

Engineering, Procurement and Construction

Agreement for

Detailed Design, Construction, Testing & Commissioning of India International Convention & Expo Centre at Sector 25, Dwarka, New Delhi on EPC Basis

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PART I - PRELIMINARY

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS AGREEMENT is entered into on this the..... day of....., 2017

BETWEEN

THE Delhi Mumbai Industrial Corridor Development Corporation Limited (DMICDC), represented by its Chief Executive Officer, New Delhi, incorporated under Indian Companies and having registered office at (Room No. 341B, 3rd Floor Hotel Ashok, Diplomatic Enclave, 50B, Chanakyapuri, New Delhi 110021 (hereinafter referred to as the "**Employer**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

M/s. _____ means the selected bidder incorporated under Indian Companies Act, _____ having its registered office at _____, (hereinafter referred to as the "**Contractor**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the Other Part.

WHEREAS:

- (A) To sustain the growth and with a vision to develop modern industrial cities, the Government of India wishes to develop the Delhi Mumbai Industrial Corridor (DMIC) as a global manufacturing and investment destination. To this end, the Government of India has set up Delhi Mumbai Industrial Corridor Development Corporation Limited (DMICDC), incorporated under the Indian Companies Act 1956, to establish, promote and facilitate the development of Delhi Mumbai Industrial Corridor.

The India International Convention & Expo Centre at Sector 25, Dwarka, New Delhi is to be developed under DMIC project.

- (B) Accordingly, the Employer has decided to undertake the "Design and Construction of India International Convention & Expo Centre at Sector 25, Dwarka, New Delhi (the "Project") in the State of Delhi on Engineering, Procurement and Construction ("EPC") basis in accordance with the terms and conditions to be set forth in this agreement.
- (C) The Employer had accordingly invited proposals by its Request for Qualification cum proposal No. (the "**Request for Qualification cum proposal "or "RFQ&P"**") for shortlisting of bidders for EPC of the "**Project**" and had shortlisted certain bidders including, inter alia, the Contractor.

As the Employer has not formed SPV at the time when RFQ cum RFP is being floated and it is considered that SPV shall be formed before the Letter of Award is issued by Delhi Mumbai Industrial Corridor Development Corporation Limited (DMICDC). Thus, Agreement for Design and Construction of India International Convention & Expo Centre at Sector 25, Dwarka, New Delhi shall be executed with SPV at the time of issue of Letter of Award (LOA).

- (D) Any and all of the rights of the Employer hereunder shall be assignable without any limitation whatsoever, without any prior written consent of the Contractor to Proposed Employer. In the event that the proposed Employer requires formal documentation relating to such assignments

granted by the Employer as stated herein, Contractor shall cooperate fully with the Employer, and from time to time, at the Employer's request, Contractor shall promptly:

- a) Execute any and all assignments, instruments and other documents that the Employer may deem necessary or useful in order to formally assign to Employer the entire right, title and interest vested in the Contract to Employer.
- b) Provide for any confirmations, no objections that may be necessary to effectuate the assignment of rights, title and interest vested in the Contract to such other Employer.

Upon such assignment of Contract being made, the Assignee Company, i. e. Employer shall undertake and shall be obligated to perform all the duties and obligations under the Contract that the Company (DMICDC) was obligated to perform and all such business transaction undertaken between the Assignee Company and Contractors relating to development of Project shall be binding, valid and subsisting as if the same were entered into originally.

The consideration of the Contract shall be the consideration for the Assignment and the Parties shall pass necessary resolutions to such effect.

- (E) After evaluation of the bids received, the Employer had accepted the bid of the selected bidder and issued its Letter of Award No. _____ dated _____ (Hereinafter called the "LOA") to the selected bidder for " Detailed Design, Construction, Testing & Commissioning of India International Convention & Expo Centre at Sector 25, Dwarka, New Delhi on EPC" at the contract price specified hereinafter, requiring the selected bidder to inter alia:

- (i) Deliver to the Employer a legal opinion from the legal counsel of the selected bidder with respect to the authority of the selected bidder to enter into this Agreement and the enforceability of the provisions thereof, within 10 (ten) days of the date of issue of LOA; and
- (ii) Execute this Agreement within 40 (Forty Days) days of the date of issue of LOA.

- (F) The Contractor has fulfilled the requirements specified in Recital (E) above;

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, the Employer hereby covenants to pay the Contractor, in consideration of the obligations specified herein, the Contract Price or such other sum as may become payable under the provisions of the Agreement at the times and in the manner specified by the Agreement and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE-1

1. Definitions and Interpretation

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in [Article 28](#)) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a "person" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words "include" and "including" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- (f) references to "construction" or "building" include, unless the context otherwise requires, survey and investigation, design, developing, engineering, procurement, supply of plant, materials, equipment, labour, delivery, transportation, installation, processing, fabrication, testing, and commissioning of the Project Works, including maintenance during the Construction Period, removing of defects, if any, and other activities incidental to the construction and "construct" or "build" shall be construed accordingly;
- (g) references to "development" include, unless the context otherwise requires, detailed design, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto during the Construction Period, and "develop" shall be construed accordingly;

- (h) any reference to any period of time shall mean a reference to that according to Indian standard time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) references to a "business day" shall be construed as a reference to a day (other than a Sunday, Public Holiday) on which the banks in New Delhi are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (m) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any gender shall include the other and the neutral gender;
- (p) "lakh" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);
- (q) "indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (r) references to the "winding-up", "dissolution", "insolvency", or "reorganisation" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Clause shall not operate so as to increase liabilities or obligations of the Employer hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Employer's Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or ~~the Employer's Engineer~~, as the case may be, in this behalf and not otherwise;
- (u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

- (v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and
- (x) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended for the reasons specified in the Agreement, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Contractor to the Employer shall be provided free of cost and in six copies, and if the Employer is required to return any such Documentation with its comments and/or approval, it shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4 Priority of agreements and errors/discrepancies

1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein; i.e. this Agreement at (a) above shall prevail over the agreements and documents at (b).

1.4.2 Subject to the provisions of [Clause 1.4.1](#), in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

- (b) between the Clauses of this Agreement and the Schedules, the Clauses of agreement shall prevail and between Schedules and Annexures, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the specifications shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the later shall prevail; and
- (f) between any value written in numerals and that in words, the later shall prevail.

1.5 Joint and several liability

1.5.1 If the Contractor has formed a Consortium of two or more persons for implementing the Project:

- (a) these persons shall, without prejudice to the provisions of this Agreement, be deemed to be jointly and severally liable to the Employer for the performance of the Agreement; and
- (b) the Contractor shall ensure that no change in the composition of the Consortium is effected without the prior consent of the Employer.

1.5.2 Without prejudice to the joint and several liability of all the members of the Consortium, the Lead Member shall represent all the members of the Consortium and shall at all times be liable and responsible for discharging the functions and obligations of the Contractor for the contract price. The Contractor shall ensure that each member of the Consortium shall be bound by any decision, communication, notice, action or inaction of the Lead Member on any matter related to this Agreement and the Employer shall be entitled to rely upon any such action, decision or communication of the Lead Member. The Employer shall have the right to release payments solely to the Lead Member and shall not in any manner be responsible or liable for the *inter se* allocation of payments among members of the Consortium. }

PART II - SCOPE OF PROJECT

ARTICLE-2

2. Scope of the Project

2.1 Scope of the Project

Under this Agreement, the scope of the Project (the "**Scope of the Project**") shall mean and include:

- (a) Detailed Design, Construction, Testing & Commissioning including Defects Liability Period for Two years (02) of India International Convention & Expo Centre at Sector 25, Dwarka, New Delhi on EPC Basis ;
- (b) set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. These schedules are included in Part 2 Volume 1.2 of the tender documents; and
- (c) performance and fulfilment of all other obligations of the Contractor in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Contractor under this Agreement.

ARTICLE-3

3. Obligations of the Contractor

3.1 Obligations of the Contractor

- 3.1.1 Subject to and on the terms and conditions of this Agreement, the Contractor shall undertake the survey, investigation, detailed design, engineering, procurement (within India or outside India), construction, Testing & Commissioning of the India International Convention & Expo Centre and services/ utilities as defined in Scope and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder. The drawings provided in the tender are for reference and indicative. The contractor has to do the detailed design, drawing preparation with all calculations at his end before getting their approval for construction.
- 3.1.2 The Contractor shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 3.1.3 Subject to the provisions of [Clauses 3.1.1](#) and [3.1.2](#), the Contractor shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 3.1.4 The Contractor shall remedy any and all loss or damage to the roads and services/ utilities in and around the battery limits which get damaged from the date of Letter of Award until the end of the Construction Period at the Contractor's cost, save and except to the extent that any such loss or damage shall have arisen from any default or neglect of the Employer or on account of a Force Majeure Event.
- 3.1.5 The Contractor shall remedy any and all loss or damage to the roads and services/ utilities in and around the battery limits which get damaged during the Defects Liability Period at the Contractor's cost to the extent that such loss or damage shall have arisen out of the reasons specified in [Clause 17.3](#).
- 3.1.6 Deleted
- 3.1.7 The Contractor shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits set forth in Schedule-F and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for Materials, methods, processes and systems used or incorporated into the Project and Services;
 - (c) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Sub-contractors in connection with the performance of its obligations under this Agreement;
 - (d) ensure and procure that its Sub-contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Contractor's obligations under this Agreement;

- (e) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (f) support, cooperate with and facilitate the Employer in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (g) ensure that the Contractor and its Sub-contractors comply with the safety and welfare measures for labour in accordance with the Schedule- R and the Applicable Laws;
- (h) keep, on the Site, a copy of this Agreement, publications named in this Agreement, the Drawings, Documents relating to the Project, and Change of Scope Orders and other communications given under this Agreement. The Employer's Engineer and its authorised personnel shall have the right of access to all these documents at all reasonable times;
- (i) cooperate with other contractors employed by the Employer and personnel of any public authority; and
- (j) not interfere unnecessarily or improperly with the convenience of the public, or the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.
- (k) the Contractor shall be responsible for usage of BIM model in the project and CAD requirements in all stages of Design and Construction as per the requirements mentioned in Schedule Q, Technical Specifications
- (l) the Contractor shall prepare Project specific Health, Safety and Environment plan based on guidelines provided in Schedule-R for implementation after it is approved by the Employer
- (m) contractor and their sub-contractors shall comply with Project Management requirements as mentioned in Schedule-S
- (n) Adhering and complying to EC (Environmental Clearance) / DPCC (Delhi Pollution Control Committee) and the compliance reports and documentation.
- (o) Adhering to updated National Green Tribunal (NGT) guidelines and also their monthly mandatory Compliances reports and required documentation.
- (p) Documentation and compliances required for obtaining IGBC Certification during the currency of the contract and also at the time of handover

3.1.8 The Contractor shall undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works.

3.2 Obligations relating to sub-contracts and any other agreements

3.2.1 The Contractor shall not sub-contract any Works in more than 30% (thirty percent) of the total contract amount of the Project under his complete responsibility & supervision, as the case may be, for such Works. The Parties further agree that all obligations and liabilities under this Agreement for the entire project Works shall at all times remain with the Contractor.

