided they do not perform work likely to jeopardize their health, safety, or morals, consistent with ILO Minimum Age Convention No. 138.
- Minimum Wages - Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally **mandated** benefits. Any disciplinary wage deductions are to conform to local law. The basis on which workers are being paid is to be clearly conveyed to them in a timely manner.
- Working Hours - Studies of good manufacturing practices clearly link worker strain to reduced productivity, increased turnover and increased injury and illness. Work weeks are not to exceed the maximum set by local law. Further, a work week should not be more than 60 hours per week, including overtime, except in emergency or unusual situations. Workers should be allowed at least one day off per seven-day week.
- Freedom of Association - Open communication and direct engagement between workers and management are the most effective ways to resolve workplace and compensation issues. Contractors are to respect the rights of workers to associate freely and to communicate openly with management regarding working conditions without fear of reprisal, intimidation or harassment. Workers' rights to join labor unions, seek representation and or join worker's councils in accordance with local laws should be acknowledged.

## II. **Health and Safety**

Contractors must recognize that in addition to minimizing the incidence of work-related injury and illness, a safe and healthy work environment enhances the quality of products and services,

consistency of production and worker retention and morale. Contractors must also recognize that ongoing worker input and education is essential to identifying and solving health and safety issues in the workplace.

The health and safety standards are:

- Occupational Injury and Illness - Procedures and systems are to be in place to prevent, manage, track and report occupational injury and illness, including provisions to: a) encourage worker reporting; b) classify and record injury and illness cases; c) provide necessary medical treatment; d) investigate cases and implement corrective actions to eliminate their causes; and e) facilitate return of workers to work.
- Emergency Preparedness - Emergency situations and events are to be identified and assessed, and their impact minimized by implementing emergency plans and response procedures, including: emergency reporting, employee notification and evacuation procedures, worker training and drills, appropriate fire detection and suppression equipment, adequate exit facilities and recovery plans.
- Occupational Safety - Worker exposure to potential safety hazards (e.g., electrical and other energy sources, fire, vehicles, and fall hazards) are to be controlled through proper design, engineering and administrative controls, preventative maintenance and safe work procedures (including lockout/tagout), and ongoing safety training. Where hazards cannot be adequately controlled by these means, workers are to be provided with appropriate, well-maintained, personal protective equipment. Workers shall not be disciplined for raising safety concerns.
- Machine Safeguarding - Production and other machinery is to be evaluated for safety hazards. Physical guards, interlocks and barriers are to be provided and properly maintained where machinery presents an injury hazard to workers.
- Industrial Hygiene - Worker exposure to chemical, biological and physical agents is to be identified, evaluated, and controlled. Engineering or administrative controls must be used to control overexposures. When hazards cannot be adequately controlled by such means, worker health is to be protected by appropriate personal protective equipment programs.
- Sanitation, Food, and Housing - Workers are to be provided with ready access to clean toilet facilities, potable water and sanitary food preparation, storage, and eating facilities. Worker dormitories provided by the Participant or a labor agent are to be maintained clean and safe, and provided with appropriate emergency egress, hot water for bathing

and showering, and adequate heat and ventilation and reasonable personal space along with reasonable entry and exit privileges.

- Physically Demanding Work - Worker exposure to the hazards of physically demanding tasks, including manual material handling and heavy or repetitive lifting, prolonged standing and highly repetitive or forceful assembly tasks is to be identified, evaluated and controlled.

### III. Environmental

Contractors should recognize that environmental responsibility is integral to producing world class products. In manufacturing operations, adverse effects on the environment and natural resources are to be minimized while safeguarding the health and safety of the public.

The Environmental Standards are:

- Product Content Restrictions - Contractors are to adhere to applicable laws and regulations regarding prohibition or restriction of specific substances including labeling laws and regulations for recycling and disposal. In addition, Contractors are to adhere to all environmental requirements specified by Employer.
- Chemical and Hazardous Materials - Chemical and other materials posing a hazard if released to the environment are to be identified and managed to ensure their safe handling, movement, storage, recycling or reuse and disposal.
- Air Emissions - Air emissions of volatile organic chemicals, aerosols, corrosives, particulates, ozone depleting chemicals and combustion by-products generated from operations are to be characterized, monitored, controlled and treated as required prior to discharge.
- Pollution Prevention and Resource Reduction - Waste of all types, including water and energy, are to be reduced or eliminated at the source or by practices such as modifying production, maintenance and facility processes, materials substitution, conservation, recycling and re-using materials.
- Wastewater and Solid Waste - Wastewater and solid waste generated from operations, industrial processes and sanitation facilities are to be monitored, controlled and treated as required prior to discharge or disposal.
- Environmental Permits and Reporting - All required environmental permits (e.g. discharge monitoring) and registrations are to be obtained, maintained and kept current and their operational and reporting requirements are to be followed.

#### IV. Ethics

Contractors must be committed to the highest standards of ethical conduct when dealing with workers, Contractors, and customers.

