

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

For

Supply, installation, testing, commissioning and integration of electromagnetic bulk water flow meters, radar level transmitters and web-based monitoring software for strengthening water accounting and online water monitoring system at AURIC Shendra Industrial Area, Chhatrapati Sambhajnagar, Maharashtra

VOLUME 1

PART 4 CONDITIONS OF CONTRACT

August 2026

Managing Director

Maharashtra 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, operation and maintenance 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 **“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.
- 1.1.16 **“Change of Scope”** shall have the meaning set forth in the recitals;
- 1.1.17 **“Change of Scope Notice”** shall have the meaning set forth in the recitals;
- 1.1.18 **“Change of Scope Order”** shall have the meaning set forth in the recitals;
- 1.1.19 **“Completion Certificate”** shall have the meaning set forth in the recitals;
- 1.1.20 **“Consortium”** means the consortium of entities which have formed a joint venture for implementation of this Project;
- 1.1.21 **“Construction”** shall have the meaning set forth in the recitals;
- 1.1.22 **“Construction Period”** means the period commencing from the Letter of Award 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 all personnel who may include the staff, labour, other employees of the Contractor, personnel utilised by contractor on Site, and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.
- 1.1.27 **“Subcontractor”** means any person appointed by Contractor for design, execution, operation, maintenance of 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 of the Works or any part thereof, which does not conform with the Specifications and Standards, and in the case of Maintenance, means any defect or deficiency which is specified in Schedule E;
- 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 Schedule-I, and shall 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” / “Engineer” / “Engineer In-charge”** means the person appointed by the Employer from time to time to act as his technical representative;
- 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 **“Indirect Political Event”** shall have the meaning set forth in the recitals;

1.1.53 **“Insurance Cover”** means the aggregate of the maximum sums insured under the insurances taken out by the Contractor pursuant to Clause 13, and includes all insurances required to be taken out by the Contractor under relevant sub clauses of Clause 13 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;

1.1.54 **“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, semiconductor, 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;

- 1.1.55 **“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;
- 1.1.56 **“LOA”** or **“Letter of Award”** means the letter of award referred to in Recital (E);
- 1.1.57 **“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;
- 1.1.58 **“Materials”** are all the supplies used by the Contractor for incorporation in the Works or for the maintenance of the Project Works;
- 1.1.59 **“Non-Political Event”** shall have the meaning set forth in the recitals;
- 1.1.60 **“Parties”** means the parties to this Agreement collectively and **“Party”** shall mean any of the parties to this Agreement individually;
- 1.1.61 **“Performance Security”** shall have the meaning set forth in the recitals;
- 1.1.62 **“Plant”** means the apparatus and machinery intended to form or forming part of the Works;
- 1.1.63 **“PMNC”** shall mean Project/Program Management Consultant appointed by Employer
- 1.1.64 **“Political Event”** shall have the meaning set forth in the recitals;
- 1.1.65 **“Programme”** shall have the meaning set forth in the recitals;
- 1.1.66 **“Project”** / **“Facility”** means the Construction and Maintenance of the Project Works 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;
- 1.1.67 **“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 and motor control centres, field instruments and control system, drainage works (b) Project Facilities situated on the Site;
- 1.1.68 **“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;
- 1.1.69 **“Project Completion Schedule”** means the progressive Project Milestones set forth in contract data sheet
- for completion of the Project Works on or before the Scheduled Completion Date;

- 1.1.70 **“Project Works”** or **“Works”** means the Site comprising **“Supply, installation, testing, commissioning and integration of electromagnetic bulk water flow meters, radar level transmitters and web-based monitoring software for strengthening water accounting and online water monitoring system at AURIC Shendra Industrial Area, Chhatrapati Sambhajinagar, Maharashtra”** project and all Project Assets, and its subsequent development and augmentation in accordance with this Agreement
- 1.1.71 **“Quality Assurance Plan”** or **“QAP”** shall have the meaning set forth in the recitals;
- 1.1.72 **“Re.”**, **“Rs.”** or **“Rupees”** or **“Indian Rupees”** means the lawful currency of the Republic of India;
- 1.1.73 **“Retention Money”** shall have the meaning set forth in Clause 3.6;
- 1.1.74 **“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;
- 1.1.75 **“Scheduled Completion Date”** shall have the meaning set forth in the recitals;
- 1.1.76 **“Scope of the Project”** shall have the meaning set forth in Clause 1.6; **“Section”** means a part of the Project Works;
- 1.1.77 **“Site”** shall have the meaning set forth in Clause 1.7;
- 1.1.78 **“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 - Employer's Requirements, Volume 3 - General Specifications, Volume 4- Schedules, Volume 5 -Tender Drawings, 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;
- 1.1.79 **“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;
- 1.1.80 **“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;
- 1.1.81 **“Termination”** means the expiry or termination of this Agreement as per Clause 11 [Termination];