- 3.2.2 In the event any sub-contract for Works, or the aggregate of such sub-contracts with any Sub-contractor, exceeds or equal to 5% (five percent) of the 30% of the Contract Price, the Contractor shall communicate the name and particulars, including the relevant experience of the sub-contractor, to the Employer prior to entering into any such sub-contract. The Employer shall examine the particulars of the sub-contractor from the national security and public interest perspective and may require the Contractor, no later than 15 (fifteen) business days from the date of receiving the communication from the Contractor, not to proceed with the sub-contract, and the Contractor shall comply therewith.
- 3.2.3 In the event any sub-contract referred to in [Clause 3.2.2](#) relates to a sub-contractor who has, over the preceding 3 (three) years, not undertaken at least one work of a similar nature with a contract value exceeding 40% (forty percent) of the value of the sub-contract to be awarded hereunder and received payments in respect thereof for an amount equal to at least such 40% (forty percent), the Employer may, no later than 15 (fifteen) business days from the date of receiving the communication from the Contractor, require the Contractor not to proceed with such sub-contract, and the Contractor shall comply therewith. Sub-Contractor executing the Electrical works shall have a valid Class A certified license for carrying out work in the State of Delhi. Sub-Contractor executing the Lift/ Escalator works shall have a valid license for carrying out work in the State of Delhi.
- 3.2.4 It is expressly agreed that the Contractor shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the agreements with its Sub-contractors or any other agreement that may be entered into by the Contractor, and no default under any such agreement shall excuse the Contractor from its obligations or liability hereunder.

If a proposed sub-contractor has been approved by Employer, the Contractor shall not replace such approved sub-contractor with another sub-contractor without obtaining the Employer's prior approval for the proposed replacement.

Notwithstanding any consent to sub-contract given by the Employer if in his opinion it is considered necessary, the Employer shall have full authority to order the removal of any sub-contractor from the site or off- site place of manufacture or storage. Contractor shall be fully responsible on behalf of all sub-contractors for all terms and terms and conditions of the contract irrespective of the sub-contractor's approval by the Employer.

Contractor or his representative only shall represent for all works with the Employer during the currency of the project, for complete scope even in case of all his subcontracts / subcontractors.

- 3.2.5 Minimum following activities shall be performed by the Contractor directly and shall not be sub-contracted: -
- a) Overall Project Management
 - b) Planning, Scheduling, Monitoring
 - c) Procurement Services
 - d) Quality Control
 - e) Health, Safety & Environment, Labour Camps.
 - f) Labour, NGT, EC, DPCC & IGBC Compliances
 - g) Construction Management
 - h) Performance Guarantee Test Run.

3.3 Employment of foreign nationals

The Contractor acknowledges, agrees and undertakes that employment of foreign personnel by the Contractor and/or its Sub-contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Contractor. Notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Contractor or any of its Subcontractors or their sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Contractor from the performance and discharge of its obligations and liabilities under this Agreement.

3.4 Contractor's personnel

- 3.4.1 The Contractor shall ensure that the personnel engaged by it or by its Sub-contractors in the performance of its obligations under this Agreement are at all times appropriately qualified, skilled and experienced in their respective functions in conformity with Good Industry Practice.
- 3.4.2 The Employer's Engineer may, for reasons to be specified in writing, direct the Contractor to remove any member of the Contractor's or Sub-contractor's personnel. Provided that any such direction issued by the Employer's Engineer shall specify the reasons for the removal of such person. In case Employer observed misconduct negligence or incompetence etc. on the part of any representative, agent, servant and workmen or employees etc. of the contractor, the Employer /SPV shall have full power and without giving any reason to the contractor, instruct the contractor to remove such engineer / staff / worker from site and provide suitable replacements. The decision of the Employer/ Employer's Engineer shall be final and binding on the contractor. The contractor shall not be allowed any compensation on this account.
- 3.4.3 The Contractor shall on receiving such a direction from the Employer's Engineer, order for the removal of such person or persons with immediate effect. It shall be the duty of the Contractor to ensure that such persons are evicted from the Site within 10 (ten) days of any such direction being issued in pursuance of [Clause 3.4.2](#). The Contractor shall further ensure that such persons have no further connection with the Works under this Agreement. The Contractor shall then appoint (or cause to be appointed) a replacement.
- 3.4.4 Unless the Contractor's Representative (Project-in-charge) is named in the Contract, the Contractor shall, within 7(seven) days of issue of LOA, submit to the Employer's Engineer for consent the name and particulars of the person the Contractor proposes to appoint after employer's approval. The Contractor shall not revoke the appointment of the Contractor's Representative without the prior information to the Engineer. The Contractor's Representative so nominated shall have full authority to act on behalf of the Contractor. The Contractor's Representative shall give his whole time to directing the preparation of the Construction and/or Manufacture Documents and the execution of the Works. The Contractor's Representative shall receive (on behalf of the Contractor) all notices, instructions, consents, no objection certificate approvals, certificates, determinations and other communications under the Contract. Whenever the Contractor's Representative is to be absent from the Site, a suitable replacement person shall be appointed, with prior consent of Employer/ Employer's Engineer. Failure on part of the Contractor to comply with these provisions shall constitute a breach of Contract.
- 3.4.5 The Contractor's Representative may delegate any of his powers, functions and authorities to any competent person, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until the Employer/ Employer's

Engineer has given prior consent thereto. The Contractor's Representative and such persons shall be fluent in the language of day to day communication and the Contractor shall be bound by and fully liable for the acts or omissions of the Contractor's Representatives or any of his employees and/or delegates, agents or nominees.

3.4.6 Technical Staff for Work

- a) The contractor shall employ at his cost the adequate number of technical staff during the execution of this work depending upon the requirement of work or as per the resource schedule approved by Employer. For this purpose the numbers to be deployed, their qualification, experience as decided by Employer shall be final and binding on contractor. The contractor shall not be entitled for any extra payment in this regard. The technical staff should be available at site, whenever required by Employer to take instructions.
- b) Within 7(seven) days of the date of Letter of Award, the contractor shall submit a site organizational chart and resume including details of experience of the Project-in-Charge and other staff proposed to be deputed by him and the technical team shall be deputed by them on the Project after getting approval from Employer/ Employer's Engineer. If desired by the contractor at later date, the Contractor's representative (Project-in-Charge) and other staff whose resume is approved by Employer can be replaced with prior written approval of Employer and replacement shall be with equivalent or superior candidate only. Decision of Employer/ Employer's Engineer shall be final and binding on the contractor. For the period of absence in non deployment of qualified manpower by the contractor, the employer shall at its discretion decide to deduct payments.
- c) Even after approving the site organizational chart, the Employer/ Employer's Engineer due to technical reasons and exigency of work can direct the contractor to depute such additional staff as in view of Employer/ Employer's Engineer is necessary and having qualification and experience as approved by the Employer/ Employer's Engineer. The removal of such additional staff from the site shall only be with the prior written approval of Employer/ Employer's Engineer. The contractor shall not be paid anything extra whatsoever on account of deployment of additional staff and decision of the Employer/ Employer's Engineer shall be final and binding on the contractor.
- d) In case the contractor fails to employ the staff as aforesaid he shall be liable to pay a reasonable amount not exceeding a sum of Rs. 1,00,000/ - for each month of default in the case of each person. The decision of the Employer/ Employer's Engineer as to the number of Technical Staff to be adequate for the project and the period for which the desired strength of technical staff was not employed by the contractor and as to the reasonableness of the amount to be deducted on this account shall be final and binding on the contractor as to the amount and the contractor's liability to pay the said amount.

3.5 Advertisement on Site

The Site or any part thereof shall not be used in any manner to advertise any commercial product or services. The Contractor shall not publish, advertise or otherwise circulate alone or in conjunction with any other person, any articles, photographs or other materials relating to the Contract, the Site, the Works, the Project or any part thereof, nor impart to the Press, or any radio or television network any information relating thereto, nor allow any representative of the media access to the Site, Contractor's Works Areas, or off-Site place of manufacture, or storage except with the permission, in writing, of the Employer. The Contractor shall ensure that his sub-contractors of any tier shall be bound by a like obligation and shall, enforce the same at his own expense. The provisions of this Sub-Clause shall not exempt the Contractor from complying with any statutory provision in regard to the taking and publication of photographs

3.6 Contractor's care of the Works

The Contractor shall bear full risk in and take full responsibility of his own and of all the sub-contractors for the care of the Works, and of the Materials, goods and equipment for incorporation therein, from the date of Letter of Award until the date of Provisional Certificate (with respect to the Works completed prior to the issuance of the Provisional Certificate) and/or Completion Certificate (with respect to the Works referred to in the Punch List), save and except to the extent that any such loss or damage shall have arisen from any default or neglect of the Employer.

3.7 Electricity, water and other services

The Contractor shall be responsible for procuring of all power, water and other services that it may require for construction, Labour camps and other purposes to fulfill all obligations of the contract at his own cost outside the battery limit(for labour camps). The contractor shall also make standby arrangement for water & electricity to ensure un-interrupted supply in any weather round the year or during any part of the day. Power and water for their men in Labour Camps and at site office, stores, offices of Employer / Employer's Engineer and upto the final Handover for testing, Commissioning and handover shall be borne by the Contractor to complete their scope and contractual obligations. As an obligation the power and water required for testing & commissioning of all systems, services & utilities shall be provided by Employer. The contractor shall follow relevant guidelines and requirements as stated in the Schedule-R.

