

Request for Qualification cum Request for
Proposal (RFQ cum RFP)

for

Shifting of existing 33 KV Bhambarda feeder passing through the AURIC-Shendra area including supply, implementation, testing and commissioning of new 33 KV single circuit overhead line of 9km at AURIC-Shendra and dismantling of existing 33 KV Bhambarda overhead line on EPC basis at AURIC-Shendra, Aurangabad, Maharashtra

VOLUME 1

PART 4 CONDITIONS OF CONTRACT

Oct 2021

Managing Director
Aurangabad Industrial Township Limited
Udyog Sarathi, MIDC Office, Marol Industrial Area,
Andheri (East), Mumbai, Maharashtra State, India - 400093

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1. GENERAL PROVISIONS

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

- 1.1.1 **“Accounting Year”** means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year.
- 1.1.2 **“Advance Payment”** shall have the meaning set forth in the recitals.
- 1.1.3 **“Affected Party”** shall have the meaning set forth in the recitals.
- 1.1.4 **“Affiliate”** means, in relation to either Party {and/or Members}, a person who controls, is controlled by, or is under the common control with such Party {or Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise).
- 1.1.5 **“Agreement”** means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement.
- 1.1.6 **“Applicable Laws”** means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made there under, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement.
- 1.1.7 **“Applicable Permits”** means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction of the Project Works during the subsistence of this Agreement.
- 1.1.8 **“Appointed Date”** means that date of issue of Letter of Award (LOA).
- 1.1.9 **“Arbitration Act”** means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time.
- 1.1.10 **“Bank”** means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crores (Rupees one thousand crore) or any other bank acceptable to the Employer.
- 1.1.11 **“Bank Rate”** means the Repo rate of interest announced by the Reserve Bank of India for all its lending operations on the Base Date.

- 1.1.12 “**Base Date**” means the last date of that calendar month, which date precedes the Bid Due Date by at least 28 (twenty-eight) days.
- 1.1.13 “**Bid**” means the documents in their entirety comprised in the bid submitted by the [selected bidder/Consortium] in response to the Request for Qualification cum Request for Proposals in accordance with the provisions thereof.
- 1.1.14 “**Bid Security**” means the Bid Security provided by the Contractor to the Employer in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security.
- 1.1.15 “**Bill of Quantities**” means the priced and completed Bill of Quantities forming part of the Bid.
- 1.1.16 “**Change in 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 Base Date.
 - d) a change in the interpretation or application of any Indian law by a judgments of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Base Date; or
 - e) any change in the rates of any of the Taxes or royalties that have a direct effect on the Project.
- 1.1.17 “**Change of Scope**” shall have the meaning set forth in the recitals;
- 1.1.18 “**Change of Scope Notice**” shall have the meaning set forth in the recitals;
- 1.1.19 “**Change of Scope Order**” shall have the meaning set forth in the recitals;
- 1.1.20 “**Completion Certificate**” shall have the meaning set forth in the recitals;
- 1.1.21 “**Construction**” shall have the meaning set forth in the recitals;
- 1.1.22 “**Construction Period**” means the period commencing from the Appointed Date and ending on the date of the Completion Certificate;
- 1.1.23 “**Contract**” means the Contract Agreement, the Letter of Award, the Form of Bid, Conditions of Contract, Contract Data Sheet, Employer’s Requirements, General Specifications, Schedules and Datasheets, Indicative Tender Drawings and the further documents (if any) which are listed in Contract Agreement or in the Letter of Award,
- 1.1.24 “**Contract Price**” means the amount specified in the recitals;

- 1.1.25 “**Contractor**” means the person(s) named as contractor in the Form of Bid whose tender has been accepted by the Employer and the legal successors in title to this person(s).;
- 1.1.26 “**Contractor’s Personnel**” means the Contractor’s Representative and or authorised signatory of the agreement are contractor’s personnel and all personnel who may include the staff, labour, other employees of the Contractor, personnel utilised by contractor on Site, are secondary personnel ; and any other personnel assisting the Contractor in the execution of the Works
- 1.1.27 “**Labour contractor**” means any person appointed by Contractor for supply of labours for any part of the Works; and the legal successors in title to each of these persons.
- 1.1.28 “**Contractor Default**” shall have the meaning set forth in the recitals;
- 1.1.29 “**Damages**” shall have the meaning set forth in the recitals;
- 1.1.30 “**Defect**” means any defect or deficiency in Construction or instalation of the Works or any part thereof, which does not conform with the Specifications and Standards
- 1.1.31 “**Defects Liability Period**” shall have the meaning set forth in the recitals;
- 1.1.32 “**Dispute**” shall have the meaning set forth in the recitals;
- 1.1.33 “**Dispute Resolution Procedure**” means the procedure for resolution of Disputes set forth in the recitals;
- 1.1.34 “**Drawings**” means all of the drawings, calculations and documents pertaining to the Project Works as set forth in Volume-3, and shall also include ‘as built’ drawings of the Project Works;
- 1.1.35 “**Document**” or “**Documentation**” means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;
- 1.1.36 “**Emergency**” means a condition or situation that is likely to endanger the safety or security of the individuals on or about the Project Works, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;
- 1.1.37 “**Employer**” means the entity/person named as employer in the Contract Data sheet and the legal successors in title to this person.
- 1.1.38 “**Employer Default**” shall have the meaning set forth in the recitals;
- 1.1.39 “**Employer’s Engineer**” means the person appointed by the Employer from time to time to act as the Engineer;
- 1.1.40 “**Employer’s Personnel**” means such person or persons as may be authorized in writing by the Employer to act on its behalf under this Agreement and shall include any person or persons having Employer to exercise any rights or perform and fulfil any obligations of the Employer under this Agreement;

- 1.1.41 **“Encumbrances”** means, in relation to the Project Works, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Works, where applicable herein but excluding utilities referred to in the recitals;
- 1.1.42 **“EPC”** means Engineering, Procurement and Construction;
- 1.1.43 **“DBO”** means Design Build and Operate
- 1.1.44 **“Final Payment Certificate”** shall have the meaning set forth in the recitals;
- 1.1.45 **“Final Payment Statement”** shall have the meaning set forth in the recitals;
- 1.1.46 **“Force Majeure”** or **“Force Majeure Event”** shall have the meaning ascribed to it in the recitals;
- 1.1.47 **“GOI”** or **“Government”** means the Government of India;
- 1.1.48 **“Good Industry Practice”** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced contractor engaged in the same type of undertaking as envisaged under this Agreement;
- 1.1.49 **“Government Instrumentality”** means any department, division or subdivision of the Government or the State Government and includes any commission, board, Employer, agency or municipal and other local Employer or statutory body including panchayat under the control of the Government or the State Government, as the case may be, and having jurisdiction over all or any part of the Project Works or the performance of all or any of the services or obligations of the Contractor under or pursuant to this Agreement;
- 1.1.50 **“Indemnified Party”** means the Party entitled to the benefit of an indemnity pursuant to the recitals;
- 1.1.51 **“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant to the recitals;
- 1.1.52 **“Insurance Cover”** means the aggregate of the maximum sums insured under the insurances taken out by the Contractor pursuant to Clause 12, and includes all insurances required to be taken out by the Contractor under relevant sub clauses of Clause 12 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;
- 1.1.53 **“Intellectual Property”** means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-

- conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;
- 1.1.54 “**Interim Payment Certificate**” or “**IPC**” means the interim payment certificate issued by the Employer’s Engineer for payment to the Contractor in respect of Contractor’s claims for payment raised in accordance with the provisions of this Agreement;
- 1.1.55 “**LOA**” or “**Letter of Award**” means the letter of award referred to in Recital (E);
- 1.1.56 “**Material Adverse Effect**” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;
- 1.1.57 “**Materials**” are all the supplies used by the Contractor for incorporation in the Works or for the maintenance of the Project Works;
- 1.1.58 “**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the parties to this Agreement individually;
- 1.1.59 “**Performance Security**” shall have the meaning set forth in the recitals;
- 1.1.60 “**Plant**” means the apparatus and machinery intended to form or forming part of the Works;
- 1.1.61 “**PMNC**” shall mean Project/Program Management Consultant appointed by Employer
- 1.1.62 “**Programme**” shall have the meaning set forth in the recitals;
- 1.1.63 “**Project**” means the Supply, installation, Testing & commissioning of 33 KV single circuit overhead line as stated in contract data sheet in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;
- 1.1.64 “**Project Assets**” means all physical and other assets relating to (a) tangible assets such as civil works and equipment including foundations, civil tanks and structures, buildings, process control hardware and software, electro-mechanical equipment, piping, valves, electrical equipment, cables and motor control centres, field instruments and control system, drainage works (b) Project Facilities situated on the Site;
- 1.1.65 “**Project Completion Date**” means the date on which the Provisional Certificate is issued and in the event no Provisional Certificate is issued, the date on which the Completion Certificate is issued;

- 1.1.66 “**Project Completion Schedule**” means the progressive Project Milestones set forth in Bid Documents for completion of the Project Works on or before the Scheduled Completion Date;
- 1.1.67 “**Quality Assurance Plan**” or “**QAP**” shall have the meaning set forth in the recitals;
- 1.1.68 “**Re.**”, “**Rs.**” or “**Rupees**” or “**Indian Rupees**” means the lawful currency of the Republic of India;
- 1.1.69 “**Retention Money**” shall have the meaning set forth in Clause 3.6;
- 1.1.70 “**Right of Way**” means the constructive possession of the Site free from encroachments and encumbrances, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction and maintenance of the Project Works in accordance with this Agreement;
- 1.1.71 “**Scheduled Completion Date**” shall have the meaning set forth in the recitals;
- 1.1.72 “**Scope of the Project**” shall have the meaning set forth in Clause 1.6; “**Section**” means a part of the Project Works;
- 1.1.73 “**Site**” shall have the meaning set forth in Clause 1.7;
- 1.1.74 “**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project Works, as set forth in, Volume-2– Technical Specifications, Volume-3- Drawings, Volume-4 – Bill of Quantities (BOQ) and other relevant parts of the tender and any modifications thereof, or additions thereto, as included in the design and engineering for the Project Works submitted by the Contractor to, and expressly approved by the Employer;
- 1.1.75 “**Subcontractor**” means any person or persons to whom a part of the Works or the Maintenance has been assigned for completion/execution/operation by the Contractor and the permitted legal successors in title to such person, but not an assignee to such person;
- 1.1.76 “**Taxes**” means any Indian taxes including GST (Goods and service tax), excise duties, customs duties, value added tax sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, Materials, equipment and services incorporated in and forming part of the Project Works charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;
- 1.1.77 “**Termination**” means the expiry or termination of this Agreement as per Clause 10 [Termination];
- 1.1.78 “**Termination Notice**” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

- 1.1.79 “**Termination Payment**” means the amount payable by either Party to the other upon Termination in accordance with Clause 10.8 [Termination Payment] ;
- 1.1.80 “**Tests**” means the tests set forth in Volume-2 – Technical Specifications to determine the completion of Works in accordance with the provisions of this Agreement;
- 1.1.81 “**Time Extension**” shall have the meaning set forth in Clause 4.6 [Extension of time for completion];
- 1.1.82 “**User**” means a person who uses or intends to use on the Project Works or any part thereof;
- 1.1.83 “**Valuation of Unpaid works**” shall have the meaning set forth in the recitals;

1.2 Order of Precedence

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- a) the Contract Agreement (if any),
- b) the Letter of Award,
- c) the Form of Bid,
- d) the Contract Data Sheet,
- e) the Conditions of Contract,
- f) the Technical Specifications
- g) the Tender Drawings,
- h) the Bill of Quantities
- i) the Schedules and any other documents listed in the Contract Data as forming part of the Contract.