- Corruption, Extortion, or Embezzlement - Corruption, extortion, and embezzlement, in any form, are strictly prohibited. Contractors shall not engage in corruption, extortion or embezzlement in any form and violations of this prohibition may result in immediate termination as a Contractor and in legal action.
- Disclosure of Information - Contractors must disclose information regarding its business activities, structure, financial situation, and performance in accordance with applicable laws and regulations and prevailing industry practices.
- No Improper Advantage - Contractors shall not offer or accept bribes or other means of obtaining undue or improper advantage.
- Fair Business, Advertising, and Competition - Contractors must uphold fair business standards in advertising, sales, and competition.
- Business Integrity - The highest standards of integrity are to be expected in all business interactions. Participants shall prohibit any and all forms of corruption, **extortion and** embezzlement. Monitoring and enforcement procedures shall be implemented to ensure conformance.
- Community Engagement - Contractors are encouraged to engage the community to help foster social and economic development and to contribute to the sustainability of the communities in which they operate.
- Protection of Intellectual Property - Contractors must respect intellectual property rights; safeguard customer information; and transfer of technology and know-how must be done in a manner that protects intellectual property rights.



## V. Management System

Contractors shall adopt or establish a management system whose scope is related to the content of this Code. The management system shall be designed to ensure (a) compliance with applicable laws, regulations and customer requirements related to the Contractors' operations and products; (b) conformance with this Code; and (c) identification and mitigation of operational risks related to this Code. It should also facilitate continual improvement.

The management system should contain the following elements:

- Company Commitment - Corporate social and environmental responsibility statements affirming Contractor's commitment to compliance and continual improvement.
- Management Accountability and Responsibility - Clearly identified company representative[s] responsible for ensuring implementation and periodic review of the status of the management systems.
- Legal and Customer Requirements - Identification, monitoring and understanding of applicable laws, regulations and customer requirements.
- Risk Assessment and Risk Management - Process to identify the environmental, health and safety and labor practice risks associated with Contractor's operations. Determination of the relative significance for each risk and implementation of appropriate procedural and physical controls to ensure regulatory compliance to control the identified risks.
- Performance Objectives with Implementation Plan and Measures - Areas to be included in a risk assessment for health and safety are warehouse and storage facilities, plant/facilities support equipment, laboratories and test areas, sanitation facilities (bathrooms), kitchen/cafeteria and worker housing /dormitories. Written standards, performance objectives, targets and implementation plans including a periodic assessment of Contractor's performance against those objectives.
- Training - Programs for training managers and workers to implement Contractor's policies, procedures and improvement objectives.
- Communication - Process for communicating clear and accurate information about Contractor's performance, practices and expectations to workers, Contractors and customers.
- Worker Feedback and Participation - Ongoing processes to assess employees' understanding of and obtain feedback on practices and conditions covered by this Code and to foster continuous improvement.

- Audits and Assessments - Periodic self-evaluations to ensure conformity to legal and regulatory requirements, the content of the Code and customer contractual requirements related to social and environmental responsibility.
- Corrective Action Process - Process for timely correction of deficiencies identified by internal or external assessments, inspections, investigations and reviews.
- Documentation and Records - Creation of documents and records to ensure regulatory compliance and conformity to company requirements along with appropriate confidentiality to protect privacy.

The Code is modeled on and contains language from the Recognized standards such as International Labour Organization Standards (ILO), Universal Declaration of Human Rights (UDHR), United Nations Convention against Corruption, and the Ethical Trading Initiative (ETI) were used as references in preparing this Code and may be useful sources of additional information.

ANNEXURE 2

**FORMAT OF PERFORMANCE BANK GUARANTEE**

**(To be executed on a Non-Judicial Stamp Paper of appropriate value)**

This Guarantee made at \_\_\_\_\_ this [\_\_\_] day of [\_\_\_\_\_] 20XX

1. WHEREAS M/s. \_\_\_\_\_ (*Pl specify the name of the Company*), a Company within the meaning of the Companies Act, 1956 having its Registered Office at \_\_\_\_\_ hereinafter referred to as the “ Employer ”, (which expression shall unless repugnant to the context or meaning thereof include its successors, administrators, executors and assigns).

2. AND WHEREAS the Employer has entered into a *contract for* \_\_\_\_\_ (*Please specify the nature of contract here* ) *vide Contract No.* \_\_\_\_\_ *dated* \_\_\_\_\_ (hereinafter referred to as the “Contract”) with M/s. \_\_\_\_\_, (hereinafter referred to as “the Supplier”, which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include their successors and assigns) for providing Goods and/or services on the terms and conditions as more particularly detailed therein.

3. AND WHEREAS as per clause \_\_\_\_ of *Special conditions of Contract/GTC*, the Supplier is obliged to provide to the Employer an unconditional bank guarantee for an amount equivalent to \_\_\_\_\_ percent (\_\_\_%) of the total Contract Value for the timely completion and faithful and successful execution of the Contract from [\_\_\_\_\_] *pl. specify the name of Bank*) having its head/registered office at [\_\_\_\_\_] through its branch in \_\_\_\_\_ (*pl. specify the name of Branch through which B.G is issued*) hereinafter referred to as “the Bank”, (which expression shall unless it be repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns).