3.8 Unforeseeable difficulties

Except as otherwise stated in the Agreement:

- (a) The Contractor accepts complete responsibility for having foreseen all difficulties and costs of successfully completing the Works;
- (b) The Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs; and
- (c) The Scheduled Completion Date shall not be adjusted to take account of any unforeseen difficulties or costs.

3.9 Contractor's Equipments

- 3.9.1 All Contractor's Equipment and Temporary Works provided by the Contractor shall, when brought on to the site with prior written information, be deemed to be exclusively intended for execution of the Works and not be removed without the consent in writing of the Employer. Such consent shall not be unreasonably withheld or delayed.
- 3.9.2 Upon completion of the Works the Contractor shall remove from the Site all the said Constructional Plant and his unused materials.
- 3.9.3 The Employer shall not, at any time, be liable for the loss or damage to any of the Constructional Plant, Temporary Works or materials.
- 3.9.4 In respect of any Constructional Plant which the Contractor shall have imported for the purpose of the Works, the Employer may assist the Contractor, where required, in procuring any necessary Government consent for re-export of the same after the completion of the Works.

- 3.9.5 The Employer may assist (but is not obligated to) the Contractor, where required, in obtaining clearance through the Customs of Constructional Plant, materials and all other project related items required for the completion of Works.

3.10 Security of the Site and Labour Camp

The Contractor shall be wholly responsible for security of site, Labour Camps, Works. Stores and yards shall be safely fenced all-round to the satisfaction of the Employer.

- a. The Contractor shall be responsible for keeping unauthorised persons off the Site and Labour Camps; and
- b. Authorized persons shall be limited to the Employees of the Contractor, Subcontractor or persons authorized by the employer.

3.11 Land For Labour Huts/ Accommodation

- 3.11.1 The contractor shall arrange the land outside the site battery limit for temporary office, their accommodation and labour huts at his own cost and get the clearance of local authorities for setting up/construction of labour camp and same is deemed to be included in the offer quoted by the contractor for the works. The contractor shall ensure that the area of labour camp is kept clean and sanitary conditions are maintained as laid down by the local authorities controlling the area and as per the Guidelines in the Contract or as advised by Employer. The vacant possession of the land used, for the purpose shall be given back by contractor to its owner after completion of the work and that too without any encumbrances and back in its original shape so that it does not invite any penalty by Employer on the complaints of the Land Owner.

The Retention Money of the contractor shall be released only after contractor demolishes all structures including foundations and gives back clear vacant possession of this land to its owner.

- 3.11.2 In the event the contractor has to shift his labour campus at any time during execution of the work on the instructions of local authorities or as per the requirement of the work progress or as may be required by Employer, he shall comply with such instructions at his cost and risk and no claim (including time & cost) whatsoever shall be entertained on this account.

3.12 Setting Out of the Works

3.12.1 Accurate Setting Out

The Contractor shall be responsible for:

- (a) the accurate setting out of the Works in relation to the original points, lines and levels of reference given by the employer in writing;
- (b) the correctness of position, levels, dimensions and alignments of all parts of the Works;
- (c) the provisions of all necessary instruments, equipment, apparatus and labour in connection with the foregoing responsibilities; and
- (d) Carefully laying, protecting and preserving all bench marks, sight rails, pegs and other things used in setting out the Works.

- (e) The contractor shall provide, fix and be responsible for the maintenance of all necessary stakes, templates, level marks, profiles and other similar things and shall take all necessary precautions to prevent their removal or disturbance and shall be responsible for consequences of such removal or disturbance should the same take place and for their efficient and timely reinstatement. The Contractor shall also be responsible for the maintenance of all existing survey marks, either existing or supplied and fixed by the Contractor. The work shall be set out to the satisfaction of the Employer/ Employer's Engineer. The approval thereof or joining in setting out the work shall not relieve the Contractor of his responsibility.
- (f) Before beginning the works, the Contractor shall, at his own cost, provide all necessary reference and level posts, pegs, bamboos, flags ranging rods, strings and other materials for proper layout of the work in accordance with the scheme, for bearing marks acceptable to the Employer/ Employer's Engineer. The Centre longitudinal or face lines and cross lines shall be marked by means of small masonry pillars. Each pillar shall have distinct marks at the centre to enable theodolite to be set over it. No work shall be started until all these points are checked and approved by the Employer/ Employer's Engineer in writing. But such approval shall not relieve the contractor of any of his responsibilities. The Contractor shall also provide all labour, materials and other facilities, as necessary, for the proper checking of layout and inspection of the points during construction.
- (g) Pillars bearing geodetic marks located at the sites of units of works under construction should be protected and fenced by the Contractor. On completion of works, the contractor shall submit the geodetic documents according to which the work was carried out.
- (h) The Employer/ Employer's Engineer shall communicate or confirm his instructions to the contractor in respect of the executions of work in a "work site order book" maintained in the office having duplicate sheet and the authorised representative of the contractor shall confirm receipt of such instructions by signing the relevant entries in the book.
- (i) All instructions issued by the Employer/ Employer's Engineer shall be in writing. The Contractor shall be liable to carry out the instructions without fail.
- (j) If the Contractor after receipt of written instruction from the Employer/ Employer's Engineer requiring compliance within seven days fails to comply with such drawings or 'instructions' or both as the Employer/ Employer's Engineer may issue, may employ and pay other persons to execute any such work whatsoever that may be necessary to give effect to such drawings or 'instructions' and all cost and expenses incurred in connection therewith as certified by the Employer/ Employer's Engineer/ Site-in-Charge shall be borne by the contractor or may be deducted from amounts due or that may become due to the contractor under the contract or may be recovered as a debt.
- (k) The Contractor shall be entirely and exclusively responsible for the horizontal and vertical alignment, the levels and correctness of every part of the work and shall rectify effectually any errors or imperfections therein. Such rectifications shall be carried out by the Contractor, at his own cost.
- (l) The Contractor shall clear the job site of all unwanted trees, bushes, undergrowth and overground and underground structures, pipes and installations, and shall re-route, if necessary, any private utilities located on or within the job sites and shall take care to keep the job site clean at all times for easy access to the job site and also from the

safety point of view to the satisfaction of the Employer/ Employer's Engineer.

- (m) The Contractor shall clean and keep clean the work site from time to time to the satisfaction of the Employer/ Employer's Engineer for easy access to work site and to ensure safe passage, movement and working. All dismantled material shall be shifted /removed by Contractor at his own cost to designated place. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required in accordance with Good Industry Practice, Applicable Laws and instructions of the Employer/ Employer's Engineer, unless required to be maintained at the Site as per the instructions of Employer/ Employer's Engineer.

The checking of any setting-out or of any line or level by the Engineer shall not in any way relieve the Contractor of his responsibility for the accuracy or correctness thereof and the Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting out the Works.

3.12.2 Errors in Setting out

If at any time during the execution of the Work, an error appears in the positions, levels, dimensions or alignment of any part of the Works, the Contractor on being required to do so or on being instructed by the Employer/Employer's Engineer shall, at Contractor's cost, rectify such error to the satisfaction of the Employer/Employer's Engineer.

3.13 Materials Obtained From Dismantlement to Be Employer's Property

All materials like stone, boulder and other materials obtained during the work of dismantling, excavation etc. will be considered Employer property and such materials shall be disposed-off to the best advantage of Employer according to the instructions in writing issued by the Employer/ Employer's Engineer.

3.14 Sale of Scrap

All the material which enters into the site and is not to be consumed within the project shall also be brought within with prior written information. It will only be permitted to be taken out of site for scrap or dumping as waste, with prior written information to Employer and with permission of relevant authority of the location where dumping is being done by Contractor.

For sale of all the materials which is neither usable for the purpose for which it was originally procured nor of any operational value should be considered as a scrap including but not limited to structural steel, reinforcement, empty cement bags, e-waste, industrial sweepings, the contractor shall duly inform the Employer before selling of such material and the amount earned from the Scrap Sale shall be deposited in Contractor's Account.

3.15 Co-Ordination with Other Agencies

Work shall be carried out in such a manner that the work of other Agencies operating at the site is not hampered due to any action of the Contractor. Proper Co-ordination with other Agencies like DMRC, NHAI, BSES, DJB, etc. & its contractors will be Contractor's responsibility. In case of any dispute, the decision of DMICDC/SPV shall be final and binding on the contractor. No claim whatsoever shall be admissible to the contractor on this account.

ARTICLE-4

4. Obligations of the Employer

4.1 Obligations of the Employer

4.1.1 The Employer shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

To assist in due discharge of its obligation, the Employer has appointed AECOM as the Employer's Engineer / Programme Manager for the Project ("PMC"). All communications relating to contract management, project management, design management upto handover on this project shall be submitted to the Employer's Engineer for final approval of Employer.

4.1.2 The Scope of the Project, Project Facilities, Specifications and Standards and the criteria for testing of the completed Works are for reference purposes and their responsibility shall finally rest with the contractor. However, their approval shall be taken by the contractor from the employer.

4.1.3 The Employer shall provide to the Contractor:

- (a) the Project Site in accordance with the provisions of [Clauses 8.2](#) and [8.3](#), within a period of 15 (fifteen) days from the date of LOA
- (b) Deleted
- (c) All environmental clearances (EC) as required under [Clause 4.3](#).
- (d) Ensure release of timely payments, advances , extra item approvals.

4.1.4 Delay in providing the Project Site in accordance with the provisions of [Clause 4.1.3](#) shall not entitle the Contractor to any Damages in accordance with the provisions of [Clause 8.3](#) of this Agreement and Time Extension in accordance with the provisions of [Clause 10.5](#) of this Agreement.

4.1.5 Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly agree that no aggregate Damages payable under [Clauses 4.1.4](#), [8.3](#) shall be considered except the time extension after the approval of employer.