If an ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction.

1.3 Employer's Use of Contractor's Document

- 1.3.1 Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.
- 1.3.2 The Contractor shall be deemed (by signing the Contract) to give to the Employer a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall:

- a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
 - b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
 - c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.
- 1.3.3 All the rights to the Construction Documents and other design documents are to be assigned to the Employer.

1.4 Contractor's Use of Employer's Document

- 1.4.1 Employer shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the Employer. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Employer's consent, be copied, used or communicated to a third party by the Contractor.

1.5 Confidentiality

- 1.5.1 The Parties shall treat the details of this Agreement as private and confidential, except to the extent necessary to carry out obligations under it or to comply with Applicable Laws. The Contractor shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous agreement of the Employer.

1.6 Scope of the Project

- 1.6.1 Under this Agreement, the scope of the Project (the "Scope of the Project") shall mean and include the relevant section described in the Volume-1-Part-1-Instruction to Bidders, Section 1.1 Project Information

1.7 Site

- 1.7.1 The site of the Project Works (the "Site") shall comprise the site described in Volume-1-Part-1-Instruction to Bidders, Section 1.1 Project Information

1.8 Inspections and Audit

- 1.8.1 The Employer or any representative authorized by the Employer in this behalf may inspect and review the progress and quality of the construction of Project Works and issue appropriate directions to the Employer's Engineer and the Contractor for taking remedial action in the event the Works are not in accordance with the provisions of this Agreement.

- 1.8.2 At any time during construction, the Employer may appoint an external technical auditor to conduct an audit of the quality of the Works. The findings of the audit, to the extent accepted by the Employer, shall be notified to the Contractor and the Employer's Engineer for taking remedial action in accordance with this Agreement. The Contractor shall provide all assistance as may be required by the auditor in the conduct of its audit hereunder. Notwithstanding anything contained in this Clause 1.8, the external technical audit shall not affect any obligations of the Contractor or the Employer's Engineer under this Agreement.

2. THE ENGINEER

2.1 Appointment of the Employer's Engineer

- 2.1.1 The Employer (AITL) shall appoint a consultant to be the engineer (herein referred as the "Employer's Engineer or Engineer-in-charge").
- 2.1.2 The Employer's Engineer may exercise the authority attributable to the Engineer as specified or implied from the Contract. However, under no circumstances the Employer's Engineer shall have authority to modify or amend the Contract.
- 2.1.3 Except as otherwise stated in these Conditions, whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Engineer shall be deemed to act for the Employer;
- 2.1.4 Except as otherwise stated in these Conditions, the Engineer has no authority to relieve the contractor of any duties, obligations or responsibilities under the Contract;
- 2.1.5 Except as otherwise stated in these Conditions, any approval, consent, test, inspection, authorisation or absence of approval shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, defect liability, omissions, discrepancies and non-compliances.
- 2.1.6 The staff of the Employer's Engineer shall include suitably qualified engineers and other professionals who are competent to assist the Employer's Engineer to carry out its duties.

2.2 Duties and Authority of the Employer's Engineer

- 2.2.1 The Employer's Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. The Employer's Engineer shall perform the duties and exercise the Authority in accordance with the provisions of this Agreement.

2.3 Instructions of the Employer's Engineer

2.3.1 The Employer's Engineer at any time may issue instructions and additional or modified Drawings to the Contractor that may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall take such instructions from the Employer's Engineer, or from its representative to whom appropriate Authority has been delegated under Clause 2.3. Any instructions from employers engineer to the contractor which has financial impact on the work shall be carried out only after the permission/approval of AITL management.

2.3.2 The instructions issued by the Employer's Engineer shall be in writing. All approvals/rejections of materials any plant visit etc carried out by the engineer or any changes w.r.t the scope of work shall be communicated to employer and approved by the employer.

However, if the Employer's Engineer issues any oral instructions to the Contractor, it shall confirm in writing the oral instructions within 2 (two) working days of issuing them.

2.3.3 In case the Contractor does not receive the confirmation of the oral instruction within the time specified in Clause 2.4.2, the Contractor shall seek the written confirmation of the oral instructions from the Employer's Engineer. The Contractor shall obtain acknowledgment from the Employer's Engineer of the communication seeking written confirmation. In case of failure of the Employer's Engineer or its delegated assistant to reply to the Contractor within 2 (two) days of the receipt of the communication from the Contractor, the Contractor may not carry out the instruction.

2.3.4 In case of any dispute on any of the instructions issued by the delegated representative, the Contractor may refer the dispute to the Employer's Engineer, who shall then confirm, reverse or vary the instructions within 5 (five) business days of the dispute being referred.

2.4 Determination by the Employer's Engineer

2.4.1 The Employer's Engineer shall consult with each Party in an endeavour to reach agreement wherever this Agreement provides for the determination of any matter by the Employer's Engineer. If such agreement is not achieved, the Employer's Engineer shall make a fair determination in accordance with this Agreement having due regard to all relevant circumstances. The Employer's Engineer shall give notice to both the Parties of each agreement or determination, with supporting particulars.

2.4.2 Each Party shall give effect to each agreement or determination made by the Employer's Engineer in accordance with the provisions of this Agreement. Provided, however, that if any Party disputes any instruction, decision, direction or determination of the Employer's Engineer, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

2.5 Remuneration of the Employer's Engineer

The remuneration, cost and expenses of the Employer's Engineer shall be paid by the Employer.

2.6 Termination of the Employer's Engineer

The Employer may, in its discretion, replace the Employer's Engineer at any time, in accordance with Clause 2.1.

3. THE CONTRACTOR

3.1 Contractor's General Obligations

3.1.1 The Contractor shall Investigate, execute and complete the Works and subsequently maintain it in during DLP accordance with the Contract and as per the Engineer-in-charge's instructions. The Contractor shall also remedy any defects whatsoever in the Works to the satisfaction of Engineer-in-charge and in accordance with the Contract.

3.1.2 The Contractor shall provide the Plant, Equipment, Services and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

3.1.3 The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction. Except to the extent specified in the Contract, the Contractor shall be responsible for all Contractor's Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract.

3.1.4 The Contractor shall, whenever required by the Engineer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Engineer.

3.1.5 If the Contract specifies that the Contractor shall design any part of the Permanent Works, then unless otherwise stated in the Particular Conditions:

- a) the Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with the procedures specified in the Contract;
- b) these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications as specified, and shall include additional information required by the Engineer-in-charge to add to the Drawings;

- c) the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and
- d) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Engineer-in-charge the “as-built” documents and other documents as required in accordance with the Specification and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking-over until these documents have been submitted to the Engineer-in-charge for review and approval thereof.

3.2 Performance Security

- 3.2.1 The Contractor shall, for the performance of its obligations hereunder during the Construction Period, provide to the Employer, within time limit specified in the Contract Data Sheet, an irrevocable and unconditional guarantee from a Bank in the format set forth in Tender Forms for an amount equal to a percentage of the Contract Price as specified in the Contract Data Sheet.
- 3.2.2 The Performance Security shall be valid and enforceable the Contractor has executed and completed the Works and remedied any defects or until 60 (sixty) days after the Defects Liability Period.,.
- 3.2.3 Until such time the Performance Security is provided by the Contractor pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security, the Employer shall release the Bid Security to the Contractor. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that in the event of failure of the Contractor to provide the Performance Security in accordance with the provisions of this Clause 3.2 and within the time specified therein or such extended period as may be provided by the Employer, in accordance with the provisions of Clause , the Employer may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Contractor under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Contractor, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 3.2.4 In the event the Contractor fails to provide the Performance Security within 10 (ten) days of this Agreement, it may seek extension of time for a period not exceeding 20 (twenty) days on payment of Damages for such extended period in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Contract Price for each day until the Performance Security is provided.

3.3 Extension of Performance Security

- 3.3.1 The Contractor shall initially provide the Performance Security for a period of 3 (three) years; provided that it shall procure the extension of the validity of the Performance Security, as necessary, at least 28 days prior to the date of expiry thereof.
- 3.3.2 If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.
- 3.3.3 Upon the Contractor providing an extended Performance Security, the previous Performance Security shall be deemed to be released and the Employer shall return the same to the Contractor within a period of 7 (seven) business days from the date of submission of the extended Performance Security.

3.4 Appropriation of Performance Security

- 3.4.1 Upon occurrence of a Contractor's Default, the Employer shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Contractor's Default.
- 3.4.2 Upon such encashment and appropriation from the Performance Security, the Contractor shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Contractor shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Employer shall be entitled to terminate the Agreement in accordance with Clause titled 'Termination'. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Contractor shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Contractor's Default, and in the event of the Contractor not curing its default within such Cure Period, the Employer shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Clause 10 titled '**Termination**'.

3.5 Release of Performance Security

- 3.5.1 The Employer shall return the Performance Security to the Contractor within 60 (sixty) days of the later of the expiry of Defect Liability period (DLP) under this Agreement. Notwithstanding the aforesaid, the Parties agree that the Employer shall not be obliged to release the Performance Security until all Defects identified during the Defects Liability Period have been rectified. If the contractor fails to rectify the defect by itself due too any reason then the same will be carried out by the employer and amount required will be deducted from the above amount

3.6 Retention Money

3.6.1 The Employer shall retain from each payment due to the Contractor the proportion as stated in the Contract Data until Completion of the whole of the Works under Construction Contract thereof as guarantee money for performance of the obligations of the Contractor during the Construction Period (the "Retention Money") subject to the condition that the maximum amount of Retention Money as stated in the Contract Data Sheet.

3.6.2 Upon occurrence of a Contractor's Default, the Employer shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Retention Money as Damages for such Contractor's Default.

3.6.3 Release of Retention Money

The retention money deducted from each RA Bills and shall be released 'without interest' within 15 days of issue of Final Completion Certificate by the Employers' Engineer. During the Defect liability period (DLP) each year 20% from the total retention money will be released each year till the completion of DLP.

3.6.4 The Parties agree that in the event of Termination of this Agreement, the Retention Money and the bank guarantees specified in this Clause 3.6 shall be treated as if they are Performance Security and shall be reckoned as such for the purposes of Termination Payment under Clause 10.8.

3.7 Site Data

3.7.1 the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies, site conditions and other circumstances which may influence or affect the Tender or Works. To the same extent, the Contractor shall be deemed to have inspected and examined the site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation):

- a) the form and nature of the Site, including sub-surface conditions,
- b) the hydrological, geotechnical, topographical and climatic conditions,
- c) the extent and nature of the work and goods necessary for the execution and completion of the works and the remedying of any defects,
- d) the Laws, procedures and labour practices of the Country, and
- e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

3.8 Electricity, Water and Gas

The Contractor shall be responsible for procuring of all Power, Water and other services that it may require.