4. NOW THEREFORE, in consideration inter alia of the Employer granting the Suppliers the Contract, the Bank hereby unconditionally and irrevocably guarantees and undertakes, on a written demand, to immediately pay to the Employer any amount so demanded (by way of one or more claims) not exceeding in the aggregate [Rs. ].....(*in words*) without any demur, reservation, contest or protest and/or without reference to the Supplier and without the Employer needing to provide or show to the Bank ,grounds or reasons or give any justification for such demand for the sum/s demanded.

5. The decision of the Employer to invoke this Guarantee and as to whether the Supplier has not performed its obligations under the Contract shall be binding on the Bank. The Bank acknowledges that any such demand by the Employer of the amounts payable by the Bank to the Employer shall be final, binding and conclusive evidence in respect of the amounts payable by the Supplier to the Employer. Any such demand made by the Employer on the Bank shall be conclusive and binding, notwithstanding any difference between the Employer and the Supplier or any dispute raised, invoked, threatened or pending before any court, tribunal, arbitrator or any other authority.

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

7. The Bank hereby waives the necessity for the Employer first demanding the aforesaid amounts or any part thereof from the Supplier before making payment to the Employer and further also waives any right the Bank may have of first requiring the Employer to use its legal remedies against the Supplier, before presenting any written demand to the Bank for payment under this Guarantee.

8. The Bank's obligations under this Guarantee shall not be reduced by reason of any partial performance of the Contract. The Bank's obligations shall not be reduced by any failure by the Employer to timely pay or perform any of its obligations under the Contract.

9. The Bank further unconditionally and unequivocally agrees with the Employer that the Employer shall be at liberty, without the Bank's consent and without affecting in any manner its rights and the Bank's obligation under this Guarantee, from time to time, to:

- (i) vary and/or modify any of the terms and conditions of the Contract;
- (ii) Forebear or enforce any of the rights exercisable by the Employer against the Supplier under the terms and conditions of the Contract; or
- (iii) Extend and/or postpone the time for performance of the obligations of the Supplier under the Contract;

and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the Employer or any indulgence shown by the Employer to the Supplier or any other

reason whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under this Guarantee.

10. This Guarantee shall be a continuing bank guarantee and shall not be discharged by any change in the constitution or composition of the Supplier, and this Guarantee shall not be affected or discharged by the liquidation, winding-up, bankruptcy, reorganisation, dissolution or insolvency of the Supplier or any of them or any other circumstances whatsoever.

11. This Guarantee shall be in addition to and not in substitution or in derogation of any other security held by the Employer to secure the performance of the obligations of the Supplier under the Contract.

12. NOTWITHSTANDING anything herein above contained, the liability of the BANK under this Guarantee shall be restricted to \_\_\_\_\_ (*insert an amount equal to \_\_\_ percent (\_\_\_%) of the Contract Value*) and this Guarantee shall be valid and enforceable and expire on \_\_\_\_\_ (*pl. specify date*) or unless a suit or action to enforce a claim under this Guarantee is filed against the Bank on or before the date of expiry.

13. On termination of this Guarantee, all rights under the said Guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities hereunder.

14. The Bank undertakes not to revoke this Guarantee during its validity except with the prior written consent of the Employer and agrees that any change in the constitution of the Bank or the Supplier shall not discharge its liability hereunder.

15. Employer may assign this Guarantee to any Person or body whether natural, incorporated or otherwise under intimation to the Bank. The Bank shall be discharged of its obligations hereunder by performance in accordance with the terms hereof to such assignee without verifying the validity / legality / enforceability of the assignment.

16. This Guarantee shall be governed by the laws of India. Any suit, action, or other proceeding arising out of, connected with, or related to this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of the courts of \_\_\_\_\_ (*pl. specify the city*), India.

Dated this ..... day of ..... 20XX at .....

(Signature)

.....

(Name)

.....

(Designation with Bank Stamp)

Attorney as per

Power of Attorney No.....

Date.....

ANNEXURE 3

NO DEMAND CERTIFICATE / LETTER OF INDEMNITY FORMAT

NO DEMAND CERTIFICATE BY CONTRACTOR  
BY CONTRACTOR/CONTRACTOR

(To be issued on letterhead of Contractor)

To ,

\_\_\_\_\_

[ Name of Employer ],

(Name and address of the Contractee [ Name of Employer ] )

Name of the Package:

Contract No.:

Date of Contract:

Name of the Contractor:

Name of the Project:

We,

M/s

\_\_\_\_\_ (Contractor) do

hereby acknowledge and confirm that we have claimed Rs. \_\_\_\_\_

(Rs.

\_\_\_\_\_ )

towards full and final settlement of our claims from [ Name of Employer ], in respect of the aforesaid WO/PO/Contract No.: [ ] Dated [ ] including all amendments, if any, to the said Contract, to our entire satisfaction and we further confirm that we have no claim whatsoever pending with [ Name of Employer ] under or in respect of the said Contract.