4.1.6 The Employer agrees to provide support to the Contractor and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this

Agreement and the Applicable Laws, the following:

- (a) upon written request from the Contractor, and subject to the Contractor complying with Applicable Laws, provide reasonable support to the Contractor in procuring Applicable Permits required from any Government Instrumentality for implementation of the Project;
- (b) upon written request from the Contractor, provide reasonable assistance to the Contractor in obtaining access to all necessary infrastructure facilities and utilities,

including water and electricity at rates and on terms no less favorable than those generally available to commercial customers receiving substantially equivalent services;

- (c) procure that no barriers that would have a Material Adverse Effect on works are erected or placed on or about the Site by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;
- (d) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (e) support, cooperate with and facilitate the Contractor in the implementation of the Project in accordance with the provisions of this Agreement; and
- (f) upon written request from the Contractor and subject to the provisions of [Clause 3.3](#), provide reasonable assistance to the Contractor and any expatriate personnel of the Contractor or its Sub-contractors to obtain applicable visas and work permits for the purposes of discharge by the Contractor or its Subcontractors of their obligations under this Agreement and the agreements with the Sub-contractors.

4.2 Maintenance obligations prior to the Appointed Date – Deleted

4.3 Environmental Clearances

The Employer represents and warrants that the environmental clearances (EC) required for construction of the Project have been procured by the Employer prior to the Bid Due Date. For the avoidance of doubt, the present status of environmental clearances is specified in Schedule-F.

ARTICLE-5

5. Representations and Warranties

5.1 Representations and warranties of the Contractor

The Contractor represents and warrants to the Employer that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and/or other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (e) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

- (j) no representation or warranty by it contained herein or in any other document furnished by it to the Employer or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (k) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Employer in connection therewith;
- (l) all information provided by the {selected bidder/ members of the Consortium} in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (m) nothing contained in this Agreement shall create any contractual relationship or obligation between the Employer and any Sub-contractors, designers, consultants or agents of the Contractor.

5.2 Representations and warranties of the Employer

The Employer represents and warrants to the Contractor that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Employer's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;
- (g) it has good and valid right to the Site and has the power and authority to grant the Project Site in respect thereof to the Contractor; and
- (h) It has procured land for project Site and environment clearances such that the Contractor can commence construction forthwith on the work Site.

5.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

ARTICLE-6

6. Disclaimer

6.1 Disclaimer

- 6.1.1 The Contractor acknowledges that prior to the execution of this Agreement, the Contractor has, after a complete and careful examination, made an independent evaluation of the Request for Qualification cum Proposal, Scope of the Project, Specifications and Standards of design, construction & maintenance, Site, local conditions, physical qualities of ground, subsoil and geology, traffic volumes, suitability and availability of access routes to the Site and all information provided by the Employer in the tender documents or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in [Clause 4.1.2](#) and [Clause 5.2](#), the Employer makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Contractor confirms that it shall have no claim whatsoever against the Employer in this regard.
- 6.1.2 The Contractor acknowledges and hereby accepts to have satisfied itself as to the correctness and sufficiency of the Contract Price.
- 6.1.3 The Contractor acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in [Clause 6.1.1](#) above and hereby acknowledges and agrees that the Employer shall not be liable for the same in any manner whatsoever to the Contractor, or any person claiming through or under any of them, and shall not lead to any adjustment of Contract Price or Scheduled Completion Date.
- 6.1.4 The Parties agree that any mistake or error in or relating to any of the matters set forth in [Clause 6.1.1](#) above shall not vitiate this Agreement, or render it voidable.
- 6.1.5 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in [Clause 6.1.1](#) above, that Party shall immediately notify the other Party, specifying the mistake or error.
- 6.1.6 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Contractor; and the Employer shall not be liable in any manner for such risks or the consequences thereof. Contractor shall keep the Employer indemnified for any such risks.
- 6.1.7 Department of Industrial Policy and Promotion has decided to incorporate a special purpose company to undertake the procurement of the ECC and related activities. Accordingly, references to “SPV” and/ or “Delhi Mumbai Industrial Corridor Development Corporation Ltd.” in this EPC Agreement shall be construed as references to Delhi Mumbai Industrial Corridor Development Corporation Ltd. until the incorporation of the aforesaid special purpose company, whereupon references to “SPV” and/ or “Delhi Mumbai Industrial Corridor Development Corporation Ltd.” in this EPC Agreement shall, unless repugnant to the context thereto, be deemed to be references to such special purpose company, and all acts or deeds done or to be done by Delhi Mumbai Industrial Corridor Development Corporation Ltd. pursuant to this EPC Agreement shall be deemed to have been done or to be done by the special purpose company. Upon the incorporation of the aforesaid special purpose company, Delhi Mumbai Industrial Corridor Development Corporation Ltd. shall advise such special purpose company in respect of the ECC as a knowledge partner.

PART III - CONSTRUCTION AND MAINTENANCE

ARTICLE-7

7. Performance Security

7.1 Performance Security

7.1.1 The Contractor shall, for the performance of its obligations hereunder during the Construction Period, provide to the Employer performance security, within 30 (thirty) days of the date of LOA. Performance Security may be furnished in the form of an account payee demand draft, bank guarantee, fixed deposit receipt from a nationalized or commercial scheduled bank, issued/confirmed from the bank in an irrevocable and unconditional guarantee in the form set forth in Annex -I of Schedule-G (the "**Performance Security**") for an amount equal to 5.0% (five percent) of the Contract Price. The Performance Security shall be valid until 60 (sixty) days after the Defects Liability Period. 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. For the avoidance of doubt, the parties expressly agree that the Contractor shall provide, extended performance security no later than 30 (thirty) days prior to the expiry of the Performance Security for the construction period and defects Liability Period specified in [Clause 17.1.2](#).

7.1.2 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 [Clause 7.1.1](#) and within the time specified therein or such extended period as may be provided by the Employer, in accordance with the provisions of [Clause 7.1.3](#), 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.

7.1.3 In the event the Contractor fails to provide the Performance Security within 30 (thirty) days of the date of LOA, it may seek extension of time for a period not exceeding 5 (five) 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.

7.2 Extension of Performance Security

The Contractor may procure the extension of the validity of the Performance Security, as necessary, at least 2 (two) months prior to the date of expiry thereof. 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.

7.3 Appropriation of Performance Security

7.3.1 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.

7.3.2 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 [Article 23](#). 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 [Article 23](#).

7.4 Release of Performance Security

7.4.1 The Employer shall return the 50% of Performance security after successful completion / testing / commissioning and handing over of the project and 50 % after the DLP.

7.4.2 The employer shall return the Additional performance security, taken in case of unbalanced bid, within 28 (twenty eight) days from the date of Issue of Completion Certificate.

7.5 Retention Money

7.5.1 From every payment for Works due to the Contractor in accordance with the provisions of [Clause 19.5](#), the Employer shall deduct 6% (six per cent) 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 shall not exceed 5% (five per cent) of the Contract Price.

7.5.2 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.

7.5.3 The Contractor may, upon furnishing an irrevocable and unconditional bank guarantee substantially in the form provided at Annex-II of Schedule-G, require the Employer to refund the Retention Money deducted by the Employer under the provisions of [Clause 7.5.1](#). Provided that the refund hereunder shall be made in tranches of not less than 1% (one per cent) of the Contract Price.

7.5.4 Within 15 (fifteen) days of the date of issue of the Completion Certificate, the Employer shall discharge the bank guarantees furnished by the Contractor under the provisions of [Clause 7.5.3](#) and refund the Retention Money not exceeding the 2.5% of the Certified Bill Amount remaining with the Employer after adjusting the amounts appropriated under the provisions of [Clause 7.5.2](#) and the amounts refunded under the provisions of [Clause 7.5.3](#).

- a) The release/ refund of Retention money of balance 2.25% of Contract Price shall be subject to the observance / compliance of the conditions as under and whichever is later:
- b) Expiry of the Defects Liability period or as per extended DLP period as approved by the Employer.
- c) The contractor produces a clearance certificate from the labour office. As soon as the work is virtually completed, the contractor shall apply for the labour clearance certificate to the Labour Officer under intimation to the Employer/ Employer's Engineer. The

Employer/ Employer's Engineer, on receipt of the said communication, shall write to the Labour Officer to intimate if any complaint is pending against the contractor in respect of the work. If no complaint is pending, on record till after 3 months after completion of the work and/or no communication is received from the Labour Officer to this effect till six months after the date of completion, it will be deemed to have received the clearance certificate.

The release/ refund of Retention money of balance 0.25% of Certified Bill Amount shall be subject to the adjustment of damages under latent Defect Period of 10 years (Limited to Mechanical Parts of all equipments of all facilities) from the date of issue of Completion Certificate.

- 7.5.5 The Parties agree that in the event of Termination of this Agreement, the Retention Money and the bank guarantees specified in this [Clause 7.5](#) shall be treated as if they are Performance Security and shall be reckoned as such for the purposes of Termination Payment under [Clause 23.6](#).
- 7.5.6 Employer reserves the right of part or full forfeiture of retention money in addition to other claims in the event of Contractor's failure to fulfill any of the Contractual Obligations or in the event of termination of contract as per terms and conditions of the contract.

ARTICLE-8

8. Right of Way

8.1 The Site

The site of the Project works (the "Site") shall comprise the site described in Schedule-A in respect of which the possession of land shall be provided by the Employer to the Contractor. The Employer shall be responsible for:

- (a) acquiring Site in accordance with the site plan finalised by the Employer, free from all encroachments and encumbrances, and free access thereto for the execution of this Agreement; and
- (b) Obtaining licences and permits for environment clearance (EC) for the Project Works.

8.2 Procurement of the Site

8.2.1 The Employer Representative and the Contractor shall, within 7 (seven) days of the date of Letter of Award (LOA), inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Subject to the provisions of [Clause 8.2.3](#), such memorandum shall have appended thereto an appendix (the "Appendix").

Whenever the Employer is ready to hand over any part or parts of the Site included in the Appendix, it shall inform the Contractor, by notice, the proposed date and time such of handing over. The Employer Representative and the Contractor shall, on the date so notified, inspect the specified parts of the Site, and prepare a memorandum containing an inventory of the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site so handed over. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute a valid evidence of giving the relevant Project Site to the Contractor.