Contractor shall arrange and provide at his own cost electric connection of suitable load from local electricity supply agency and will also keep ready Generators of adequate capacity as stand by arrangement in case of electric failure during construction for running pump sets, vibrators, mixer, needle sets and electric set and other electrically operated Construction equipment etc. at his own cost.

The cabling for electric connection for Construction and testing shall be arranged by the Contractor himself at his own cost. The non-availability /sanction of electric connection shall be no excuse for delay in completion of work.

The Water required for all purposes including construction, testing purpose shall be arranged by Contractor at his cost.

3.9 Progress Reports

3.9.1 During the Construction Period, the Contractor shall, no later than 10 (ten) days after the close of each month, furnish to the Employer and the Engineer-in-charge a monthly report on progress of the Works and shall promptly give such other relevant information as may be required by the Engineer-in-charge. Soft copies of the reports also to be submitted.

3.9.2 Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

3.9.3 Each report shall include:

- a) charts and detailed descriptions of progress, including each stage of Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor,
- b) photographs/video showing the progress on the Site and status of manufacture;
- c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - i. commencement of manufacture,
 - ii. Contractor's inspections,
 - iii. tests, and
 - iv. shipment and arrival at the Site;
- d) copies of quality assurance documents, test results and certificates of Materials;
- e) list of claims by any party;
- f) Comparisons of actual and planned progress, with details of any events or anticipated risks that may inhibit the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.
- g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;

3.10 Security of the Site

Unless otherwise stated:

- a) the Contractor shall be responsible for keeping unauthorised persons off the Site, and
- b) authorised persons shall be limited to the Contractor's Personnel and the Employer's Personnel; and to any other personnel notified to the Contractor, by the Employer or

the Engineer, as authorised personnel of the Employer's other contractors on the Site.

3.11 Fossils

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Engineer and shall be entitled subject to claims for:

- a) an extension of time for any such delay, if completion is or will be delayed, and
- b) payment of any such Cost, which shall be included in the Contract Price.

4. CONSTRUCTION OF THE PROJECT WORKS

4.1 Obligations prior to commencement of Works

- 4.1.1 Within one week (7 days) of the Letter of Award, the Contractor shall:
- a) undertake and perform all such acts, deeds and things as may be necessary or required before commencement of Works under and in accordance with this Agreement, the Applicable Laws and Applicable Permits;
 - b) the Contractor within stipulated time as indicated in Contract Data Sheet, shall submit to the Employer and the Engineer-in-charge a project plan and schedule for the Works (the "Programme"), developed using networking techniques giving the following details:
 1. Contractor's organization for the Project, the general methods and arrangements for Construction, Quality Assurance Plan including, Safety Plan covering Safety of users and workers during Construction, Contractor's key personnel and equipment.
 2. Programme for completion of all stages of Construction and Project milestones. The Programme shall include:
 - a. the order in which the Contractor intends to carry out the Works, including the anticipated timing of construction, Supply, Installation, Erection, Testing, Commissioning and various packages and stages of Works;
 - b. the periods for reviews;
 - c. the sequence and timing of inspections and tests specified in this Tender.
 - d. The Contractor shall submit a revised programme whenever the previous programme is inconsistent with the actual progress or with the Contractor's obligations.
 3. Monthly Cash Flow Forecast

The Contractor shall appoint a qualified safety Officer with minimum 10 years' experience to carry out safety audit at the design stage of the Project Works in accordance with the Applicable Laws and Good Industry Practice.
- 4.1.2 The safety audit shall be carried out by the Safety officer in respect of all such design details that have a bearing on safety of Users as well as pedestrians and animals involved in or associated with accidents. The recommendations of the Safety Officer shall be incorporated in the design of the Project Works and the Contractor shall forward to the Employer's Engineer a certificate to this effect together with the recommendations of the Safety Officer.
- 4.1.3 Within 30 (thirty) days of the Project Completion Date, the Contractor shall furnish to the Employer and the Engineer-in-charge a complete set of As-Built-Drawings, in 2 (two) hard copies and soft copy as may be acceptable to the Employer, reflecting the Project Works as actually constructed, including an as built survey illustrating the layout of the Project Works and setback lines, if any, of the buildings and structures forming part of Project Facilities.

4.2 Construction of the Project Works

- 4.2.1 The Contractor shall construct the Project Works as specified in Schedules and Datasheets in conformance Good For Construction (GFC) Drawings and Technical Specifications, Bill of Quantities (BOQ) and applicable standards prepared by him as per the requirement. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works. The Contractor agrees and undertakes that the construction shall be completed within the Time for Completion of Works as indicated in Contract Data Sheet, including any extension thereof.

4.3 Scheduled Completion date

- 4.3.1 The Scheduled Completion Date for the construction of works shall occur on the last day of Time for Completion as indicated in the Contract Data Sheet. The progress shall be monitored as per time line given in the Contract Data Sheet. A grace period of 30 days shall be given for evaluating the work done. If the contractor does not achieve the milestones for the reasons attributable to him, then the Delay Damages shall be applicable as per the Contract data Sheet.

4.4 Extension of time for completion

- 4.4.1 Without prejudice to any other provision of this Agreement for and in respect of extension of time, the Contractor shall be entitled to extension time for Completion of Works (the “**Time Extension**”) to the extent that completion of any Project Milestone is or will be delayed by occurrence of any of the following conditions, namely:
- c) change of Scope (unless an adjustment to the Scheduled Completion Date has been agreed under Clause 4.6);
 - d) occurrence of a Force Majeure Event;
 - e) any delay, impediment or prevention caused by or attributable to the Employer, the Employer's personnel or the Employer's other contractors on the Site; and

4.4.2 The Contractor shall, no later than 15 (fifteen) business days from the occurrence of an event or circumstance specified in Clause 4.4.1, inform the Engineer-in-charge by notice in writing, with a copy to the Employer, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for Time Extension in accordance with the provisions of this Agreement. Provided that the period of 15 (fifteen) business days shall be calculated from the date on which the Contractor became aware, or should have become aware, of the occurrence of such an event or circumstance.

Provided further that notwithstanding anything to the contrary contained in this Agreement, Time Extension shall be due and applicable only for the Works which are affected by the aforesaid events or circumstances and shall not in any manner affect the Project Completion Schedule for and in respect of the Works which are not affected hereunder.

4.4.3 In the event of the failure of the Contractor to issue to the Engineer-in-charge a notice in accordance with the provisions of Clause 4.4.2 within the time specified therein, the Contractor shall not be entitled to any Time Extension and shall forfeit its right for any such claims in future. For the avoidance of doubt, in the event of failure of the Contractor to issue notice as specified in this Clause 4.4.2, the Employer shall be discharged from all liability in connection with the claim.

4.4.4 The Engineer-in-charge shall, on receipt of the claim in accordance with the provisions of Clause 4.4.2, examine the claim expeditiously within the time frame specified herein. In the event the Engineer-in-charge requires any clarifications to examine the claim, the Engineer-in-charge shall seek the same within 15 (fifteen) days from the date of receiving the claim. The Contractor shall, on receipt of the communication of the Engineer-in-charge requesting for clarification, furnish the same to the Engineer-in-charge within 10 (ten) days thereof. The Engineer-in-charge shall, within a period of 60 (sixty) days from the date of receipt of such clarifications, forward in writing to the Contractor its determination of Time Extension.

Provided that when determining each extension of time under this Clause 4.4.2, the Engineer-in-charge shall review previous determinations and may increase, but shall not decrease, the total Time Extension.

4.4.5 If the event or circumstance giving rise to the notice has a continuing effect:

- a) a fully detailed claim shall be considered as interim;
- b) the Contractor shall, no later than 10 (ten) days after the close of each month, send further interim claims specifying the accumulated delay, the extension of time claimed, and such further particulars as the Engineer-in-charge may reasonably require; and
- c) the Contractor shall send a final claim within 30 (thirty) days after the effect of the event or the circumstance ceases.

Upon receipt of the claim hereunder, the Engineer-in-charge shall examine the same in accordance with the provisions of Clause 4.4.2 within a period of 60 (sixty) days of the receipt thereof.

4.5 **Incomplete Works**

In the event the Contractor fails to complete the Works in accordance with the Project Completion Schedule, including any Time Extension granted under this Agreement, the Contractor shall endeavour to complete the balance work expeditiously and shall pay Damages to the Employer in accordance with the provisions for delay of each day until the Works are completed in accordance with the provisions of this Agreement. Recovery of Damages under this Clause shall be without prejudice to the rights of the Employer under this Agreement including the right to termination under Clause 10 [Termination].

4.6 Change of Scope

- 4.6.1 The Employer may, notwithstanding anything to the contrary contained in this Agreement, require the Contractor to make modifications/alterations to the Works (“Change of Scope”) before the issue of the Completion Certificate either by giving an instruction or by requesting the Contractor to submit a proposal for Change of Scope involving additional cost or reduction in cost. Any such Change of Scope shall be made and valued in accordance with the provisions of this Clause 4.6
- 4.6.2 Change of Scope shall mean:
1. change in specifications of any item of Works; and/or
 2. any additional work, Plant, Materials or services which are not included in the Scope of the Project
- 4.6.3 For the avoidance of doubt, the Parties agree that the Contractor shall not undertake any Change of Scope without the express consent of the Employer, save and except any Works necessary for meeting any Emergency which shall also be communicated to the employer/employers engineer prior starting the works.
- 4.6.4 In the event of the Employer determining that a Change of Scope is necessary, he will issue to the Contractor a notice specifying in reasonable detail the works and services contemplated there under (the “Change of Scope Notice”).
- 4.6.5 Upon receipt of a Change of Scope Notice, the Contractor shall, with due diligence, provide to the Employer and the Employer’s Engineer such information as is necessary, together with preliminary documentation in support of:
- a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
 - b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including the following details:
 - i. break down of the quantities, unit rates and cost for different items of work;
 - ii. proposed design for the Change of Scope; and
 - iii. proposed modifications, if any, to the Project Completion Schedule of the Project Works

4.6.6 Contractor's quotation of costs for the Change of Scope shall be determined on the following principles:

- a) the latest available edition of MIDC Schedule of Rates applicable to Nanded Region & Aurangabad PWD rates will be adopted for the valuation of any works which are not already covered by the items included in Price Schedules. Payments for the Variations Items shall be made in INR only.
- b) In the event that items are not covered in the MIDC Schedule of rates applicable to Nanded Region, then the latest edition of the Maharashtra Water Supply and Sewerage Board rates applicable for Aurangabad and then the schedule of rates related to Aurangabad PWD will be used in that order.
- c) If from above (a) & (b) the specific items rates are not present only then as a last option, the market rates substantiated with 3 quotations, followed by work order and/ or Tax Invoice shall be considered only when the executed variation items are not covered under Price Schedule or the above referred schedule of rates. A fixed percentage of 15% shall be added to cover the Contractor's Overhead and Profit for the rates evaluated under this category

For the avoidance of doubt, the Parties expressly agree that, subject to the provisions of Clause 4.8, the Contract Price shall be increased or decreased, as the case may be, on account of Change of Scope.