Notwithstanding any protest, note or objection recorded or raised by us in any correspondence, documents, measurement books and / or final bills etc.

(a) we confirm that [ Name of Employer ] stands fully discharged of all its obligations,

(b) we shall make no claim of any nature on [ Name of Employer ] or any of its affiliates or personnel, and

(c) we waive all our rights to lodge any claim or protest in future, in respect of the said Contract.

We have paid in full all applicable duties, levies, taxes and statutory and other amounts payable by us in connection with the above-mentioned Contract and amounts payable to or in relation to third parties engaged by us including our contractors, suppliers, employees and labour. No payment in this regard is pending or unpaid and we have no (and shall have no) claim against [ Name of Employer ] in this regard.

No refund has been received/ is envisaged to be received or reasonably believed to be receivable on account of taxes, duties or any other payment made by us in respect of the Contract. In case any refund corresponding to any amount paid or reimbursed by [ Name of Employer ] is received in the future, the same will be passed on to [ Name of Employer ] promptly and without any demand from them in this regard.

We are issuing this "NO DEMAND CERTIFICATE" in favor of [ Name of Employer ]with full knowledge of its contents and with our free consent without any influence, misrepresentation, coercion etc.

Date:

Place:

Signature:

Name:

Designation:

(Company Seal)



FORMAT FOR LETTER OF INDEMNITY

Format for Letter of Indemnity

(Notes: Preferably shall be obtained on Stamp paper of appropriate value as applicable at the place of execution, if not, then at least on the letterhead of the Contractor)

Place: \_\_\_\_\_

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

To,

Name and address (Preferably Mumbai) of contractee [ Name of Employer ]

Dear Sirs,

WO/PO/Contract No. \_\_\_\_\_ Dated \_/ \_/ \_

For \_\_\_\_\_

Settlement of Dues

In consideration of your awarding the subject Work Order/Contract to us and in further consideration of your having agreed to pay our final bill towards settlement of the dues in respect of the subject Work Order/Contract, inter alia, on our assurances and representations that :

- (a) We have paid in full all amounts payable by us including but not limited to duties, levies, taxes, cess, octroi, royalties, statutory payments, amounts payable to or in relation to third parties engaged by us including our contractors, suppliers, employees and labour, and
- (b) we have fully complied with all requirements under applicable laws in connection with the subject Work Order/Contract,

We \_\_\_\_\_,  
unconditionally and irrevocably agree and undertake, to pay and/or settle entirely at our own cost and indemnify, defend and hold harmless you, your affiliates and your/your affiliates' personnel, directors and representatives, (hereinafter collectively referred to as "Indemnified Parties") from and against any and all liabilities, judgments, damages, losses, claims, costs

and expenses, claimed, suffered or incurred or, likely to be claimed, suffered or incurred at any time by or against the Indemnified Parties or any of them as a result of, or arising out of, or in any way related to any failure or delay in payment of any of the amounts or compliances by us as aforesaid for any reason whatsoever.

Any notice(s) or communication(s) by you shall be sufficient proof that the Indemnified Parties have suffered or incurred loss, damages, liabilities etc. as aforesaid and we shall upon receipt of such notice(s) or communication(s) immediately, without any delay or demur or contest, make payment to you of the entire amount demanded under the said notice(s) or communication(s).

This letter of indemnity shall be in addition to and not in derogation of any other indemnity/ guarantee and/or security which we may have executed in your favor or your rights and entitlements under the contract.

This letter shall be governed by and construed and interpreted to accordance with the laws of India, and shall be subject to the exclusive jurisdiction of the courts of law at Mumbai.

Yours faithfully,

For M/s\_\_\_\_\_

Authorized Signatory

ANNEXURE 4

**(To be executed on a Non-Judicial Stamp Paper of appropriate value)**

**FORMAT OF ADVANCE BANK GUARANTEE**

This Guarantee made at \_\_\_\_\_ this [\_\_\_\_] day of [\_\_\_\_] 20XX

1. WHEREAS M/s. \_\_\_\_\_ (*Pl specify the name of the Company*), a Company within the meaning of the Companies Act, 1956 having its Registered Office at \_\_\_\_\_ hereinafter referred to as the “ Employer”, (which expression shall unless repugnant to the context or meaning thereof include its successors, administrators, executors and assigns).

2. AND WHEREAS the Employer has entered into a *contract for \_\_\_\_\_ (Please specify the nature of contract here ) vide Contract No. \_\_\_\_\_ dated \_\_\_\_\_* (hereinafter referred to as the “Contract”) with M/s. \_\_\_\_\_, (hereinafter referred to as “the Supplier”, which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors and assigns) for providing of the Goods and/or services on the terms and conditions as more particularly detailed therein.

3. AND WHEREAS in conformity with the provisions of clause \_\_\_\_\_ of *Special conditions of Contract/GTC*, the Supplier has agreed to furnish a Bank Guarantee for an amount equivalent to the Advance Payment of Rs. .... extended by the Employer to the Supplier for the faithful execution of the Contract.