- 1.1.82 **“Termination Notice”** means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;
- 1.1.83 **“Termination Payment”** means the amount payable by either Party to the other upon Termination in accordance with Clause 11.8 [Termination Payment] ;
- 1.1.84 **“Tests”** means the tests set forth in Part 1 of Volume 2- Employer’s Requirements to determine the completion of Works in accordance with the provisions of this Agreement;
- 1.1.85 **“Time Extension”** shall have the meaning set forth in Clause 4.6 [Extension of time for completion];
- 1.1.86 **“User”** means a person who uses or intends to use on the Project Works or any part thereof;
- 1.1.87 **“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 Employer’s Requirements/Particular Conditions of Contract,
- f) the Conditions of Contract,
- g) the Indicative Tender Drawings,
- h) General Specifications and
- i) the Schedules and any other documents 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 Instructions to the 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 in respect of which the Right of Way shall be provided by the Employer to the Contractor. The Employer shall be responsible for:

- a) acquiring and providing land on the Site in accordance with the land use plan finalized by the Employer, free from all encroachments and encumbrances, and free access thereto for the execution of this Agreement; and

- b) obtaining licenses and permits for environment clearance for the Project Works.

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

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3. THE CONTRACTOR

3.1 Contractor's General Obligations

- 3.1.1 The Contractor shall design, execute and complete the Works in accordance with the Contract and as per the Engineer-in-charge's/employer's instructions. The Contractor shall also remedy any defects whatsoever in the Works to the satisfaction of Engineer-in-charge/employers 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/employer, 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/employer.
- 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/employer the "as-built" documents and DLP operation and maintenance manuals 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 and manuals have been submitted to the Engineer-in-charge/employer for review and approval thereof.

3.2 Performance Security

- 3.2.1 The Contractor shall, for the performance of its obligations hereunder during the EPC/Construction Period, provide to the Employer, within time limit specified in the Contract Data Sheet, an irrevocable and unconditional guarantee from a nationalised 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 completion
- 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 Vol 1, Part 1, ITB Clause 7.5 [Performance Security] 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 2 (two) 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 11 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 Defects Liability Period 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 to the satisfaction of the employer.

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 The Contractor may, upon furnishing an irrevocable and unconditional bank guarantee substantially in the form provided Tender Forms, require the Employer to refund the Retention Money deducted by the Employer under the provisions of Clauses 3.6.1 and Clause 11.7 [Valuation of Unpaid Works]. Provided that the refund hereunder shall be made in tranches of not less than 1% (one per cent) of the Contract Price.
- 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 11.8.

3.7 **Site Data**

3.7.1 The Employer shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in the Employer's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Employer shall similarly make available to the Contractor all such data which come into the Employer's possession after the Base Date. The Contractor shall be responsible for interpreting all such data.

3.7.2 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 during construction and testing.

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 other electrically operated Construction equipment etc. at his own cost.

3.9 **Employer's Equipment and Free Issue Material**

Employer does not have provision for any equipment or free issue material.

3.10 Deleted

3.11 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.

3.12 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.

4.1 **Construction of the Project Works**

- 4.1.1 The Contractor shall construct the Project Works as specified in Schedules and Datasheets in conformance to Volume 3 Employer's Requirements. 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.

4.2 **Scheduled Completion date**

- 4.2.1 1 months from the issuance of LOA

4.3 **Incomplete Works**

4.4 **Change of Scope - Deleted**

4.5 **Restrictions to Change of Scope – Deleted**

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

- 4.6.1 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.
- 4.6.2 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.
- 4.6.3 Notwithstanding anything contrary to this Clause 4.10, 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) Within 30 days of award of work the contractor shall provide the site office with independent soundproof air-conditioned cabins for use by Engineer-in-Charge/employer and consultant and its staff appointed by Employer. The site office should have at least one meeting room (min 10-person seating capacity in each), pantry and toilet facilities. The site office shall include necessary furniture, required office equipment i.e. Fax, photocopy, computer with colour laser printer of latest configuration/software and broadband internet connections for use by Engineer-in-Charge and consultant and its staff appointed by Employer.
- b) The location and layout of site offices shall be got approved from the Engineer-in-charge before providing the same.
- c) The Contractor has to arrange for the land required for site office and store area at nearest location to the site at its own cost.
- d) 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.
- e) The Contractor shall provide electricity, water and telephone connections to the site office at his own cost along with other required facilities.
- f) Running expenses of the site office shall be borne by the Contractor.
- g) 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 without the written permission of Engineer-in-Charge.

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

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.

Contractor shall appoint a Quality Control Manager and team, responsible for conducting daily inspections, preparation of QAP, preparation of work method statements, compliance of site quality observations and NCRs, reports, co-ordinating for third party testing, submission of monthly quality report etc. in co-ordination with PMNC / Employer Engineer.

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.

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 import 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. **QUALITY MANAGEMENT**

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 **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.

6.3 **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.

6.4 **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.