4.6.7 Upon reaching an agreement, the Employer shall issue an order (the "Change of Scope Order") requiring the Contractor to proceed with the performance thereof.

4.6.8 Payment for Change of Scope shall be made in accordance with the payment schedule specified in the Change of Scope Order.

4.7 **Restrictions to Change of Scope**

4.7.1 No Change of Scope shall be executed unless the Employer has issued the Change of Scope Order save and except any Works necessary for meeting any Emergency.

4.7.2 Notwithstanding anything to the contrary in this Clause 4, no change made necessary because of any default of the Contractor in the performance of its obligations under this Agreement shall be deemed to be Change of Scope, and shall not result in any adjustment of the Contract Price or the Project Completion Schedule.

4.8 **Power of the Employer to undertake works**

4.8.1 In the event the Parties are unable to agree to the proposed Change of Scope in accordance with Clause 4.8, the Employer may, after giving notice to the Contractor and considering its reply thereto, award such works or services to any third party or agency as deemed suitable.

- 4.8.2 It is also agreed that the Contractor shall provide assistance and cooperation to the person or agency who undertakes the works or services hereunder, and will be responsible for rectification of any Defects and/ or maintenance of works carried out by other agencies.
- 4.8.3 Notwithstanding anything contrary to this Clause 4.8, it will be Contractor's obligation to construct and maintain the Project Works in accordance with this Agreement.

5. STAFF AND LABOUR

5.1 Persons in the Service of Employer

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel.

5.2 Labour Laws

The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

5.3 Working Hours

No work shall be carried out on the Site on locally recognised days of rest, or outside the normal working hours as indicated in Contract Data Sheet, unless:

- a) otherwise stated in the Contract,
- b) the Engineer-in-charge gives consent, or
- c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer-in-charge

5.4 Facilities for Staff and Labour

Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

- a) The Contractor shall appoint a duly qualified safety officer who shall be stationed at the site from the time the contractor mobilizes. These personnel or a suitable

- replacement, if required, and for which prior permission of Employer is to be obtained, shall be stationed at site till the end of the contract period.
- b) The Contractor shall provide electricity, water and telephone connections to the site office at his own cost along with other required facilities.
 - c) Running expenses of the site office shall be borne by the Contractor.
 - d) The contractor shall submit the plan of labour camp stating number of labour occupancy and number of toilets provided along with the photographs of the same. Details about the food arrangement and health measures taken by the contractor keeping in mind the rules and regulations of state and central government as per the current pandemic situation shall be followed for the welfare of labours
 - e) The Contractor shall construct the labour camp within 7 days receiving the LOA. The area to establish the labour camp shall be identified and provided by the engineer in charge. The contractor shall not use any part of the project site or any adjoining/nearby site for labour camp or for accommodation/housing of any labour on his own.

5.5 Contractor's Superintendence

Throughout the execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications and 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.

Contractor shall appoint a Planning Engineer at project site with computer having M.S. Project/Primavera and CAD facility. The role and purpose of the Engineer shall be mainly to maintain weekly reporting to Employer (besides monthly Progress Report) on an approved format through E-mail facility kept by the Contractor at site. Also, CAD drafting facility is required to incorporate necessary details/variation on drawings or the As-built drawings time -to- time during construction process and to avoid any discrepancies therein.

5.6 Measures against Insects and Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect all staff and labour employed on the Site from insect and pest nuisance, and to reduce the dangers to health and general nuisance occasioned by the same. The Contractor shall provide his staff and labour with suitable prophylactics for the prevention of malaria and take steps to prevent the formation of the stagnant pools of water. The Contractor shall comply with all the regulations of the local health authorities and shall arrange to spray thoroughly with approved insecticide in all.

5.7 Epidemics

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government, or the local medical or sanitary authorities, for the purpose of dealing with and overcoming the same.

5.8 Burial or Cremation of the Dead

The Contractor shall make all necessary arrangements for the transport, to anyplace as required for burial/cremation, of any of his expatriate employees or members of their families who may die at the works. The Contractor shall also be responsible, to the extent required by local regulations, for making any arrangements with regard to burial/cremation of any of his local employees who may die while engaged upon the Works.

5.9 Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Laws of the Country import, sell, gift, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale gift, barter or disposal by Contractor's Personnel. Also, any contractors' personnel shall not be under the influence of the same during the work and in the premises.

5.10 Arms and Ammunition

The Contractor shall not give, barter or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or allow Contractor's personnel to do so.

5.11 Festivals and Religious Customs

The Contractor shall respect the Country's/Locally recognized festivals, days of rest and religious or other customs.

5.12 Foreign Staff and Labour

The Contractor may appoint any personnel who are necessary for the execution of the Works. The contractor must ensure that these personnel are provided with the required residence visas and work permits. The Contractor shall be responsible for the return to the place where they were recruited or to their domicile of imported Contractor's Personnel. The Contractor shall be responsible for such personnel who are to return until they shall have left the Site or, in the case of foreign nationals who have been recruited outside the country, shall have left it.

6. PLANT, MATERIALS AND WORKMANSHIP

6.1 Quality of Materials and Workmanship

The Contractor shall ensure that all the Construction, Materials and workmanship are in accordance with the requirements specified in this Agreement, Employer's Requirements, General Specifications and Standards and Good Industry Practice.

6.2 Quality Control System

The Contractor shall establish a quality control mechanism to ensure compliance with the provisions of this Agreement (the "Quality Assurance Plan" or "QAP").

The Contractor shall, within a week (seven) days of the Appointed Date, submit to the Engineer-in-charge its Quality Assurance Plan which shall include the following:

- a) Organization including Quality Control Manager and Engineers, duties and responsibilities, procedures, inspections and documentation;
- b) quality control mechanism including sampling and testing of Materials, test frequencies, standards, acceptance criteria, testing facilities, reporting, recording and interpretation of test results, approvals, check list for site activities, and proforma for testing and calibration in accordance with the Indian standards, relevant specifications and Good Industry Practice; and
- c) internal quality audit system.

The Contractor shall procure all documents, apparatus and instruments, fuel, consumables, water, electricity, labour, materials, samples, and qualified personnel as are necessary for examining and testing the Project Assets and workmanship in accordance with the Quality Assurance Plan.

The cost of testing of Construction, Materials and workmanship under this clause 6 shall be borne by the Contractor.

As a part of process all materials to be part of permanent works shall be inspected by Contractor along with AITL/PMNC Engineer before dispatch and the contractor to detect any damage after delivery at site.

The Contractor shall not interfere in any way with any existing works, whether the property of the Employer or of a third party, whether or not the position of such works is indicated to the Contractor by the Engineer, except where such interference is specifically described as part of the Works, either in the Contract or in an instruction from the Engineer. He shall also be expected to seek independently the approval from such a 'Third party' in case the need for interference arises. All material shall comply with appropriate Standard Specifications unless otherwise required hereinafter.

The Contractor shall, before placing any order of materials, manufactured articles or machinery for incorporation in the Works, submit for the information to the Engineer the names of the suppliers from whom he proposes to obtain such materials, manufactured articles or machinery, together with a list of the same, giving the origin, quality, weight,

quality, weight, strength, description and other relevant details. No materials, manufactured articles or machinery shall be used before passing the quality check and submitted the same to the engineer/employer.

All materials shall be delivered to the Site a sufficient period of time before they are required for use in the Works, to enable the Engineer to take such samples as he may wish for testing and approval.

Notwithstanding the fact that approval has been given to the source of supply, the Engineer may forbid the use of any materials if, upon delivery, they are found to be defective with proper reasoning and checking, or he considers them unsuitable for incorporation in the Works. Such rejected materials shall be removed from the site forthwith.

The Contractor may propose alternative materials of equivalent quality to those specified, and subject to the approval, such materials may be used in the Works.

The Contractor shall have no claim against the Employer in respect of any financial loss which he may suffer as a result of the rejection of any such materials, and he shall also bear the cost of removing them from the Site.

The Engineer shall have the right to inspect materials and plant for the permanent works during the course of manufacture. The Contractor shall arrange for the right of access to manufacturing premises for the Engineer and his staff during normal working hours. The Engineer shall be given sufficient notice by the Contractor to allow him to observe the testing of any materials for the works at the place of manufacture. The Engineer shall also be given the opportunity to inspect any material or plant in their completed state prior to packing for transport to the site.

If requested by the Engineer, the Contractor shall provide to the Engineer copies of orders for the supply of goods or materials required in connection with the works.

Material such as all type of pipes (of all sizes) & other equipment like pump, motor including power equipment like transformers, switch gear, cables, panels etc., all type of valves (of all sizes), flow meters any other materials as per requirements which are supplied by the contractor under this contract are subject to approved Third party inspection. The charges for such inspection shall be paid by the contractor. All the arrangements for inspection i.e. measuring tools, testing equipment and tools, labour required for handling materials during testing etc. shall be made available / arranged by the manufacturer /Vendor / contractor in their premises at their own costs. These cost shall be deemed included in contractor's price bid and nothing extra shall be paid to the said account. If any particular testing facility is not available at the premises /location of Factory, then the test shall be arranged by the factory owner /Vendor at his own cost at other locations / test laboratory. All expenses in this regard shall also have to be borne by the contractor/ manufacturer/vendor /contractor only. If the material inspected fails during test on no fault of the inspecting agency, fees are payable to the inspecting agency for the said inspection and for any further re-inspection of the same material.

The name of the agency for third party inspection shall be informed to Employers Engineer.

If it is subsequently observed that there are defects in the quality of material, the contractor shall replace the material without any extra cost. In addition to third party inspection, the Employers Engineer or his representative may conduct inspection intermittently.

Third Party Inspection Report: The third party inspection report merely in the certificate form stating that “pipes/valves/specials or any other material inspected are found satisfactory” will not be accepted, but it should be in the form of detailed report stating the parameters checked & observations made with comments of the Inspecting Officer in accordance with the respective Specifications/detailed item wise specifications / as per Tender notice.

AITL has right to appoint a third-party agency to inspect the work that are undertaken by the contractor the details of the same shall be stated in the work order given to that party and it same will be binding the contractor

6.3 Methodology

The Contractor shall, at least 15 (fifteen) days prior to the commencement of the construction, submit to the Engineer-in-charge for review and approval the methodology with detailed risk assessment proposed to be adopted for executing the Works and measures for ensuring safety.

6.4 Inspection and Technical Audit by the Employer

The Employer or any representative authorized by the Employer in this behalf may inspect and review the progress and quality of the construction of Project Works and issue appropriate directions to the Engineer-in-charge and the Contractor for taking remedial action in the event the Works are not in accordance with the provisions of this Agreement.

6.5 External Technical Audit

At any time during construction, the Employer may appoint an external technical auditor to conduct an audit of the quality of the Works. The findings of the audit, to the extent accepted by the Employer, shall be notified to the Contractor and the Engineer-in-charge for taking remedial action in accordance with this Agreement. The Contractor shall provide all assistance as may be required by the auditor in the conduct of its audit hereunder. Notwithstanding anything contained in this Clause 6.5, the external technical audit shall not affect any obligations of the Contractor or the Engineer-in-charge under this Agreement.