4. AND WHEREAS the Supplier has agreed to provide the Employer and the Employer has agreed to accept the Advance Bank Guarantee for \_\_\_\_\_ percent (\_\_\_\_%) of the total Contract Value from [\_\_\_\_\_] (*pl. specify the name of Bank*) having its head/registered office at [\_\_\_\_\_] through its branch in \_\_\_\_\_ (*pl. specify the name of Branch through which B.G is issued*) hereinafter referred to as “the Bank”, (which expression shall unless it be repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns).

5. NOW THEREFORE, in consideration inter alia of the Employer granting the Suppliers the Contract, the Bank hereby unconditionally and irrevocably guarantees and undertakes, on a written demand, to immediately pay to the Employer any amount so demanded (by way of one or more claims) not exceeding in the aggregate [Rs. ....] (*in words*) without any demur,

reservation, contest or protest and/or without reference to the Supplier and without the Employer needing to provide or show to the Bank ,grounds or reasons or give any justification for such demand for the sum/s demanded.

6. The decision of the Employer as to whether the Supplier has fulfilled its obligation or not towards set-off of Advance Payment extended by the Employer to the Supplier shall be final and binding on the Bank and the Supplier. The Bank acknowledges that any such demand by the Employer of the amounts payable by the Bank to the Employer shall be final, binding and conclusive evidence in respect of the amounts payable by the Supplier to the Employer. Any such demand made by the Employer on the Bank shall be conclusive and binding, notwithstanding any difference between the Employer and the Supplier or any dispute raised, invoked, threatened or pending before any court, tribunal, arbitrator or any other authority.

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

8. The Bank hereby waives the necessity for the Employer first demanding the aforesaid amounts or any part thereof from the Supplier before making payment to the Employer and further also waives any right the Bank may have of first requiring the Employer to use its legal remedies against the Supplier, before presenting any written demand to the Bank for payment under this Guarantee.

9. The Bank's obligations under this Guarantee shall not be reduced by reason of any partial performance of the Contract. The Bank's obligations shall not be reduced by any failure by the Employer to timely pay or perform any of its obligations under the Contract.

10. The Bank further unconditionally and unequivocally agrees with the Employer that the Employer shall be at liberty, without the Bank's consent and without affecting in any manner its rights and the Bank's obligation under this Guarantee, from time to time, to:

- i. vary and/or modify any of the terms and conditions of the Contract;
- ii. forebear or enforce any of the rights exercisable by the Employer against the Supplier under the terms and conditions of the Contract; or and the Bank shall not be relieved from its liability by

reason of any such act or omission on the part of the Employer or any indulgence shown by the Employer to the Supplier or any other reason whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under this Guarantee.

11. This Guarantee shall not be discharged by any change in the constitution or composition of the Supplier, and this Guarantee shall not be affected or discharged by the liquidation, winding-up, bankruptcy, reorganisation, dissolution or insolvency of the Supplier or any of them or any other circumstances whatsoever.

12. This Guarantee shall be in addition to and not in substitution or in derogation of any other security held by the Employer to secure the obligations of the Supplier under the Contract.

13. NOTWITHSTANDING anything herein above contained, the liability of the BANK under this Guarantee shall be restricted to \_\_\_\_\_ (*insert an amount equal to \_\_\_ percent (\_\_\_%) of the Contract Value*) and this Guarantee shall be valid and enforceable and expire on \_\_\_\_\_ (*pl. specify date*) or unless a suit or action to enforce a claim under this Guarantee is filed against the Bank on or before the date of expiry.

14. On termination of this Guarantee, all rights under the said Guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities hereunder.

15. The Bank undertakes not to revoke this Guarantee during its validity except with the prior written consent of the Employer and agrees that any change in the constitution of the Bank or the Supplier shall not discharge our liability hereunder.

16. Employer may assign this Guarantee to any Person or body whether natural, incorporated or otherwise under intimation to the Bank. The Bank shall be discharged of its obligations hereunder by performance in accordance with the terms hereof to such assignee without verifying the validity / legality / enforceability of the assignment.

17. This Guarantee shall be governed by the laws of India. Any suit, action, or other proceeding arising out of, connected with, or related to this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of the courts of \_\_\_\_\_ (*pl. specify the city*), India.

Dated this ..... day of ..... 20XX at .....

(Signature)

.....

(Name)

.....

(Designation with Bank Stamp)

Attorney as per

Power of Attorney No.....

Date.....



**PARENT COMPANY GUARANTEE**

**(To be executed on a Non-Judicial Stamp Paper of appropriate value)**

THIS PARENT COMPANY GUARANTEE (this “**Guarantee**”) is dated [\_\_\_\_\_] and made between:

- (1) [Parent Company name], whose registered office is at [•] (the “**Guarantor**”); and
- (2) The **Guarantor** is the parent/holding company of [name of vendor/Contractor] having its registered office at [address of Vendor/Contractor as given in the Contract with Employer] which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors and assigns.
- (3) This Guarantee is furnished against the Contract/Agreement [ Ref no: \_\_\_\_\_ Dated: \_\_\_\_\_ ] and subsequent amendments if any.
- (4) [Name of Employer], a company incorporated under Laws of India, and having its registered office at [complete registered office address as given in the Contract/Agreement] (the “Employer”, which expression shall include its successors and assignees).