8.2.2 The Employer shall provide the Project Site to the Contractor in respect of all land included in the Appendix as specified in Schedule-A. The extension of the metro line from the Dwarka Sector-25 station, towards the eastern to western side of the site is also planned. The proposed tunnel alignment of the Metro, which would be falling under the Exhibition Hall 3 and metro subway tunnel connecting Metro station & convention Centre shall be completed and the area under these two locations shall be handed over to EPC contractor after July 2018. The smaller areas surrounding these structures shall be free for the contractor to occupy and work for the scope of this project. A parcel of land measuring 1368 sq.m next to Convention centre (as earmarked on master Plan) shall be made available after July 2018. Two HT overhead Electrical lines crossing North East & North West Corner is existing contractor to take all precautions while executing the work under and around the HT Lines.

8.2.3 Notwithstanding anything to the contrary contained in this [Clause 8.2](#), the Employer shall specify the parts of the Site, if any, for which Project Site shall be provided to the Contractor on the dates specified in [clause 8.2](#). Such parts shall also be included in the Appendix prepared in pursuance of [clause 8.2.1](#).

8.2.4 Work Front

- (a) The work front/ job site/ Free Issue Material (if applicable) required by the Contractor for the performance of the works shall be handed over by the Employer to the Contractor sequentially in the stages meeting the Contractor's requirements for the works with a view that the Contractor shall so plan his works as to perform and achieve completion in a sequential manner without starting all the works at the same time such that the Schedule does not get disturbed at all. Contractor shall deploy men & material in accordance with the work front so that the delays are compensated & schedule remains unaffected. No compensation of time & cost shall be provided in view of delays on work front.
- (b) To this end, within 4 (Four weeks) of the Letter of Award, the Contractor shall finalise in consultation with the Employer/ Employer's Engineer, sequential requirements of the work front/ job site/ Free Issue Material taking into account other works concurrently being undertaken by the Employer at and about the same job site and/or on the performance or completion of which the Contractor's performance depends.

8.3 Damages for delay in handing over the Site

- 8.3.1 In the event of delay of full or partial handover of any part of the Site by the Employer on or before the date(s) specified in [Clause 8.2](#) for any reason other than Force Majeure or breach of this Agreement by the Contractor, the Employer shall not pay any remunerative Damages to the Contractor. Only the time extension in lieu of delays in handover may be granted by the employer subject to employer's approval.
- 8.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Contractor expressly agrees that Works on all parts of the Site for which Project Site is granted within 90 (ninety) days of the date of Letter of Award, or with respect to the parts of the Site provided in [clause 8.2](#) or Schedule-A, no later than the date(s) specified therein, as the case may be, shall be completed before the Scheduled Completion Date and shall not qualify for any Time Extension under the provisions of [Clause 8.3.1](#).
- 8.3.3 Notwithstanding anything to the contrary contained in this Agreement, the Employer may at any time withdraw any Works forming part of this Agreement, subject to such Works not exceeding an aggregate value, such value to be determined in accordance with Items of Price Bid, equal to 10(ten) percent of the Contract Price.
- 8.3.4 Provided that if any Works are withdrawn after commencement of the Construction of such works, the Employer shall pay to the Contractor 110% (one hundred and ten per cent) of the fair value of the work done, as assessed by the Employer's Engineer

8.4 Site to be free from Encumbrances

Subject to the provisions of [Clause 8.2](#), the Site shall be made available by the Employer to the Contractor pursuant hereto free from all Encumbrances and occupations and without the Contractor being required to make any payment to the Employer on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Project Completion Schedule. For the avoidance of doubt, it is agreed that the existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances. It is further agreed that, unless otherwise specified in this Agreement, the Contractor accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

8.5 Protection of Site from encroachments

On and after signing the memorandum and/or subsequent memorandum referred to in [Clause 8.2.1](#), and until the issue of the Completion Certificate, the Contractor shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place. During the Construction Period, the Contractor shall protect the Site with safe & sound fencing and from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Sub-contractor or other person claiming through or under the Agreement to place or create any Encumbrance or security threat over all or any part of the Site or the Project Assets, or on any rights of the Contractor therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement. In the event of any encroachment or occupation on any part of the Site, the Contractor shall report such encroachment or occupation forthwith to the Employer and undertake its removal at its own cost and expenses.

8.6 Special/temporary Roads

The Contractor shall bear all costs and charges for any special or temporary Project Site required by it in connection with access to the Site. The Contractor shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project Works and the performance of its obligations under this Agreement.

8.7 Access to the Employer and the Employer's Engineer

- 8.7.1 The site handed over to the Contractor hereunder shall always be subject to the right of access of the Employer and the Employer's Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.
- 8.7.2 The Contractor shall ensure, subject to all relevant safety procedures, that the Employer has un-restricted access to the Site during any emergency situation, as decided by the Employer's Engineer.

8.8 Geological and archaeological finds

- 8.8.1 It is expressly agreed that mining, geological or archaeological rights do not form part of this Agreement with the Contractor for the Works, and the Contractor hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Employer or the concerned Government Instrumentality. The Contractor shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Employer forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. All gold, silver and other minerals of any description and all precious stones, coins, treasure, relics, antiques and all other similar things which shall be found in, under or upon the site, shall be the property of the Employer.

For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Contractor hereunder shall be reimbursed by the Employer. It is also agreed that the Employer shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

ARTICLE-9

9. Utilities and Trees

9.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Contractor shall ensure that the respective entities owning the existing structures, or utilities on, under or above the Site are enabled by it to keep them in continuous satisfactory use, if necessary.

9.2 Shifting of obstructing utilities

The Contractor shall, in accordance with Applicable Laws and with assistance of the Employer, cause shifting of any utility (including electric lines, water pipes and telephone cables, trunk sewers, temporary structures and trees etc. with their due permissions) to an appropriate location or alignment, if such utility or obstruction adversely affects the execution of Works in accordance with this Agreement. The actual cost of such shifting shall be borne by the Contractor and no time costs shall be borne by the Employer.

9.3 New utilities

9.3.1 The Contractor shall allow, subject to such conditions as the Employer may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Contractor, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this [Clause 9.3](#) shall not in any manner relieve the Contractor of its obligation to construct and maintain the Project Works in accordance with this Agreement and any damage caused by such use shall be restored forthwith at the cost of the Employer.

9.3.2 The Employer may, by notice, require the Contractor to connect any adjoining road and services to the Project roads and services, and the connecting portion thereof falling within the Site shall be constructed by the Contractor at the Employer's cost in accordance with [Article 10](#).

9.3.3 Deleted.

9.3.4 In the event the construction of any Works is affected by a new utility or works undertaken in accordance with this [Clause 9.3](#), the Contractor shall be entitled to a reasonable Time Extension as determined by the Employer's Engineer.

9.4 Felling of trees – Deleted

ARTICLE-10

10. Design and Construction of the Project Works

10.1 Obligations prior to commencement of Works

10.1.1 Within 10 (ten) days of the date of letter of Award, the Contractor shall:

- (a) appoint its representative, duly authorised to deal with the Employer in respect of all matters under or arising out of or relating to this Agreement;
- (b) appoint a design director (the "**Design Director**") who will head the Contractor's design unit and shall be responsible for surveys, investigations, collection of data, and preparation of preliminary and detailed designs & shop drawings and their approval and during execution;
- (c) 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; and
- (d) make its own arrangements for quarrying of materials needed for the Project Works under and in accordance with the Applicable Laws and Applicable Permits.

10.1.2 Deleted

10.1.3 The Contractor shall submit to the Employer and the Employer's Engineer a detailed resource schedule over and above the version already submitted by the contractor at the time of bid submission with modifications if any, called. Programme (the "Programme") for the Works, developed using networking techniques giving the following details:

Part I Contractor's organisation for the Project, the general methods and arrangements for design and construction, environmental management plan, Quality Assurance Plan including design quality plan, traffic management and safety plan covering safety of users and workers during construction, Contractor's key personnel and equipment.

Part II Programme for completion of all stages of construction and Project Milestones of the Works as specified in Project Completion Schedule set forth in Schedule-J. The Programme in required format Primavera –P6 Latest version with all the 3M's (Men, Material & Machinery & their justification calculation wherever required / desired) shall include:

- (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of design and stages of Works;
- (b) the periods for reviews under [Clause 10.2](#);
- (c) the sequence and timing of inspections and tests specified in this Agreement.

The Contractor shall submit a revised programme whenever the previous programme is inconsistent with the actual progress or with the Contractor's obligations

Part III Monthly cash flow forecast.

Consent by the Employer/Employer's Engineer to Programmes shall not relieve the Contractor of any of his responsibilities or obligations under the Contract. If the Programmes indicate that a Key Date has not, or will not be met, it shall not, by itself entitle the Contractor to an extension of time in relation to such Key Date.

- 10.1.4 The Contractor shall compute, on the basis of the Drawings prepared in accordance with [Clause 10.2.4](#), and provide to the Employer's Engineer, the length, area and numbers, as the case may be, in respect of the various items of work specified in Price Bid ([Appendix-1B-Annex-I](#), RFQ cum RFP) and comprising the Scope of the Project. The Parties expressly agree that these details shall form the basis for estimating the interim payments for the Works in accordance with the provisions of [Clause 19.3](#). For the avoidance of doubt, the sum of payments to be computed in respect of all the items of work shall not exceed the Contract Price, as may be adjusted in accordance with the provisions of this Agreement.
- 10.1.5 The Contractor shall appoint a safety consultant (the "**Safety Consultant**") to carry out safety audit at the design stage of the Project Works in accordance with the Applicable Laws and Good Industry Practice. The Safety Consultant shall be appointed after proposing to the Employer a panel of three names of qualified and experienced firms from whom the Employer may choose one to be the Safety Consultant. Provided, however, that if the panel is not acceptable to the Employer and the reasons for the same are furnished to the Contractor, the Contractor shall propose to the Employer a revised panel of three names from the firms empaneled as safety consultants by the Employer for obtaining the consent of the Employer. The Contractor shall also obtain the consent of the Employer for the key personnel of the Safety Consultant who shall have adequate experience and qualifications in safety audit of the project. The Employer shall, within 15 (fifteen) days of receiving a proposal from the Contractor hereunder, convey its decision, with reasons, to the Contractor, and if no such decision is conveyed within the said period, the Contractor may proceed with engaging of the Safety Consultant.
- 10.1.6 The safety audit pursuant to [Clause 10.1.5](#) shall be carried out by the Safety Consultant in respect of all such design details that have a bearing on safety of Users as well as pedestrians, workers, employees working within and around the site involved in or associated with accidents. The recommendations of the Safety Consultant 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 Consultant. In the event that any works required by the Safety Consultant shall fall beyond the scope of Schedule-B, Schedule-C or Schedule-D, the Contractor shall make a report thereon and seek the instructions of the Employer for Change in Scope. For the avoidance of doubt, the Safety Consultant to be engaged by the Contractor shall be independent of the design and implementation team of the Contractor.