6.6 Inspection of Construction Records

The Employer shall have the right to inspect the records of the Contractor relating to the Works.

The Contractor shall hand over to the AITL\Employer's Engineer a copy of all its quality control records and documents before the Completion Certificate is issued.

6.7 Inspection

The Engineer-in-charge and its authorized representative shall at all reasonable times:

- a) have full access to all parts of the Site and to all places from which natural Materials are being obtained for use in the Works; and
- b) during production, manufacture and construction at the Site and at the place of production, be entitled to examine, inspect, measure and test the Materials and workmanship, and to check the progress of manufacture of Materials.

The Contractor shall give the Engineer-in-charge and its authorized agents access, facilities and safety equipment for carrying out their obligations under this Agreement.

For the avoidance of doubt, such inspection or submission of Inspection Report by the Engineer-in-charge shall not relieve or absolve the Contractor of its obligations and liabilities under this Agreement in any manner whatsoever.

6.8 Samples

The Contractor shall submit the following samples of Materials and relevant information to the Engineer-in-charge for pre-construction review:

- a) manufacturer's test reports and standard samples of manufactured Materials; and
- b) samples of such other Materials as the Engineer-in-charge may require.

6.9 Tests

For determining that the Works conform to the Specifications and Standards, the Engineer-in-charge shall require the Contractor to carry out or cause to be carried out tests, at such time and frequency and in such manner as specified in this Agreement, and in accordance with Good Industry Practice for quality assurance. The test checks by the Engineer-in-charge shall comprise at least 20 (twenty) percent of the quantity or number of tests prescribed for each category or type of test for quality control by the Contractor.

In the event that results of any tests conducted under this Clause 6.9 establish any Defects or deficiencies in the Works, the Contractor shall carry out remedial measures and furnish a report to the Engineer-in-charge in this behalf. The Engineer-in-charge shall require the Contractor to carry out or cause to be carried out tests to determine that such remedial measures have brought the Works into compliance with the Specifications and Standards, and the procedure shall be repeated until such Works conform to the Specifications and Standards. For the avoidance of doubt, the cost of such tests and remedial measures in pursuance thereof shall be solely borne by the Contractor.

6.10 Examination of Work Before Covering Up

In respect of the work which the Engineer-in-charge is entitled to examine, inspect, measure and/or test before it is covered up or put out of view or any part of the work is placed thereon, the Contractor shall give notice to the Engineer-in-charge whenever any such work is ready and before it is covered up.

The Engineer-in-charge shall then either carry out the examination, inspection or testing without unreasonable delay. Provided, however, that if any work is of a continuous nature where it is not possible or prudent to keep it uncovered or incomplete, then Contractor shall notify the schedule of carrying out such work to give sufficient opportunity, not being less than 3 (three) business days' notice, to the Engineer-in-charge to conduct its inspection, measurement or test while the work is continuing.

Provided further that in the event the Contractor receives no response from the Engineer-in-charge within a period of 3 (three) business days from the date on which the Contractor's notice hereunder is delivered to the Engineer-in-charge, the Contractor shall be entitled to assume that the Engineer-in-charge would not undertake the said inspection.

6.11 Rejection

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials, design or workmanship is found to be defective or otherwise not in accordance with the provisions of this Agreement, the Engineer-in-charge shall reject the Plant, Materials, design or workmanship by giving notice to the Contractor, with reasons with approval of AITL management. The Contractor shall then promptly make good the Defect and ensure that the rejected item complies with the requirements of this Agreement.

If the Engineer-in-charge requires the Plant, Materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions, as applicable in each case. If the rejection and retesting cause the Employer to incur any additional costs, such cost shall be recoverable by the Employer from the Contractor; and may be deducted by the Employer from any monies due to be paid to the Contractor.

6.12 Remedial work

6.12.1 Notwithstanding any previous test or certification, the Engineer-in-charge may instruct the Contractor to:

- a) remove from the Site and replace any Plant or Materials which are not in accordance with the provisions of this Agreement;
- b) remove and re-execute any work which is not in accordance with the provisions of this Agreement, Good For Construction (GFC) Drawings and the Technical Specification and applicable Standards; and
- c) Execute any work which is urgently required for the safety of the Project Works, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work required on account of a Force Majeure Event, the provisions of Clause 13 shall apply.

If the Contractor fails to comply with the instructions issued by the Engineer-in-charge under this Clause 6.12.1, within the time specified in the Engineer-in-charge's notice or as mutually agreed, the Engineer-in-charge may advise the Employer to have the work executed by another agency. The cost so incurred by the Employer for undertaking such work shall, without prejudice to the rights of the Employer to recover Damages in accordance with the provisions of this Agreement, be recoverable from the Contractor and may be deducted by the Employer from any monies due to be paid to the Contractor.

6.13 Royalties

6.13.1 Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments for:

- a) natural Materials obtained from outside the Site, and
- b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.
- c) Any bill which have been submitted for payment where it needs the royalty to be paid to the government. While submitting the subsequent Running account bill the contractor shall furnish/submit the receipt/challan of royalty paid to the respective authority.

6.14 Delays during construction

- 6.14.1 In the event the Contractor does not achieve any of the Project Milestones or the Engineer-in-charge shall have reasonably determined that the rate of progress of Works is such that Completion of the Project Works is not likely to be achieved by the end of the Scheduled Completion Date, and shall apprise the detail to AITL management. And post approval of management shall notify the same to the Contractor. The Contractor shall, within 15 (fifteen) days of such notice, by a communication inform the Engineer-in-charge in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

6.15 Suspension of unsafe Construction Works

- 6.15.1 Upon recommendation of the Engineer-in-charge to this effect by giving intimation to the employer, the Employer may by notice require the Contractor to suspend forthwith the whole or any part of the Works if, in the reasonable opinion of the Engineer-in-charge, such work threatens the safety of the Users and pedestrians.

The Contractor shall, pursuant to the notice under this Clause 6.15.1, suspend the Works or any part thereof for such time and in such manner as may be specified by the Employer and thereupon carry out remedial measures to secure the safety of suspended works, the Users and pedestrians. The Contractor may by notice require the Engineer-in-charge to inspect such remedial measures forthwith and make a report to the Employer recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Engineer-in-charge, the Employer shall either revoke such suspension or instruct the Contractor to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Employer, and the procedure set forth in this Clause 6.15.1, shall be repeated until the suspension hereunder is revoked.

Subject to the provisions of Clause 13 [Force Majeure], all reasonable costs incurred for maintaining and protecting the Works or part thereof during the period of suspension (the “**Preservation Costs**”), shall be borne by the Contractor; provided that if the suspension has occurred as a result of any breach of this Agreement by the Employer, the Preservation Costs shall be borne by the Employer.

If suspension of Works is for reasons not attributable to the Contractor, the Engineer-in-charge shall determine any Time Extension to which the Contractor is reasonably entitled.

7. COMMENCEMENT, DELAYS AND SUSPENSION

7.1 Commencement of Work

The commencement date shall be within the time specified in the Contract Data Sheet.

7.2 Time for Completion

The Contractor shall complete the whole of the Works, and each Section complete in itself (if any), within the Time for Completion for the Works or Section (as the case may be), including:

- a) achieving the passing of the Tests on Completion, and
- b) completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking over.

7.3 Delay Damages

- 7.3.1 If the Contractor fails to comply with time for completion of project, the Contractor shall subject to penalty as specified per delay damages to the Employer for this default. These delay damages shall be the sum stated in the Contract Data Sheet, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages as stated in the Contract Data Sheet.
- 7.3.2 These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.

7.4 Tests on Completion

- 7.4.1 At least 15 (fifteen) days prior to the likely completion of the Project Works, or a Section thereof, the Contractor shall notify the Engineer-in-charge of its intent to subject the Project Works or a Section thereof, to Tests. The date and time of each of the Tests shall be determined by the Contractor in consultation with the Engineer-in-charge and notified to the Employer who may designate its representative to witness the Tests.
- 7.4.2 Contractor shall submit the testing plan and procedure for Engineer-in-charge's approval one months before the scheduled tests.
- 7.4.3 Provisioning of all electricity, equipment, fuel, instruments, labour, materials, water and suitably qualified and experienced staff for the execution of EPC works shall be made available by the Contractor.
- 7.4.4 Contractor shall carry out the tests properly and maintain formal test records of start, duration, finish, test pressure, witness along with weather conditions and observations.
- 7.4.5 The Engineer-in-charge shall witness, observe, monitor and review the Tests conducted by the Contractor and review the results of the Tests to determine compliance of the Project Works or a Section there of, with Specifications and Standards and submit the report to the management .

7.4.6 If it is reasonably anticipated or determined by the Engineer-in-charge during the course of any Test that the performance of the Project Works or Section or any part thereof, does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Contractor to remedy and rectify the Defect or deficiencies.

7.4.7 For the avoidance of doubt, it is expressly agreed that the Engineer-in-charge may require the Contractor to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project Works or Section thereof with the Specifications and Standards.

7.5 Delayed Tests

7.5.1 If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer. All tests shall be carried out at Govt Labs in the state of Maharashtra

7.5.2 If the Contractor fails to carry out the Tests on Completion within the period of 21 days, the Employer's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

7.6 Retesting

7.6.1 If the Works, or a Section, fail to pass the Tests on Completion, the Engineer or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

7.7 Failure to Pass Tests on Completion

7.7.1 In the event Tests on Completion demonstrate that the Work has failed to pass Tests on Completion, the Contractor shall have 3 months from the date of expiry of the relevant Time for Completion (unless such period is extended in accordance with this Contract) to achieve Required Output Standards or, at a minimum, the minimum permissible Output Standards from the facilities.

7.7.2 If the Works, or a Section, again fail to pass the Tests on Completion repeated under Clause 7.7 [Retesting], the Engineer shall be entitled to:

- a) order further repetition of Tests on Completion.
- b) reject the Works or Section (as the case may be) if the failure deprives the Employer of substantially the whole benefit of the Works or Section.

7.8 Liquidated Damages

- 7.8.1 In the event that the Works fail to pass any or all of the Tests on Completion as defined in Technical Specifications and applicable standards, then the Employer shall levy Liquidated Damages, based on the extent of such failure, in accordance with the following formulae, subject to the condition that the total amount of Delay Damages for Works and/or Liquidated Damages for failure to pass the Tests on Completion shall not exceed the Maximum Amount of Delay Damages as defined in this Contract Data Sheet.