WHEREAS:

- (A) The **Employer** and [**Name of Vendor/Contractor**] have entered into [details of contract] Contract/Agreement whose reference details mentioned under serial number (3) above (the “Contract/Agreement”, which expression shall mean such Contract as amended, varied, altered and/or supplemented and/or novated from time to time and shall include other Contracts/Agreements entered between the Employer and the Vendor/Contractor in connection with such other Contracts/Agreements) for the performance and fulfilment of the duties and obligations of such Contract/Agreement.
- (B) The Guarantor is the ultimate parent/holding company of the Vendor/Contractor.
- (C) The Guarantor has agreed to guarantee the Employer the due and proper performance by the Vendor/Contractor of the Vendor/Contractor's duties and obligations arising under or in connection with this Contract/Agreement upon the terms of this Guarantee.



NOW THEREFORE, in consideration of the premises contained herein, THIS GUARANTEE WITNESSES as follows:

## **1 Interpretation**

### **1.1 In this Guarantee:**

Insolvency Event means:

- (a) The Vendor/Contractor becomes insolvent or unable to pay its debts;
- (b) The Vendor/Contractor is dissolved or enters into liquidation, , a voluntary arrangement, a scheme of arrangement with creditors, any analogous or similar procedure or any other form of procedures relating to insolvency, reorganisation or dissolution in any jurisdiction; or any step is taken by any person with a view to any of those things;
- (c) the Vendor/Contractor ceases to carry on business, stops payment of its debts or any class of them or enters into any compromise or arrangement in respect of its debts or any class of them; or takes any step to do any of those things;
- (d) any judgment or order against the Vendor/Contractor is not stayed or complied with within 14 days;
- (e) any execution, sequestration or other legal process is commenced against any of the assets of the Vendor/Contractor and is not discharged within 7 days; or
- (f) any steps are taken to enforce by law any security/charge/hypothecation/pledge over any assets of the Vendor/Contractor.

1.2 Words and expressions used but not defined in this Guarantee shall have the meanings attributed to them in the Contract/Agreement.

## **2 Guarantee**

2.1 The Guarantor hereby irrevocably and unconditionally guarantees the due and proper performance by the Vendor/Contractor of the Vendor/Contractor's duties and obligations arising under or in connection with the Contract/Agreement so that, subject to clause 2.2, if the Vendor/Contractor shall in any respect fail to perform any of its duties and/or obligations arising under or in connection with the Contract/Agreement or shall commit any

breach of any provision, or fails to fulfil any warranty or indemnity, set out in the Contract/Agreement, then, upon the Employer's demand, the Guarantor shall forthwith perform and fulfil in the place of the Vendor/Contractor each and every duty, obligation, provision, warranty or indemnity in respect of which the Vendor/Contractor has committed a breach or which the Vendor/Contractor has otherwise failed to fulfil.

- 2.2 The Guarantor shall be liable for and shall indemnify and save harmless the Employer from and against any and all costs, losses and legal and other expenses which may be imposed on or incurred by the Employer in seeking to enforce and enforcing this Guarantee and in seeking to enforce and enforcing any judgment or order obtained in respect of this Guarantee.
- 2.3 Subject to the provisions of clauses 3, 7 and 8, the liability of the Guarantor under this Guarantee in respect of each failure or breach shall be limited to the extent that the Vendor/Contractor would have been liable under or in connection with the Contract/Agreement for such breach or failure.

### **3 Indemnity**

The Guarantor agrees to indemnify the Employer on demand against any loss or liability suffered or incurred by the Employer if any of the duties or obligations of the Vendor/Contractor under or pursuant to the Contract/Agreement is or becomes unenforceable, invalid or illegal for any reason whatsoever as if the Guarantor were primarily liable under the Contract/Agreement and as if such duties and/or obligations were not unenforceable, invalid or illegal.

### **4 Guarantee Protections**

- 4.1 The Guarantor acknowledges and agrees that the liability of the Guarantor under this Guarantee shall not be impaired, reduced, discharged or otherwise affected by reason(s) of any of the following:
- (a) any variation, amendment, alteration or supplement to the Contract/Agreement or to the extent, nature or method of performance of the duties and/or obligations referred to in the Contract/Agreement, in each case, however fundamental such variation, amendment, alteration and/or supplement is and/or any novation of the Contract/Agreement; or