10.2 Design and Drawings

- 10.2.1 Design and Drawings shall be developed in conformity with the Specifications and Standards set forth in Schedule-D.

The Design Phase shall immediately commence upon issuance of LOA to the Contractor. Contractor's submittals during Design Phase for the Scope of Works shall include the following stages:-

- 1) Design Development (DD) stage
- 2) Detailed Design Stage (DTD)
- 3) Working Drawings (WD) or Good For Construction Drawings(GFC)
- 4) Shop Drawings (SHD)

5) As-Built Drawings (ABD)

- i. Design Development (DD) stage: It shall be sufficiently detailed to show all the main elements of the design and documents required for preparation of the Detailed Design stage drawings. It shall include, but not be limited to, the following
- Report on compliance with the design criteria and all applicable codes and statutory regulations.
 - Submission of design manuals
 - Preliminary off site testing recommendation
 - References to the relevant design codes and standards
 - General arrangement of drawings, plans, elevations, and sections at suitable scale
 - Calculations and drawings for all structures.
 - Finishes and landscape schedule for the works
 - Design submission programme/schedule with approval schedule for completion of Project
 - Drawings/ reports of project site surveys in reference to Survey of India reference points and other field investigations
 - 3D renderings, visuals, and animations as required
 - Design simulation, if required.

Design manual: Contractor shall submit the complete process, timelines/schedules for all the deliverables to be provided to complete the detailed design

- ii. Detailed Design (DD) stage submission shall be a coherent and complete set of documents properly consolidated and indexed and shall fully describe the proposed design. All disciplines of works which are inter-dependent shall be submitted together in a single submission. In particular, and where appropriate, it shall include, but not be limited to the following -

a) General:

- The dimensions of all major features, structural elements, and members
- All catalogues, samples, materials specifications
- Potential forces and movements due to all possible loadings and actions on the structures, and their accommodation
- Layout and typical details of reinforcement in structural concrete members
- Locations and nature of all relevant joints and connections and details thereof
- Standard details
- Provisions and proposals for construction interfacing with the Related Works
- Details and erection methods

- Utilities to be diverted /protected/to be newly provided.
- All system layout drawings, specifications, flow process and shop drawings
- b) Drawings:

The Detailed Design stage submission shall include drawings that shall illustrate the proposed design and in particular shall include, but not be limited to the following;

 - Structures: General arrangements, drawings, numeration drawings, reinforcement drawings, Structural Drawings and other miscellaneous item drawings.
 - Utility: Proposed storm water/ drainage/sewerage/rainwater harvesting/water supply network designs and drawings with specifications including any relocation.
- c) Documents with details of Design Specifications, Construction specifications, utilities, Survey reports, Temporary Works Design, Construction/ Erection analysis
- iii. **Good for Construction (GFC) Drawings** - On the issue of a Notice in respect of the Detailed Design drawings, the Contractor shall produce the proposed working drawings. The working drawings shall include Detailed Design drawings, which may be supplemented by drawings further developed in accordance with the working drawings such as site sketches, bar bending schedules, bar reference drawings, additional construction details, equipment installation details, finishes material list with accompanying specification and the like. All such drawings shall comply with the requirements of the detailed design submittal and design criteria.
- iv. **As-Built Drawings (ABD) – after completion of Construction.**
 - a) The Contractor shall maintain all records of the deviations in construction of permanent works from working drawings for the preparation of As-Built Drawings.
 - b) These records shall be maintained in one master copy (paper copy) of the working drawings and subsequently updated on the CAD drawings. Upon completion of the works or at such time as agreed to or required by the Employer, the Contractor shall prepare drawings subject to the Employer Notice, shall become As-Built Drawings.
 - c) All such drawings shall be endorsed by the Contractor as true records of the construction of the permanent works and all temporary works that are to remain on the Project site. The Contractor shall also show the locations of utilities exposed and retained.

10.2.2 The Contractor, under its own expenses, shall appoint a proof check consultant (the "**Proof Consultant**") after proposing to the Employer a panel of three names of qualified and experienced firms from whom the Employer may choose one to be the Proof Consultant. Provided, however, that if the panel is not acceptable to the Employer and the reasons for the same are furnished to the Contractor, the Contractor shall propose to the Employer a revised panel of three names from the firms empaneled as proof consultants by the Employer for obtaining the consent of the Employer. The Contractor shall also obtain the consent of the Employer for three key personnel of the Proof Consultant who shall have good experience and qualifications in Structures, MEP works and ICT works respectively. The Employer shall, within 15 (fifteen) days of receiving a proposal from the Contractor hereunder, convey its decision, with reasons, to the Contractor, and if no such decision is conveyed within the said period, the Contractor may proceed with engaging of the Proof Consultant.

10.2.3 The Proof Consultant firm shall:

- (a) Evolve a systems approach with the Design Director so as to minimize the time & cost required for final designs and construction drawings; and
- (b) Proof check the detailed calculations, drawings and designs, which have been approved by the Design Director.

10.2.4 In respect of the Contractor's obligations with respect to the design and Drawings of the Project Works as set forth in Schedule-I, the following shall apply:

- (a) the Contractor shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, six copies each of the design and Drawings checked by Proof Consultant and then PEAC;
- (b) by submitting the Drawings for review to the Proof Consultant and then PEAC the Contractor shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project, the Specifications and Standards and the Applicable Laws;
- (c) within 15 (fifteen) days of the receipt of the Drawing, the Proof Consultant and then PEAC shall review the same and convey its observations to the Contractor with particular reference to their conformity with the Scope of the Project and the Specifications and Standards. The contractor shall submit the drawings approved by Proof Consultant & PEAC to the employer's Engineer for review and final approval. The Contractor shall not be obliged to await the observations of the Employer's Engineer on the Drawings submitted pursuant hereto beyond the said period of 15 (fifteen) days and may begin or continue Works at its own discretion and risk; Provided, however that in case of Structural works, the aforesaid period of 15 (fifteen) days may be extended upto 21(Twenty one) days;
- (d) if the aforesaid observations of the PEAC indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Contractor in conformity with the provisions of this Agreement and resubmitted for review after checking by Proof Consultant. The PEAC shall give its observations, if any, within 10 (ten) days of receipt of the revised Drawings. The contractor shall submit the revised drawings approved by PEAC & Proof Consultant for review and final approval. In the event the Contractor fails to revise and resubmit such Drawings for review as aforesaid, the Employer's Engineer may withhold the payment for the affected works in accordance with the provisions of [Clause 19.5.4](#). If the Contractor disputes any decision, direction or determination of the Employer's Engineer hereunder, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure;
- (e) no review and/or observation of the Employer's Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Contractor of its obligations and liabilities under this Agreement in any manner nor shall the Employer's Engineer or the Employer be liable for the same in any manner; and if errors, omissions, ambiguities, inconsistencies, inadequacies or other Defects are found in the Drawings, they and the construction works shall be corrected at the Contractor's cost, notwithstanding any review under this [Article 10](#);

- (f) the Contractor shall be responsible for delays in submitting the Drawing as set forth in Schedule-I caused by reason of delays in surveys and field investigations, and shall not be entitled to seek any relief in that regard from the Employer; and
- (g) the Contractor warrants that its designers, including any third parties engaged by it, shall have the required experience and capability in accordance with Good Industry Practice and it shall indemnify the Employer against any damage, expense, liability, loss or claim, which the Employer might incur, sustain or be subject to arising from any breach of the Contractor's design responsibility and/or warranty set out in this Clause.
- (h) The contractor shall be responsible for obtaining the approval of proof consultant, PEAC, Employer/ employer's Engineer on drawings and details before commencement of respective works including structural design duly vetted by I.I.T or other Institutes of National repute including obtaining structural safety certificate from the Institute of National repute.

10.2.5 Any cost or delay in construction arising from review by the Proof Consultant, PEAC & Employer's Engineer shall be borne by the Contractor.

10.2.6 Works shall be executed in accordance with the Drawings provided by the Contractor in accordance with the provisions of this [Clause 10.2](#) and the observations of the PEAC, Proof Consultant & Employer's Engineer thereon as communicated pursuant to the provisions of [Clause 10.2.4](#) (d). Such Drawings shall not be amended or altered without prior written notice to the Employer's Engineer. If a Party becomes aware of an error or defect of a technical nature in the design or Drawings, that Party shall promptly give notice to the other Party of such error or defect.

10.2.7 Within 90 (ninety) days of the Project Completion Date, the Contractor shall furnish to the Employer and the Employer's Engineer a complete set of as-built Drawings, in 6(six) hard copies and in micro film form or in such other medium as may be acceptable to the Employer, reflecting the Project Works as actually designed, engineered and 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.

10.3 Construction of the Project Works

10.3.1 The Contractor shall construct the Project Works as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. 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 608th day) from the date of LOA shall be the scheduled completion date (the "**Scheduled Completion Date**") and the Contractor agrees and undertakes that the construction shall be completed on or before the Scheduled Completion Date, including any extension thereof.