8. EMPLOYER'S TAKING OVER

8.1 Taking Over

- 8.1.1 "Taking Over" shall not mean physical taking over of the works by the Employer. The Employer shall be deemed to have taken over the Works on the date when the commissioning of the scheme after the trial run and the Tests on Completion would have been completed and duly informed so by the Contractor to the Employer in writing unless refuted by the Employer within 14 days. Also, post SITC the contractor shall handover the same to MSEDCL

9. CONTRACT PRICE AND PAYMENT

9.1 The Contract Price

- 9.1.1 Payment for the Works shall be made on a lump sum basis according to below major work categories as follows:
1. Design and documentation, including all necessary Designs and documentation required for the Works;
 2. Civil works, Installation, Testing, Commissioning and other services required for the different plant components in accordance with the payment units as set out in the Schedule of Prices and/or as proposed by the Contractor and approved by the Engineer;
 3. Plant and Equipment, whether manufactured or fabricated outside or within the Employer's country, including supply of all electrical and instrumentation equipment, etc., for the different plant components according to the payment units as set out in the Schedule of Prices and/or as proposed by the Contractor and approved by the Engineer; and
- 9.1.2 The Contract Price shall be adjusted for changes in the cost of labour and materials in accordance with the provisions of Clause 9.2 [Adjustments for Changes in Cost];

- 9.1.3 The Contractor shall pay all the duties, fees and taxes including GST in consequence of his obligations under the Contract, and the Contract Price shall not be adjusted for such costs, except as stated in Clause 9.2 [Adjustments for Changes in Legislation];
- 9.1.4 Any quantities which may be set out in the Schedule are only estimated quantities and are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfilment of his obligations under the Contract. The Contractor is responsible to assess the exact requirements and quantities for all items for the purpose of quoting his rates, and no variation in rates will be allowed on account of any variation in the estimated quantities unless specifically provided elsewhere in the Bid Document.
- 9.1.5 Any quantities, prices or rates of payment per unit quantity which may be set out in the Schedule are only to be used for the purposes stated in the Schedule and may be inapplicable for other purposes.
- 9.1.6 The cost of any taxes incurred in India on the supply of Plant and equipment listed under specific Schedules of Schedule of Prices, whether manufactured or fabricated outside or within the Employer's country, shall be reimbursed at actual cost, not at the estimated cost listed in the Schedule of Prices."
- 9.1.7 Progressive payments shall be made for the work completed by the Contractor in accordance with the provisions of Clause 10.2 [Payment Schedule for Interim Valuation]."

9.2 Application for Interim Payment Certificates

- 9.2.1 Prior to commencing construction of the Works, the Contractor shall submit a Bill of Principal Quantities of the Permanent Works (here in referred as "BPQPW") including provision for construction, installation, testing, trial run and commissioning together with such supporting information and calculations as the Engineer may reasonably require.
- 9.2.2 The BPQPW shall include the anticipated final quantities of the principal items of Permanent Works, which shall have been priced using all-in rates such that the total amount equals the Accepted Contract Amount.
- 9.2.3 The BPQPW shall not contain priced items for design (other than as may be specified in the Schedule of Prices) or for Temporary Works; the value of each element of such work, and of any other work elements not described in the BPQPW, shall each be included in the rates for Permanent Works to be constructed after such element is carried out.

9.2.4 The BPQPW shall be subject to the approval of the Engineer, who may require the Contractor to revise and reissue the BPQPW at any time before taking-over to reflect Variations or if the Engineer determines that the BPQPW will not fully represent the Permanent Works at taking-over. If the total amount of the BPQPW at any time differs from the Contract Price, the Contract Price shall prevail.

During the Time for Completion of Part 1 - EPC of the Works, the Contract Price for the purpose of sub-paragraph (a) of Clause 10.3 [Application for Interim Payment Certificates] shall not exceed the amount calculated from the current BPQPW, based on the quantities of Permanent Works which have been constructed in accordance with the Contract. The Contractor's interim statement shall be in the same form as that of the current BPQPW and shall be accompanied by the Contractor's signed statement that the current BPQPW attached thereto (including anticipated final quantities) and the as-constructed quantities are all correct; each such statement shall also be accompanied by a Construction Certificate, signed by the Contractor's Representative, certifying that the part of the Works constructed to date complies with the Contract. However, the Contractor may propose such lesser amount as is reasonable, supported with appropriate calculation on a similar basis to the procedure described in this Sub-Clause.

The above procedures notwithstanding, interim valuations for the purposes of determining payments to be made to the Contractor by the Employer will be subject to the conditions summarised in the following Table 1 to ensure successful completion of the Works and satisfactory performance of the Contractor's obligations under the Contract. The designation "P" means progressive monthly payments up to the limits indicated, based on progress made by the Contractor. The designation "LS" means that lump sum payment is made upon completion of the activity described.

Payment Schedule given below is for understanding. Contractor has to take approval for activity wise detailed payment schedule with reference to the below table from employers engineers.

Sl.no	Head	Percentage %	Remarks
A	Design and Drawings	5%	
B	Supply of all material at site	30%	
C	Execution of Work	30%	
i.	33KV Overhead line work	70%	
ii.	33KV Underground work for ROB Crossing	20%	
iii.	Dismantling of existing line	10%	
D	Commissioning of total 33 KV line with the permission of MSEDCL	15%	
E	Handing Over to MSEDCL	15%	

F	3 months after successful Handover	5%	
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9.3 Application of Interim Payments

For payments relating to EPC Works, the Contractor shall submit a statement in six copies to the Engineer after the end of each month, in a form approved by the Engineer, showing the amounts to which the Contractor considers himself to be entitled together with supporting documents which shall include the detailed report on the progress during the month in accordance with Clause 3.10 [Progress Reports].

The statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

1. the estimated contract value, at base rates and prices, of the Contractor's Documents produced and the Works (including Variations) executed up the end of the month.
2. any amounts to be added and deducted for changes in cost in accordance with Clause 9.2 [Adjustments of Changes in Cost];
3. any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Contract Data Sheet to the total of the above amounts, until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Contract Data Sheet;
4. any amounts to be added and deducted for the advance payments and repayments in accordance with Clause 10.4 [Advance Payment];
5. any other additions or deductions which may have become due in accordance with the Contract (including those under Clause 15 [Claims, Disputes and Arbitration]), other than under Sub-Clause 7.3 [Delay Damages]; and
6. the deduction of the amounts certified in all previous Interim Payment Certificates

9.4 Payment

9.4.1 The Employer shall pay to the Contractor:

1. the amount certified in each Interim Payment Certificate within 60 days from the date on which the Engineer receives the Statement and supporting documents; and
2. the amount certified in the Final Payment Certificate within 90 days from the date of issue of the Certificate.

Payments shall be made in Indian Rupees, into a bank account nominated by the Contractor, in India.

9.5 Currencies of Payment

The currency of account shall be the Local Currency i.e. INR (Indian National Rupees) and all payments made in accordance with the Contract shall be in Local Currency.

9.6 Change in laws

9.6.1 The Contract Price is subject to adjustment for any increase or decrease in Cost due to any significant change in the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws) made after the date of issue of Letter of Award, which affect the Contractor in the performance of obligations under the Contract.

9.6.2 If as a result of Change in Law, the Contractor suffers any additional costs in the execution of the Works or in relation to the performance of its other obligations under this Agreement, the Contractor shall, within 15 (fifteen) days from the date it becomes reasonably aware of such addition in cost, notify the Employer with a copy to the Engineer-in-charge of such additional cost due to Change in Law.

If as a result of Change in Law, the Contractor benefits from any reduction in costs for the execution of this Agreement or in accordance with the provisions of this Agreement, either Party shall, within 15 (fifteen) days from the date it becomes reasonably aware of such reduction in cost, notify the other Party with a copy to the Engineer-in-charge of such reduction in cost due to Change in Law.

The Engineer-in-charge shall, within 30 (thirty) days from the date of receipt of the notice from the Contractor or the Employer, determine any addition or reduction to the Contract Price, as the case may be, due to the Change in Law.

10. TERMINATION

10.1 Corrupt or Fraudulent Practices

10.1.1 The Employer may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Contractor, in the case if the Contractor, in the judgment of the Employer has engaged in Corrupt or Fraudulent Practices in competing for or in executing the Contract.

For the purpose of this clause:

"Corrupt Practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution.

"Fraudulent Practice" means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Employer, and includes collusive practice among contractors (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

10.2 Notice to Correct

If the Contractor fails to carry out any obligation under the Contract, the Engineer may issue a notice to the Contractor to make good the failure and to remedy it within a specified reasonable time.

10.3 Termination for Contractor Default

10.3.1 The Employer shall be entitled to terminate the Contract under any of the following conditions:

1. the Contractor fails to provide, extend or replenish, as the case may be complying with Clause 3.2 [Performance Security] or take adequate action as per notice under Clause 10.2 [Notice to Correct]
2. the Contractor abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
3. the Contractor does not achieve the latest outstanding Project Milestone due in accordance with the project schedule approved by Employer, subject to any Time Extension, and continues to be in default for 45 (forty-five) days;
4. the Contractor fails to rectify any Defect, the non-rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Agreement or as directed by the Engineer-in-charge;
5. the Contractor subcontracts the whole or any part of the Works or assigns the Contract or the Maintenance without prior consent of the Engineer-in-charge;
6. the Contractor becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events
7. the Contractor creates any Encumbrance in breach of this Agreement;
8. the Contractor has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Employer, a Material Adverse Effect;
9. any representation or warranty of the Contractor herein contained which is, as of the date hereof, found to be materially false or the Contractor is at any time hereafter found to be in breach thereof;
10. the Contractor submits to the Employer any statement, notice or other document, in written or electronic form, which has a material effect on the Employer's rights, obligations or interests and which is false in material particulars;
11. the Contractor has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
12. the Contractor commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Project or on the Employer.

10.3.2 Save as otherwise provided in this Agreement, in the event that any of the defaults specified above shall have occurred, the Contractor shall be deemed to be in default of this Agreement (the “Contractor Default”), unless the default has occurred solely as a result of any breach of this Agreement by the Employer or due to Force Majeure.

10.3.3 Without prejudice to any other rights or remedies which the Employer may have under this Agreement, upon occurrence of a Contractor Default, the Employer shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor; provided that before issuing the Termination Notice, the Employer shall by a notice inform the Contractor of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Contractor to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

10.4 Termination for Employer Default

10.4.1 In the event that any of the defaults specified below shall have occurred, and the Employer fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Employer shall be deemed to be in default of this Agreement (the “Employer Default”) unless the default has occurred as a result of any breach of this Agreement by the Contractor or due to Force Majeure. The defaults referred to herein shall include:

- a) the Employer has failed to make payment of any amount due and payable to the Contractor within the period specified in this Agreement;
- b) the Employer has failed to provide, within a period of 180 (one hundred and eighty) days from the Award Date, the environmental clearances required for construction of the Project Works;
- c) the Employer repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or
- d) the Engineer-in-charge fails to issue the relevant Interim Payment Certificate within 60 (sixty) days after receiving a statement and supporting documents.

Without prejudice to any other right or remedy which the Contractor may have under this Agreement, upon occurrence of an Employer’s Default, the Contractor shall be entitled to terminate this Agreement by issuing a Termination Notice to the Employer; provided that before issuing the Termination Notice, the Contractor shall by a notice inform the Employer of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Employer to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

10.5 Termination for Employer’s Convenience

10.5.1 Notwithstanding anything stated herein above, the Employer may terminate this Agreement for convenience. The termination shall take effect 30 (thirty) days from the date of notice hereunder.