- (b) any allowance of time, waiver, forbearance, delay, forgiveness, indulgence, compromise, delay by or on the part of Employer in asserting any of its rights against the Vendor/Contractor or in connection with the Contract/Agreement or in respect of any right or remedy arising under the Contract/Agreement; or,
- (c) any settlement or arrangement made between the Employer and the Vendor/Contractor in relation to the Contract/Agreement; or
- (d) any composition, discharge, release, concession, waiver or other variation of liability entered into with, or granted to, the Vendor/Contractor; or
- (e) the Contract/Agreement or any provision thereof being or becoming illegal, invalid, void, voidable or unenforceable; or
- (f) termination of the Contract/Agreement or the Vendor/Contractor's employment under this Contract/Agreement; or
- (g) any disability, incapacity, legal limitation, change in status of the Vendor/Contractor; or
- (h) an Insolvency Event; or
- (i) a change in the constitution of the Vendor/Contractor; or
- (j) the Employer taking, holding, varying, realising or not enforcing any other security for the liabilities of the Vendor/Contractor under the Contract/Agreement;
- (k) any lender exercising any rights it may have to assume any rights and/or obligations of the Employer under the Contract/Agreement pursuant to any collateral warranty or any third party rights vested in it pursuant to the terms of the Contract/Agreement; or
- (l) any other act, omission or default which in the absence of this provision would or might have operated to discharge, reduce, exonerate or otherwise affect the liability of the Guarantor under the terms of this Guarantee,

in each case whether such matters are done or omitted to be done with or without notice to, or the consent of, the Guarantor and the Guarantor hereby waives any requirement for notice of, or consent to, any such matters.

## 5 Continuity and Discharge of the Guarantee

5.1 The Guarantor agrees that this Guarantee:

- (a) shall not be revocable by the Guarantor;
- (b) shall be a continuing guarantee and accordingly shall apply in relation to all of the duties, obligations, provisions, warranties or indemnities of the Vendor/Contractor under and arising out of the Contract/Agreement and remain in full force and effect until all the said duties, obligations, provisions, warranties or indemnities shall have been carried out, completed and discharged in accordance with the Contract/Agreement;
- (c) shall be additional to and not in substitution for any rights or remedies that the Employer may have against the Vendor/Contractor under the Contract/Agreement or at law;
- (d) shall be additional to any other guarantee or security from time to time held by the Employer; and
- (e) shall remain in full force and effect as long as the Vendor/Contractor remains under any actual or contingent liability under or in connection with the terms of the Contract/Agreement;

5.2 The Guarantor agrees that, notwithstanding clause 2.2, the Employer shall not be obliged, before enforcing any of its rights or remedies under this Guarantee, to commence proceedings or take any other action against or in respect of the Vendor/Contractor or enforce any other guarantee or security from time to time held by the Employer in respect of the duties and/or obligations of the Vendor/Contractor under or in connection with the Contract/Agreement.

5.3 Any decision of any adjudicator, expert, arbitral tribunal and/or any court in respect of or in connection with the Contract/Agreement or any Contract/Agreement reached between the Vendor/Contractor and the Employer which is binding on the Vendor/Contractor and the Employer shall be binding on the Guarantor.

5.4 The Guarantor agrees that, as long as this Guarantee remains in force and effect and until all obligations of the Vendor/Contractor and the Guarantor respectively under or in

connection with the Contract/Agreement and this Guarantee have been discharged in full, it shall not:

- (a) take any security from the Vendor/Contractor in connection with this Guarantee (and, if taken, any such security shall be held by the Guarantor as security for its liability to the Employer under this Guarantee);
- (b) be subrogated to any right or security of the Employer,

and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this clause 5.4 shall be held by the Guarantor in trust for and shall be promptly paid to the Employer.

## **6 Representations and Warranties**

6.1 The Guarantor hereby warrants, represents and undertakes to the Employer that:

- (a) it is duly incorporated under the laws of the country of its incorporation, possesses the capacity to sue and be sued in its own name and has the power to carry on its business and to own its property and other assets;
- (b) it has the power to execute, deliver and perform its obligations under this Guarantee and all necessary corporate, shareholder and other action and consents have been taken or, as the case may be, received to authorise the execution, delivery and performance of this Guarantee;
- (c) its obligations under this Guarantee constitute its legal, valid and binding obligations and are in full force and effect and rank at least pari passu with all other of its present and future unsecured and unsubordinated indebtedness (with the exception of any obligations which are mandatorily preferred by law and not by contract);

6.2 The creation of this Guarantee and the performance and observance of the obligations hereunder does not:

- (a) contravene any existing applicable law, statute, rule, regulation or any judgment to which it is subject;
- (b) conflict with or result in any breach of the terms or constitute a default under any Contract/Agreement or other instrument to which it is a party or subject; and/or

- (c) result in the creation of or imposition of or oblige it or any of its subsidiaries to create any charge or other encumbrance or any of its subsidiaries, assets, rights or revenues.

## **7 Payment under the Guarantee**

The Guarantor agrees that all sums payable by the Guarantor under this Guarantee shall be paid to the Employer in full without set-off or counterclaim and free of any present or future taxes, levies, cess, duties, charges, fees, withholdings or deductions (together referred to as Deductions) which would not have been imposed if such payments had been made by the Vendor/Contractor, and, if the Guarantor is compelled by law to make any Deductions, the Guarantor will gross up the payment so that the net sum received by the Employer is equal to the full amount which the Employer would have received had no such Deductions been made.