6.5 **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, or promptly give notice to the Contractor that the Engineer-in-charge does not require to do so. 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.

6.6 **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. 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.

6.7 Remedial work

6.7.1 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 and the Specification and 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 14 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.

6.8 Royalties

6.8.1 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.

6.9 Delays during construction

6.9.1 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, it shall notify the same to the Contractor, and 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.

6.10 Suspension of unsafe Construction Works

- 6.10.1 Upon recommendation of the Engineer-in-charge to this effect, 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 14 [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 completion /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 Suspension of Work

- 7.4.1 The Engineer-in-charge may at any time instruct the Contractor to suspend progress of part or all of the Works. The Engineer-in-charge may also notify the cause for the suspension.
- 7.4.2 During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.
- 7.4.3 The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure.

7.5 Tests on Completion

Post Supply and installation of all meters the tests shall be carried out as per employer's requirement.

7.6 Delayed Tests

Deleted

7.7 Retesting

Deleted

7.8 Failure to Pass Tests on Completion

Deleted

7.9 Liquidated Damages

- 7.9.1 In the event that the Works fail to pass any or all of the Tests on Completion as defined in Vol 3 Part 1 - General Requirements, 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/COMPLETION CERTIFICATE

8.1 Taking Over/Completion Certificate

- 8.1.1 The Employer shall take over the Site and the Works within seven days of the Engineer making a presentation to the management and taking the consent for issuing a certificate of Completion.

The Employer shall be deemed to have taken over the Construction Works on the date when the commissioning of the scheme after the Tests on Completion would have been completed and duly informed by the Contractor to the Employer in writing unless refuted by the Employer within 14 days.

- 8.1.2 Contractor shall carry out the Operation and Maintenance during Defect Liability Period without any additional cost to Employer.

9.1 Application for Interim Payment Certificates

- 9.1.1 For payments relating to Works, the Contractor shall submit a statement 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
- 9.1.2 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 to the end of the month.
 2. 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;
 3. any amounts to be added and deducted for the advance payments and repayments in accordance with Clause 9.4 [Advance Payment];
 4. 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
 5. the deduction of the amounts certified in all previous Interim Payment Certificates.

11. RISK AND RESPONSIBILITY

10.1 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.

10.2 Indemnity by the Contractor

Without limiting the generality of Clause 12 [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:

- c) 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
- d) 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
- e) failure of the Contractor to comply with Applicable Laws and Applicable Permits;
- f) 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
- g) 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.

- h) 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.

10.3 Indemnity by the Employer

- 10.3.1 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 13 [Insurance].

10.4 Notice and contest of claims

- 10.4.1 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 12 [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.

10.5 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 12 [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 12.4 [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 12.4 [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 12.4 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.

10.6 Limitation of Liability

- 10.6.1 Notwithstanding anything to the contrary contained in this Clause 12 [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.
- 10.6.2 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.
- 10.6.3 This Clause 12.6 [Limitation of Liability] shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

13. FORCE MAJEURE

12.1 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 Non- Political Event, Indirect Political Event and Political Event, as defined in Clauses 14.2, 14.3 and 14.4 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.

12.2 Non-Political Event

A Non-Political 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 Indirect Political Event set forth in Clause 14.3;
- c) any failure or delay of a Sub-contractor but only to the extent caused by another Non-Political Event;
- 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;

12.3 Indirect Political Event

An Indirect Political 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 Indirect Political Event;

12.4 **Political Event**

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- a) change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Clause 10.9 [Change in laws];
- b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Contractor or of the Sub- Contractors;
- c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Contractor or any of the Sub-contractors to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Contractor's or any Sub- contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- d) any failure or delay of a Sub-contractor but only to the extent caused by another Political Event; or

12.5 **Duty to Report Force Majeure Event**

12.5.1 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 14 [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 14.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

12.6 **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 Non-Political Event, 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 Indirect Political Event, all Force Majeure costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political 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
- c) upon occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by the Employer to the Contractor.

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 14 [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.

12.7 **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 14 [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.

12.8 **Termination Payment for Force Majeure Event**

In the event of this Agreement being terminated on account of a Non- Political Event, the Termination Payment shall be an amount equal to the sum payable under Clause 11.7 [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 Indirect Political Event, the Termination Payment shall include:

- a) any sums due and payable under Clause 11.7 [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;

If Termination is on account of a Political Event, the Employer shall make a Termination Payment to the Contractor in an amount that would be payable under Clause 11.8 [Termination Payment] as if it were an Employer Default.

12.9 **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.

12.10 **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**

13.1 **Dispute Resolution**

- 13.1.1 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 15.2.

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.

13.2 **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 15.1.1 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 15.3.

13.3 Arbitration

- 13.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 15.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 15.3.2. 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.
- 13.3.2 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.
- 13.3.3 The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Clause 15 [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.
- 13.3.4 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.
- 13.3.5 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.
- 13.3.6 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.

13.4 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 15.3 [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.