10.6 Requirements after Termination

- 10.6.1 Upon Termination of this Agreement Contractor shall deliver to the Employer all Plant and Materials which shall have become the property of the Employer.
- 10.6.2 After termination of this Agreement for Contractor Default, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Materials, Plant and Equipment, drawings and other design documents made by or on behalf of the Contractor.
- 10.6.3 Upon Termination of this Agreement for Contractor Default, the Contractor shall then vacate the Site within one week and deliver any required Goods, all Contractor's Documents and other design documents (including all relevant records, reports, Intellectual Property and other licenses pertaining to the Works, Maintenance, other design documents and in case of Termination occurring after the Provisional Certificate has been issued, the "as built" Drawings for the Works) made by or for him, to the Engineer-in-charge. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works. The contractor shall transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Law.
- 10.6.4 Upon Termination of this Agreement for Contractor Default, the Employer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

10.7 Valuation of Unpaid Works

10.7.1 After a notice of termination under Clause 10.3 [Termination for Contractor Default], the Employer may:

- a) Within a period of 45 (forty-five) days after Termination under applicable sub-clauses of clause 10, as the case may be, the Engineer-in-charge shall proceed in accordance with Clause 2.5 [Determination by the Employer's Engineer] to determine as follows the valuation of unpaid Works (the "Valuation of Unpaid Works"):
- b) value of the completed stage of the Works, less payments already made;
- c) reasonable value of the partially completed stages of works as on the date of Termination, only if such works conform with the Specifications and Standards; and
- d) value of Maintenance, if any, for completed months, less payments already made, and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement; and (ii) all taxes due to be deducted at source.

The Valuation of Unpaid Works shall be communicated to the Employer, with a copy to the Contractor, within a period of 45 (forty five) days from the date of Termination.

10.8 Termination Payment

10.8.1 Upon Termination on account of Contractor's Default under Clause 10.3, the Employer shall:

- a) withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established, and/or recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works,.
- b) encash and appropriate the Performance Security and Retention Money, or in the event the Contractor has failed to replenish or extend the Performance Security
- c) encash and appropriate the bank guarantee, if any, for and in respect of the outstanding liquidated and interest thereon; and pay to the Contractor, by way of Termination Payment, an amount equivalent to the Valuation of Unpaid Works after adjusting any other sums payable or recoverable, as the case may be, in accordance with the provisions of this Agreement.

10.8.2 Upon Termination on account of an Employer Default under Clause 10.4 [Termination for Employer Default] or Clause 10.5 [Termination for Employer's Convenience for Employer's convenience], the Employer shall:

- a) return the Performance Security and Retention Money forthwith;
- b) encash and appropriate the bank guarantee, if any, for and in respect of the outstanding Advance Payment; and
- c) pay to the Contractor, by way of Termination Payment, an amount equal to:
 - i. Valuation of Unpaid Works;
 - ii. the reasonable cost, as determined by the Engineer-in-charge, of the Plant and Materials procured by the Contractor and transferred to the Employer for its use, only if such Plant and Materials are in conformity with the Specifications and Standards;
 - iii. the reasonable cost of temporary works, as determined by the Engineer-in-charge; and

Termination Payment shall become due and payable to the Contractor within 45 (forty five) days of a demand being made by the Contractor to the Employer with the necessary particulars. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Employer of its payment obligations in respect thereof hereunder.

The Contractor expressly agrees that Termination Payment under this Clause 10.8 shall constitute a full and final settlement of all claims of the Contractor on account of Termination of this Agreement and that it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

10.9 **Other Rights and Obligations of the Parties**

Upon Termination for any reason whatsoever

- a) property and ownership in all Materials, Plant and Works and the Project Works shall, as between the Contractor and the Employer, vest in the Employer in whole; provided that the foregoing shall be without prejudice to Clause 10.8 [Termination Payment]
- b) risk of loss or damage to any Materials, Plant or Works and the care and custody thereof shall pass from the Contractor to the Employer; and
- c) the Employer shall be entitled to restrain the Contractor and any person claiming through or under the Agreement from entering upon the Site or any part of the Project except for taking possession of materials, stores, implements, construction plants and equipment of the Contractor, which have not been vested in the Employer in accordance with the provisions of this Agreement.

10.10 Survival of Rights

Notwithstanding anything to the contrary contained in this Agreement any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or Agreement. All rights and obligations of either Party under this Agreement, including Termination Payments, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

11. RISK AND RESPONSIBILITY

11.1 General indemnity

The Contractor will indemnify, defend, save and hold harmless the Employer and its officers, servants, agents, Government Instrumentality and Government owned and/or controlled entities/enterprises, (the "Employer Indemnified Persons") against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Contractor of any of its obligations under this Agreement or from any negligence under the Agreement, including any errors or deficiencies in the design documents, or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Employer Indemnified Persons.

11.2 Indemnity by the Contractor

Without limiting the generality of Clause 11 [Risk and Responsibility], the Contractor shall fully indemnify, hold harmless and defend the Employer and the Employer Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- d) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and
- e) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:
 - i. arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, and

- ii. is attributable to any negligence, wilful act or breach of the Contract by the Contractor, the Contractor's Personnel, their respective agents, or anyone directly or indirectly employed by any of them
- f) failure of the Contractor to comply with Applicable Laws and Applicable Permits;
- g) payment of taxes required to be made by the Contractor in respect of the income or other taxes of the Sub-contractors, suppliers and representatives; or
- h) non-payment of amounts due as a result of Materials or services furnished to the Contractor or any of its Sub-contractors which are payable by the Contractor or any of its Sub-contractors.
- i) any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Contractor or by the Sub-contractors in performing the Contractor's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project Works, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Contractor shall promptly make every reasonable effort to secure for the Employer a license, at no cost to the Employer, authorizing continued use of the infringing work. If the Contractor is unable to secure such license within a reasonable time, the Contractor shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non- infringing.

11.3 Indemnity by the Employer

11.3.1 The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover as described in relevant sub-clauses of Clause 12 [Insurance].

11.4 Notice and contest of claims

11.4.1 In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Clause 11 [Risk and Responsibility], (the "Indemnified Party") it shall notify the other Party (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

11.5 Defense of claims

The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Clause 11 [Risk and Responsibility], the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

If the Indemnifying Party has exercised its rights under Clause 11.4 [Notice and contest of claims], the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

If the Indemnifying Party exercises its rights under Clause 11.4 [Notice and contest of claims], the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- a) the employment of counsel by such party has been authorized in writing by the Indemnifying Party; or
- b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or
- c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - i. that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - ii. that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 11.4 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

11.6 Limitation of Liability

- 11.6.1 Notwithstanding anything to the contrary contained in this Clause 11 [Risk and Responsibility], neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract.
- 11.6.2 The total liability of the Contractor to the Employer, under or in connection with the Contract shall not exceed the sum stated in the Contract Data Sheet.
- 11.6.3 This Clause 11.6 [Limitation of Liability] shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

12. INSURANCE

12.1 Insurance for Works and Maintenance

- 12.1.1 The contractor shall obtain insurance policy from Directorate of insurance, Govt of Maharashtra a State Government owned Insurance Company.

The Contractor shall effect and maintain at its own cost the insurances specified in Clause 12 and as per the requirements under the Applicable Laws.

- 12.1.2 Subject to the relevant provisions of Clause 13 [Force Majeure], the Employer and the Contractor shall, in accordance with its obligations as provided for in this Agreement, be liable to bear the cost of any loss or damage that does not fall within the scope of this Clause 12 [Insurance] or cannot be recovered from the insurers.

- 12.1.3 Subject to the exceptions specified in Clause 12.1.4 below, the Contractor shall, save and except as provided for in this Agreement, fully indemnify, hold harmless and defend the Employer from and against any and all losses, damages, costs, charges and/or claims with respect to:

- a) the death of or injury to any person; or
- b) the loss of or damage to any property (other than the Works);

That may arise out of or in consequence of any breach by the Contractor of this Agreement during the execution of the Works or the remedying of any Defects therein.

- 12.1.4 Notwithstanding anything stated above in Clause 12.1.3, the Employer shall fully indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims arising out of or with respect to
- a) the use or occupation of land or any part thereof by the Employer;
 - b) the right of the Employer to execute the Works, or any part thereof, on, over, under, in or through any land;
 - c) the damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any Defects therein, in accordance with this Agreement; and
 - d) the death of or injury to persons or loss of or damage to property resulting from any act or neglect of the Employer, its agents, servants or other contractors, not being employed by the Contractor Provided that, in the event of any injury or damage as a result of the contributory negligence of the Contractor, the Employer shall be liable to indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims to the extent as may be proportionately determined to be the liability of the Employer, its servants or agents or other contractors not associated with the Contractor in such injury or damage.
- 12.1.5 Without prejudice to the obligations of the Parties as specified under Clauses 12.1.3 and 13.1.4, the Contractor shall maintain or effect such third party insurances as may be required under the Applicable Laws.
- 12.1.6 The Contractor shall provide to the Employer, within 30 days of the Appointed Date, evidence of professional liability insurance maintained by its Project Manager and/or consultants to cover the risk of professional negligence in the design of Works. The professional liability coverage shall be for a sum of not less than 3% (three per cent) of the Contract Price and shall be maintained until the end of the Defects Liability Period.

12.2 Insurance for Works and Contractor's Equipment

12.2.1 The Contractor shall effect and maintain at its own cost, from the Date of Letter of Award till the date of issue of the last Completion Certificate, the following insurances for a minimum amount as indicated in the Contract Data Sheet for any loss or damage occurring on account of Force Majeure event 1, malicious act, accidental damage, explosion, fire and terrorism:

- a) insurance of Works, Plant and Materials, replacement cost to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature; and
- b) Insurance for the Contractor's equipment and Documents brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.
- c) The Contractor shall effect and maintain at its own cost, from the Appointed Date till the date of issue of the last completion certificate from the issue of completion certificate, the following Insurances for any loss or damage occurring on account of Force Majeure, malicious act, accidental damage, explosion, Fire, Terrorism and War and Riots Protection Insurance.

- 12.2.2 The insurance under Clause 12.2 above shall cover the employer and the contractor against all loss or damage from whatsoever cause arising other than risks which are not insurable at commercial terms.

“All risks of loss including theft of or damage to physical property and of personal injury and death which arise during and in consequence of the performance of the Contract other than the Exceptional Risks are the responsibility of the Contractor. Any loss not insured or not recovered (including policy excesses etc.) from insurers shall be borne by the Contractor. All insurances shall be in the joint name of contractor and the Employer. The contractor shall maintain a Contractors All Risk Policy (CAR) for the entire duration of the contract including DLP period for the entire facility” The Contractor shall also take additional covers (Add-On covers) insurance like Third Party Liability, Surrounding properties, Clearance and Removal of debris, Cross liability, Express Freight, Extended Maintenance Cover up to Final Takeover, etc. The sum insured for such Add-On covers shall be decided by the CONTRACTOR based on his assessment and risk involved in the contract. Risks to be covered by insurance shall not be limited merely to the items mentioned above. The CONTRACTOR shall arrange for insurance of any other risks he may deem prudent, but the expenses thereof shall be to the account of the contractor only full plant. If necessary, Transit and storage (all risks) insurance coverage for additional transit involved for sending equipment/material to Sub-Contractor/Fabricator’s shop for fabrication/ reprocessing and receiving back at site shall be taken.