10.3.2 The Contractor shall construct the Project Works in accordance with the Project Completion Schedule set forth in Schedule-J. In the event that the Contractor fails to achieve any Project Milestone or the Scheduled Completion Date within a period of 30 (thirty) days from the date set forth in Schedule-J, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Employer, the Employer shall hold Damages for that stage of work to the tune of a sum calculated at the rate of 0.05% (zero point zero five percent) of the Contract Price for delay of each day reckoned from the date specified in Schedule -J and until such Project Milestone is achieved or the Works are completed; provided that if the period for

any or all Project Milestones or the Scheduled Completion Date is extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-J shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-J has been amended as above; provided further that in the event the Works are completed within or before the Scheduled Completion Date including any Time Extension, applicable for that work or section, the Damages paid under this [Clause 10.3.2](#) shall be refunded by the Employer to the Contractor, but without any interest thereon. The payments withheld during non-achievement of any stage shall be carried forward for the next stage and shall be considered for release if the delay has been recouped. For the avoidance of doubt, it is agreed that recovery of Damages under this [Clause 10.3.2](#) shall be without prejudice to the rights of the Employer under this Agreement including the right of Termination thereof. The Parties further agree that Time Extension hereunder shall only be reckoned for and in respect of the affected works as specified in [Clause 10.5.2](#).

10.3.3 The Employer shall notify the Contractor of its decision to impose Damages in pursuance with the provisions of this [Clause 10.3](#), provided that no deduction on account of Damages shall be effected by the Employer without notifying the Contractor of its decision to impose the Damages, and taking into consideration the representation, if any, made by the Contractor within 20 (twenty) days of such notice. The Parties expressly agree that the total amount of Damages under [Clause 10.3.2](#) shall not exceed 10% (ten percent) of the Contract Price.

10.3.4 Execution In Accordance with Specifications, Drawings, and orders etc.

- a) All items of work in the Stage Payment shall be carried out as per the technical specifications, design parameters, detailed approved drawings and instructions of the Employer/ Employer's Engineer of DMICDC/SPV and the rates shall include for supply of required materials including proper storage, consumables, skilled & unskilled labour, all tests required before dispatch, during execution or before handover, as per standards or as approved/ advised by DMICDC/SPV, supervision and tools, tackles, plant & machinery complete as called for in the detailed specifications and conditions of the contract. The contractor shall execute the whole and every part of the work in the most substantial and workman like manner both as regards materials and otherwise in every respect in strict accordance with the specifications. The contractor shall also conform exactly, fully and faithfully to the design, drawings and instructions in writing in respect of the work assigned by the Employer/ Employer's Engineer.
- b) The contractor shall comply with the provisions of the contract and execute the works with care and diligence and maintain the works and provide all labour and materials, tools and plants including for measurements and supervision of all works, structural plans and other things of temporary or permanent nature required for such execution and maintenance in so far as the necessity for providing these, is specified or is reasonably inferred from the contract. The contractor shall take full responsibility for adequacy, suitability and safety of all the works and methods of construction.
- c) The Contractor shall within scope of his work prepare detailed working and other plans, drawings and designs required for or in connection with the performance of the work or selection, procurement or making any supply, and these plans/ drawings shall be got approved from the DMICDC/SPV before the Contractor commences the performance of the relative work or making the relative supply.
- d) The Contractor shall within the scope of his work also carry out investigative and design studies and prepare detailed design for the various materials and works covered in the contract documents. Such detailed designs along with referred codes, standards and practices, back-up calculations, computer runs and other details on basis of which the

designs have been prepared shall be subject to the Employer's approval. Detailed working drawings, quantities of all items and material specifications shall be prepared and established on the basis of the approved design(s) and shall also be subject to the Employer's approval. The Contractor shall furnish six prints each of the drawings for approval of the Employer/ Employer's Engineer.

The Contractor shall not permit any work to be done or any material to be supplied or fabricated or manufactured at variance with drawings/ designs/ specifications approved by the Employer/ Employer's Engineer or other specified authority. The approved drawings may be released to the Contractor for fabrication/ installation progressively.

- e) Unless otherwise required at least 6 (six) sets of direct reading reproducible, no lower in quality than auto positive of extra thin paper able to produce clean legible prints (the reproducible to be submitted in roll forms) and 6 (six) sets of prints of all approved plans/drawings/ designs/ specifications prepared by the Contractor and the quantities of all items, together with similar sets of reproducible and prints of all revisions/amendments/ modifications therein shall be lodged with the Employer/ Employer's Engineer for the record of the Employer such sets of plans/ drawings/designs/ specifications shall be signed by the Contractor and shall indicate thereon the number and date of each revision/ amendment and of the communication of the Employer/ Employer's Engineer or any other agency appointed by Employer for the approval thereof, by which the approval was given.
- f) All the Final drawings shall bear the certification stamp as indicated below, duly signed by both, the Contractor and the approving authority, Employer/ Employer's Engineer:

Certified True for Project		
Contract No.		
Signed (Contractor)		
Signed (Design Consultant of the Contractor)		
Signed Proof Consultant		
Signed PEAC		
Signed Employer/ Employer's Engineer		

The drawings and documents to be submitted by the Contractor to Employer after award of the work as per the requirements enlisted in the bidding document elsewhere shall be for review, information and record. The Contractor shall ensure that drawings and documents submitted to Employer's are accompanied by relevant calculations, data as required and essential for review of the document / drawings by Employer. All documents and drawings including those of Contractor's sub-vendor's manufacturer's etc. shall be submitted to Employer after having been fully vetted in detail, approved and corrected by the Contractor & shall bear Contractors seal / certifications to this effect. All documents / drawings & submissions made to Employer without compliance to this requirement will not be acceptable and the delay & liability owing to this shall be to the Contractor's account.

- g) The review of documents and drawings by Employer shall not be construed by Contractor as limiting any of his responsibility to meet the requirements of specifications, drawings etc. and liabilities for mistakes and deviations. Upon receiving the comments on the drawing / documents reviewed by Employer, Contractor shall incorporate the comments as required and ensure their compliance. The subsequent submission by the Contractor of the updated drawings / documents shall be accompanied by a compliance report etc. The submissions calling for repeated reviews by the Employer shall be avoided by the Contractor and it shall not entitle any cost or time to the contractor. Any inaccuracies, errors

and non-compliance to contractual requirements will be rectified by the Contractor. Delay occurring on this shall be to the account of the Contractor. The Works shall be free of all Defects in materials and workmanship and shall be adequate, stable, safe and strictly compliant with the instructions of Employer/ Employer's Engineer, the Drawings and Designs, the Specifications and Good Industry Practice, such that the project when complete shall be capable of meeting the Guaranteed Performance Levels.

10.3.4 i) Role of PEAC & Operator during the contract:

PEAC shall be an interface between the Employer's engineer and the EPC contractor for providing all design related clarifications, any queries raised by the contractor & during the handholding period of detailed design stage. PEAC shall review detailed design and GFCs prepared by the contractor(s) and ensure that all preliminary design aspects and parameters have been adhered to.

PEAC shall advise and comment on the samples submitted by the EPC contractor if these are in line with the technical specifications finalized by PEAC in the tender. Checking of all the systems, finishes, schemes and their working at the time of commissioning shall also be done by the PEAC at the time of handover.

EPC Contractor shall share the detailed design of all elements with the Operator. Operator shall give its inputs only from the perspective of Operational/ Functional Improvements. No suggestion in design shall be considered or given by Operator which may change the Envelope or Master plan or Architectural Layout of the Project/ Facilities. If the operator does not comment within 15 days, the design from the viewpoint of Operational/ Functional requirements shall be considered deemed approved.

10.3.5 Materials to be provided by the Contractor

- a) The contractor shall, at his own expense, provide all materials, required including Cement & Steel for the works. The contractor shall at his own expense and without delay; supply to the Employer/ Employer's Engineer samples of materials to be used on the work and shall get the same approved in advance. All such materials to be provided by the Contractor shall be in conformity with the specifications laid down or referred to in the contract. The contractor shall, if requested by the Employer/ Employer's Engineer furnish proof, to the satisfaction of the Employer/ Employer's Engineer that the materials so comply. The contractor shall at his risk and cost, submit the samples of materials to be tested or analysed in India or Abroad and bear all charges and cost of testing. The Employer/ Employer's Engineer or his authorized representative shall at all times have access to the works and to all workshops and places where work is being prepared or from where materials, manufactured articles or machinery are being obtained for the works and the contractor shall afford every facility and every assistance and cost in obtaining the right and visit to such access. The Employer/ Employer's Engineer shall have full powers to require the removal from the premises of all materials which in his opinion are not in accordance with the specifications and in case of default, the Employer/ Employer's Engineer shall be at liberty to employ at the expense of the contractor, other persons to remove the same without being answerable or accountable for any loss or damage that may happen or arise to such materials. The Employer/ Employer's Engineer shall also have full power to require other proper materials to be substituted thereof and in case of default, the Employer/ Employer's Engineer may cause the same to the supplies and all costs which may require such removal and substitution shall be borne by the contractor.
- b) The Contractor shall be responsible at his own cost and initiative within the scope of services, to take delivery of the materials from the port of delivery in India in respect of imported materials and from the factory or ware-house or other place(s) of delivery in respect of

indigenous materials and to transport these to the Contractor's stockpiles, godowns or other places of storage arranged by him for this purpose, and to transport the same from said godowns or place(s) of storage to the work site for incorporation in the permanent works.