## **8 Interest & Charges**

The Guarantor shall pay interest on any amount due under this Guarantee from the due date to the date of actual payment at a fluctuating per annum rate equals to the one year SBI PLR as on date when payment shall be release to the Employer. The Guarantor shall bear entire cost of stamping/ duty or any other charges related to execution of this Guarantee without any reimbursement from Employer.

## **9 Assignment**

- 9.1 The Employer may assign, charge or transfer this Guarantee without the consent of the Guarantor;
  - (a) by way of security and by way of reassignment on redemption;
  - (b) to any of the Employer's holding companies or subsidiaries/firm/associate(within the meaning of Companies Act 2013) and any other company Employer deems fit.
  - (c) to any other Person provided that the Employer's interest in the Contract/Agreement is assigned to such entity ,and shall give the Guarantor written notice of any assignment.
- 9.2 The Guarantor shall not assign, charge or transfer this Guarantee at any circumstances and conditions.

## **10 Claims Procedure**

10.1 Any demand under this Guarantee shall be in writing and shall be served personally or by first class pre-paid post. The demand shall be deemed to be received:

- (a) if served personally, when so served;
- (b) if served by pre-paid post, on the second business day after the day it is posted;
- (c) If the Guarantor is a company incorporated outside the India, the Guarantor appoints the following as its agent for the service of any demand under this Guarantee and/or legal proceedings under this Guarantee:

(Name and address of the Agent)The Guarantor undertakes to the Employer that:

- (i) if for any reason such agent ceases to act on behalf of the Guarantor, the Guarantor will promptly appoint a replacement of an agent and will notify the Employer of the replacement immediately in writing; and
- (ii) the Guarantor will not revoke the authority of its agent.

## **11 No Waiver and Provisions Severable**

11.1 Each of the provisions of this Guarantee is severable and distinct from the others, and if for any reason any such provision or part of a provision is or becomes ineffective, inoperable, invalid or unenforceable it shall be severed and deemed to be deleted from this Guarantee, and in such event the remaining provisions of this Guarantee shall continue to have full force and effect.

## **12 Rights of Third Parties**

Nothing in this Guarantee confers or purports to confer on any third party any benefit or any right to enforce any term of this Guarantee Counterparts

This Guarantee shall be executed by the Party in one original which shall be in the possession of custody of Employer and true copy of the same shall be in the custody of the Vendor/Supplier. Governing Law

12.1 This Guarantee and any other non-contractual obligations connected with it shall be governed by and construed in accordance with Laws of India.

12.2 The parties irrevocably agree that all disputes arising under or in connection with this Guarantee, any other non-contractual obligations connected with it, or in connection with the negotiation, existence, legal validity, enforceability or termination of this Guarantee, regardless of whether the same shall be regarded as contractual claims or not, shall be exclusively governed by and determined only in accordance with Laws of India.

### 13 Jurisdiction

The parties irrevocably agree that the courts of Mumbai to have exclusive jurisdiction, and that no other court is to have jurisdiction to:

- (a) determine any claim, dispute or difference arising under or in connection with this Guarantee, any other non-contractual obligations connected with it, or in connection with the negotiation, existence, legal validity, enforceability or termination of this Guarantee, whether the alleged liability shall arise under the Law of India grant interim remedies, or other provisional or protective relief

THIS GUARANTEE has been executed as a deed, and it has been delivered on the date stated at the beginning of this Guarantee.

For **(Name of Employer)**

For **(Name of Guarantor)**

Signature:

Signature:

Signature:

Name:

Name:

Name:

Designation:

Designation:

Designation:



**Note for Guarantor:**

1. Guarantor must ensure authorized signatories of the Guarantor who signs this Guarantee should be not less than CEO, M.D, President, Chairman or Vice Chairman designation or any officers/employees entrusted by the Guarantor and authorized by the Board of the Guarantor under Indian Laws / respective country laws.
2. Guarantor must submit the Power of Attorney (PoA) as true certified copy. The company secretary of the Guarantor shall issue true certified copy of PoA and hand over to the Employer in person or first class post without any request from the Employer.
3. Guarantor must ensure that this Guarantee (including revised/amended) reached in hands of competent authority of the Employer. The Guarantor must preserve the acceptance/confirmation of this original Guarantee from the Employer in writing.
4. The Guarantor must renew this Guarantee from time to time to make this Guarantee valid under Indian Laws and issue the revised/amended original Guarantee(s) to the Employer immediately.
5. PoA must be valid and issued under prevalent Indian Laws / respective country laws.

Annexure – 7

PARENT COMPANY UNDERTAKING

Format shall be issued on consultation with Employer's HOD Finance/Project Director/HoD Site

Annexure – 8

LIST OF STANDARD DOCUMENTS MANDATORILY REQUIRED ALONG WITH SUBMISSION  
OF TAX INVOICE TO SITE FINANCE

Vendor shall contact Employers' Site finance/HOD finance for submission of documents to be  
submitted with Tax Invoice