The Contractor shall, save and except as provided for in this Agreement, fully indemnify, hold harmless and defend the Employer from and against any and all losses, damages, costs, charges and/or claims with respect to:

- (a) the death of or injury to any person; or
- (b) the loss of or damage to any property (other than the Works);

That may arise out of or in consequence of any breach by the Contractor of this Agreement during the execution of the Works or the remedying of any Defects therein.

Notwithstanding anything stated in above Clause, the Employer shall fully indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims arising out of or with respect to

- (a) the use or occupation of land or any part thereof by the Employer;
- (b) the right of the Employer to execute the Works, or any part thereof, on, over, under, in or through any land;
- (c) the damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any Defects therein, in accordance with this Agreement; and
- (d) the death of or injury to persons or loss of or damage to property resulting from any act or neglect of the Employer, its agents, servants or other contractors, not being employed by the Contractor Provided that, in the event of any injury or damage as a result of the contributory negligence of the Contractor, the Employer shall be liable to indemnify the Contractor from and against any and all losses, damages, costs, charges,

proceedings and/or claims to the extent as may be proportionately determined to be the liability of the Employer, its servants or agents or other contractors not associated with the Contractor in such injury or damage.

Without prejudice to the obligations of the Parties as specified under above Clauses, the Contractor shall maintain or effect such third party insurances as may be required under the Applicable Laws.

The Contractor shall provide to the Employer, within 30 days of the Letter of Award, evidence of professional liability insurance maintained by its Design Director and/or consultants to cover the risk of professional negligence in the design of Works. The professional liability coverage shall be for a sum of not less than 3% (three per cent) of the Contract Price and shall be maintained until the end of the Defects Liability Period.

12.3 Insurance for Contractor's Defects Liability

The Contractor shall effect and maintain Insurance cover for the works from the date of issue of the Completion Certificate until the end of the Defects Liability Period for any loss or damage for which the Contractor is liable and arises from a cause occurring prior to the issue of Completion Certificate. The Contractor shall also maintain other insurances for maximum sums as may be required under the Applicable Laws and in accordance with Good Industry Practice.

12.4 Insurance to be in Joint Names

The Insurance under headings 12.2 and 12.3 above shall be in the joint names of the Contractor and the Employer.

12.5 Notice to the Employer

No later than 15 (fifteen) days after the date of this Agreement, the Contractor shall by notice furnish to the Employer, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Clause 12 [Insurance]. Within 15 (fifteen) days of receipt of such notice, the Employer may require the Contractor to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

12.6 Evidence of Insurance Cover

All insurances obtained by the Contractor in accordance with this Clause 12 [Insurance] shall be maintained with insurers on terms consistent with Good Industry Practice. Within 10 (ten) days from the Letter of Award, the Contractor shall furnish to the Employer notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty-five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Contractor to the Employer. The Contractor shall act in accordance with the directions of the Employer. Provided that the Contractor shall produce to the

Employer the insurance policies in force and the receipts for payment of the current premium. The Contractor shall ensure the adequacy of the insurances at all times in accordance with the provisions of this Agreement.

12.7 **Remedy for failure to insure**

If the Contractor shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Employer shall have the option to either keep in force any such insurances, and pay such premium and recover the costs thereof from the Contractor, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Contractor.

12.8 **Waiver of Subrogation**

All insurance policies in respect of the insurance obtained by the Contractor pursuant to this Clause 12 [Insurance] shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Employer, and its assigns, successors, undertakings and their subsidiaries, Affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

12.9 **Contractor's Waiver**

The Contractor hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Employer and its assigns, undertakings and their subsidiaries, Affiliates, employees, successors, insurers and underwriters, which the Contractor may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Contractor pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

12.10 **Cross liabilities**

Any such insurance maintained or effected in pursuance of this Clause 12 [Insurance] shall include a cross liability clause such that the insurance shall apply to the Contractor and to the Employer as separately insured.

12.11 **Accident or Injury to Workmen**

Notwithstanding anything stated in this Agreement, it is hereby expressly agreed between the Parties that the Employer shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Contractor or Sub-contractor, save and except as for death or injury resulting from any act, omission or default of the Employer, its agents or servants. The Contractor shall indemnify and keep indemnified the Employer from and against all such claims,

proceedings, damages, costs, charges, and expenses whatsoever in respect of the above save and except for those acts, omissions or defaults for which the Employer shall be liable.

12.12 Insurance against Accident to Workmen

The Contractor shall effect and maintain during the Agreement such insurances as may be required to insure the Contractor's personnel and any other persons employed by it on the Project Site from and against any liability incurred in pursuance of this Clause 12 [Insurance]. Provided that for the purposes of this Clause 12.12, the Contractor's personnel/any person employed by the Contractor shall include the Sub-contractor and its personnel. It is further provided that, in respect of any persons employed by any Sub-contractor, the Contractor's obligations to insure as aforesaid under this Clause shall be discharged if the Sub-contractor shall have insured against any liability in respect of such persons in such manner that the Employer is indemnified under the policy. The Contractor shall require such Sub-contractor to produce before the Employer, within 2 days of appointment with the policy of insurance and the receipt for payment of the current premium within 10 (ten) days of such demand being made by the Employer.

12.13 Application of Insurance Proceeds

The proceeds from all insurance claims, except for life and injury, shall be applied for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Works and the provisions of this Agreement in respect of construction of works shall apply mutatis mutandis to the works undertaken out of the proceeds of insurance.

12.14 Compliance with Policy Conditions

Each Party hereby expressly agrees to fully indemnify the other Party from and against all losses and claims arising from its failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

13. FORCE MAJEURE

13.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Force Majeure Event¹, Force Majeure Event 2 as defined in Clauses 13.2, 13.3 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "Affected Party") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

13.2 Force Majeure Event 1

A Event shall mean one or more of the following acts or events:

- a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- b) strikes or boycotts (other than those involving the Contractor, Subcontractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project works for a continuous period of 24 (twenty- four) hours and an aggregate period exceeding 10 (ten) days in an Accounting Year, and not being an Event set forth in Clause 13.3;
- c) any failure or delay of a Sub-contractor but only to the extent caused by another Non-Event stated above;
- d) any judgement or order of any court of competent jurisdiction or statutory Employer made against the Contractor in any proceedings for reasons other than (i) failure of the Contractor to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Employer;
- e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection;

13.3 Force Majeure Event 2

An Event shall mean one or more of the following acts or events:

- a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 10 (ten) days in an Accounting Year;
- c) any civil commotion, boycott or political agitation which prevents construction of the Project Works by the Contractor for an aggregate period exceeding 10 (ten) days in an Accounting Year;
- d) any failure or delay of a Sub-contractor to the extent caused by any Event stated above;

13.4 Duty to Report Force Majeure Event

13.4.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Clause 13 [Force Majeure] with evidence in support thereof;
- b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- d) any other information relevant to the Affected Party's claim.

The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 10 (ten) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 13.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

13.5 Effect of Force Majeure Event on the Agreement

Upon the occurrence of any Force Majeure after the Letter of Award, the costs incurred and attributable to such event and directly relating to this Agreement (the "**Force Majeure costs**") shall be allocated and paid as follows:

- a) upon occurrence of a Force majeure Event 1, the Parties shall bear their respective Force Majeure costs and neither Party shall be required to pay to the other Party any costs thereof;
- b) upon occurrence of an Force majeure Event 2, all Force Majeure costs attributable to such Force majeure Event 2, and not exceeding the Insurance Cover for such Event, shall be borne by the Contractor, and to the extent Force Majeure costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Employer to the Contractor for the Force Majeure events; and

For the avoidance of doubt, Force Majeure costs may include costs directly attributable to the Force Majeure Event, but shall not include debt repayment obligations, if any, of the Contractor.

Save and except as expressly provided in this Clause 13 [Force Majeure], neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss,

damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

Upon the occurrence of any Force Majeure Event during the Construction Period, the Project Completion Schedule for and in respect of the affected Works shall be extended on a day for day basis for such period as performance of the Contractor's obligations is affected on account of the Force Majeure Event or its subsisting effects.

13.6 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 60 (sixty) days or more within a continuous period of 120 (one hundred and twenty) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Clause 13 [Force Majeure], and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

13.7 Termination Payment for Force Majeure Event

In the event of this Agreement being terminated on account of a Force Majeure Event 1, the Termination Payment shall be an amount equal to the sum payable under Clause 10.7 [Valuation of Unpaid Works].

Provided that in the event Termination occurs during the Maintenance Period, the Employer's Engineer shall only determine the value of Works associated with Maintenance.

If Termination is on account of an Force Majeure Event 2, the Termination Payment shall include:

- a) any sums due and payable under Clause 10.7 [Valuation of Unpaid Works]; and
- b) the reasonable cost, as determined by the Employer's Engineer, of the Plant and Materials procured by the Contractor and transferred to the Employer for use in Construction or Maintenance, only if such Plant and Materials are in conformity with the Specifications and Standards;

13.8 Dispute Resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the

occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

13.9 **Excuse from Performance of Obligations**

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

14. **CLAIMS, DISPUTES AND ARBITRATION**

14.1 **Dispute Resolution**

- 14.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 14.2.

The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

14.2 **Conciliation**

In the event of any Dispute between the Parties, either Party may call upon the Employer's Engineer, or such other person as the Parties may mutually agree upon (the "Conciliator") to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Conciliator or without the intervention of the Conciliator, either Party may require such Dispute to be referred to the Managing Director of the Employer and the Chairman of the Board of Directors of the Contractor for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) business days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven)

business day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 14.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 14.3.

14.3 Arbitration

- 14.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 14.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 14.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be [Mumbai], and the language of arbitration proceedings shall be English.
- 14.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 14.3.3 The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Clause 14 [Claims, Disputes And Arbitration] shall be final and binding on the Parties as from the date it is made, and the Contractor and the Employer agree and undertake to carry out such Award without delay.
- 14.3.4 The Contractor and the Employer agree that an Award may be enforced against the Contractor and/or the Employer, as the case may be, and their respective assets wherever situated.
- 14.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.
- 14.3.6 In the event the Party against whom the Award has been granted challenges the Award for any reason in a court of law, it shall make an interim payment to the other Party for an amount equal to 75% (seventy-five per cent) of the Award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank Guarantee for a sum equal to 120 % (one hundred and twenty per cent) of the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten per cent) per annum from the date of interim payment to the date of final settlement of such balance.

14.4 Adjudication by Regulatory Employer, Tribunal or Commission

In the event of constitution of a statutory regulatory Employer, tribunal or commission, as the case may be, with powers to adjudicate upon disputes between the Contractor

and the Employer, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 14.3 [Arbitration], be adjudicated upon by such regulatory authority, tribunal or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or court of competent jurisdiction, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.