The work of delivery and transportation of materials shall include (but not be limited to) the following-

- i.) Payment of custom duty, Clearance of the goods through custom and port clearance including filling and/or filing of all custom manifests, bills of entry, and custom declarations and other documents as may be required for the clearance of the goods from customs or port authorities, including making necessary payment of Customs Duties.
- ii.) Stevedoring, clearing, forwarding and handling services as required for imported and indigenous materials and consignments including payment at contractor's cost of any insurance (the insurance shall be in a fully convertible currency), demurrage, wharfage, port charges, siding charges, retention charges, detention charges or other charges whatsoever and howsoever designated or levied by any railway, air-port, ship and/or other authorities for or in connection with the loading, unloading or detention of any materials or vessels or other means of transport beyond the free period or unloading, clearance, retention or detention or loading, as the case may be, provided by the relevant authority(ies) or carrier(s) in this behalf.
- iii.) All works and operations necessary to lift and to remove the material from port, warehouse, railway or other siding, factory or other places of delivery, loading, handling, transporting and unloading and safely stacking, placing or storing the same at godowns, yards or other place(s) of storage including lashing or other-wise securing or protecting the same in transit and during and in storage.
- iv.) All acts, deeds, matters or things required to fulfil all local, municipal and other statutory authorities with respect to the transportation of any materials through or into any State, municipal, local or other barriers or limits or for the import of the materials or any of them within the limits of such barrier, including payment of octroi or other local toll (if applicable), terminal and/or entry or other taxes payable on the passage or entry of the materials through or within any local limits, for which purpose the DMICDC shall give the Contractor and/or Contractor's designate(s) any and all authority(ies) as may be reasonably required in this behalf. If Road Permits, Entry Permits, Transit Permits or the like for the transportation of any materials is to be obtained in the name of the DMICDC, it shall at the request of the Contractor sign and provide such documents as are required to be furnished by the DMICDC to obtain the Permit(s).
- v.) All other acts, deeds, matters and things whatsoever ancillary, auxiliary or incidental to the above including but not limited to the grading of the site and/or creation of temporary approaches and ramps etc. as may be required.

10.3.6 Materials and Samples

- a) The materials/products used on the works shall be one of the approved make/ brands out of list of manufacturers / brands /makes given in the tender documents or shop drawings submitted or as approved in the Detailed Engineering or shop drawings submitted after the award of Work. The contractor shall submit samples/ specimens out of approved makes of materials/ products to the Employer/ Employer's Engineer for prior approval. In exceptional circumstances Employer/ Employer's Engineer may allow alternate equivalent makes/brands of products/ materials at his sole discretion. The final choice of brand / make shall remain with the Employer/ Employer's Engineer, whose decision in this matter shall be final and binding and nothing extra on this account shall be payable to the Contractor. In case single

brand/ make are mentioned, other equivalent makes/ brands may be considered by the Employer/ Employer's Engineer. In case of variance in CPWD/IS/BIS Specifications from approved products/makes specification, the specification of approved product/make shall prevail for which nothing shall be paid extra to the Contractor. In case no make or brand of any materials, articles, fittings and accessories etc. is specified, the same shall comply with the relevant Indian Standard Specifications and shall bear the IS/BIS mark. The Employer's Engineer and the Employer shall have the discretion to check quality of materials and equipments to be incorporated in the work, at source of supply or site of work and even after incorporation in the work. They shall also have the discretion to check the workmanship of various items of work to be executed in this work. The contractor shall provide the necessary facilities and assistance for this purpose.

- b) The above provisions shall not absolve the contractor from the quality of final product and in getting the material and workmanship quality checked and approved from the Employer/ Employer's Engineer.
- c) The contractor shall well in advance, produce samples of all materials, articles, fittings, accessories etc. that he proposes to use and get them approved in two sets duly signed and in writing by Employer. The materials articles etc. as approved shall be labelled as such and shall be signed by Employer and the Contractor's representative. One set in the site office of the Employer/ Employer's Engineer.
- d) The approved samples shall be kept in the custody of the Employer/Employer's Engineer till completion of the work. Thereafter the samples except those destroyed during testing shall be returned to the contractor. No payment will be made to the contractor for the additional required samples or samples destroyed in testing.
- e) The brands of all materials, articles fittings etc. approved together with the names of the manufacturers and firms from which supplies have been arranged shall be recorded in the site order book.
- f) The contractor shall set up and maintain at his cost, a field testing laboratory for all day to day tests at his own cost to the satisfaction of the Employer/ Employer's Engineer. This field testing laboratory shall be provided with equipment and facilities to carry out all mandatory field tests as per the requirements of selected materials and specifications. The laboratory building shall be constructed and installed with the appropriate facilities, Temperature and humidity controls shall be available wherever necessary during testing of samples. All equipments shall be provided by the Contractor so as to be compatible with the testing requirements specified. The Contractor shall maintain all the equipments in good working condition for the duration of the contract. The Contractor shall provide approved qualified personnel to run the laboratory for the duration of the Contract. The number of staff and equipment available must at all times be sufficient to keep pace with the sampling and testing programme as required by the Employer/ Employer's Engineer. The Contractor shall fully service the site laboratory and shall supply everything necessary for its proper functioning, including all transport needed to move equipment and samples to and from sampling points on the site, etc. The Contractor shall re-calibrate all measuring devices as per or established norms for each testing equipment annually whenever so required by the Employer/ Employer's Engineer and shall submit the results of such calibration without delay. All field tests shall be carried out in the presence of Employer's representative. All costs towards samples, materials, collection, transport, manpower, testing etc. shall be borne by the Contractor and are deemed to be included in the rates quoted by him in the Offer/ tender.

The contractor(s) shall display the calibration certificate of each equipment at the location of equipment & shall get recalibrated at least one week before its expiry date. Irrespective of any loss due to theft, fire or whatsoever. No claim shall be entertained towards cost and time.

Contractor/subcontractors has / have to deploy security personnel for safeguarding of materials procured and bought at site. Irrespective of any loss due to theft, fire or whatsoever. No claim shall be entertained towards cost and time

10.3.7 Materials Procured With the Assistance of Employer

If any material for the execution of this contract is procured with the assistance of Employer either by issue from its stores or purchase made under orders or permits or licenses obtained by Employer, the contractor shall hold and use the said materials economically and solely for the purpose of this contract and shall not dispose them without the permission of Employer/ Employer's Engineer. The contractor, if required by the Employer, shall return all such surplus or unserviceable materials that may be left with him after the completion of the contract or at its termination on whatsoever reason, on being paid or credited such price as the Employer/ Employer's Engineer shall determine having due regard to the conditions of materials. The price allowed to the contractor, however, shall not exceed the amount charged to him excluding the element of storage charges which shall be 10% of the cost charged to contractor. The decision of the Employer/ Employer's Engineer shall be final and conclusive.

Contractor, subcontractors has / has to deploy security personnel for safeguarding of materials procured and bought at site. Irrespective of any loss due to theft, fire or whatsoever; no claim shall be entertained towards cost and time.

10.3.8 Contractor to Supply Tools & Plants

The contractor shall provide at his own cost all materials, machinery, tools & plants as require for completion of work. In addition to this, appliances, implements, other plants, ladders, cordage, tackle, scaffolding and temporary works required for the proper execution of the work, whether original, altered or substituted and whether included in the specifications or other documents forming part of the contract or referred to in these conditions or not, or which may be necessary for the purpose of satisfying or complying with the requirements of the Employer/ Employer's Engineer as to any matter as to which under these conditions he is entitled to be satisfied, or which he is entitled to require together with carriage therefore to and from the work. The contractor shall also supply without charge the requisite number of persons with the means and materials, necessary for the purpose of setting out works, and counting, weighing and assisting the measurement or examination at any time and from time to time of the work or materials. Failing his so doing, the same may be provided by the Employer/ Employer's Engineer at the expense of the contractor and the expenses may be deducted, from any money due to the contractor, under this contract or otherwise and/or from his Retention Money or the proceeds of sale thereof, or of a sufficient portions thereof.

10.3.9 Shipping/International Air Freight and Other Documents

- a) Without prejudice to any other obligations of the Contractor under the Contract, and in addition to any other documents required to be furnished by the Contractor under the Contract, the Contractor shall, in respect of all items and materials imported into India, after making necessary payments to Customs and clearing the consignments, obtain and furnish to the Employer, along with his monthly invoices, the following documents (hereinafter for the sake of brevity collectively referred to as the "the said documents") according to the provisions of the following clauses, namely :

- Signed Invoice(s) with all terms and conditions including quantity, value etc.
1. Clean Bill of Lading;
 2. Packing lists
 3. Certificate of origin of goods to be given by seller or a recognized chamber of commerce or another agency designated by the local government for this purpose.

4. Consular's Invoice, if necessary;
 5. Export License/documents, if applicable; and
 6. Any other document(s) or literature submitted by him during Custom clearance;
 7. Phytosanitary Certificate (in original) for packing material as per International norms.
 8. Manufacturing Test Certificate and guarantee.
 9. Certificate of Insurance.
- b) The bill of lading shall clearly indicate the description of the items/materials giving the dimensions, quantities, weights, Port of loading, and all other details required for Customs clearance of the consignment, and/or as may be specified by the Employer from time to time in this behalf. The Bill of Lading shall show the gross freight amount, and shall either indicate or be accompanied by the carrier's statement of charges and shall carry all other particulars necessary to bind the carrier.
- c) The Contractor shall not less than 7(seven) clear days before the contemplated date of shipment, inform the Employer/ Employer's Engineer of the contemplated date of relative shipment of the item(s) or material(s) and of the contemplated date of arrival thereof in India. The Contractor shall also, within 48 (Forty-Eight) hours of shipment, send intimation of shipment by fax or scanned copy by email to the addresses of the Employer.
- d) The Invoice shall be drawn in the name of the Contractor Account and shall state the quantity and detailed description of each item supplied reflecting the value of each item/material and the basis of delivery at site. The Invoice and Bill of Lading shall also indicate on the face of it, the Number, date and validity of the Import License (if the Import License has been revalidated, Number and date of re-validation) against which the Import is being made. The description of each item/material indicated in the Invoice and the Bill of Lading shall conform to the description of the item/material as given in the relative Import License(s)/Permit(s) issued to the owner in this behalf.

The Contractor shall ensure that all imports into India are in conformity with Export-import policy in force- FEMA Rules.

10.3.10 Packing and Forwarding

a) IMPORTED SUPPLIES

- 1) The Contractor wherever applicable, shall, after proper painting, pack and crate all materials for shipment in a manner suitable for export to a tropical, humid climate in accordance with internationally accepted export practices and in such a manner so as to protect them from damage and deterioration in transit by road, rail and/or sea and during storage at Contractor's Own Warehouse and at the site, as the case may be, till the time of erection. Without prejudice to any other liabilities or obligations of the Contractor, the Contractor shall be responsible for all damage(s) to the materials due to improper packing.
- 2) The Contractor shall notify the Employer/ Employer's Engineer of the date of each shipment from the port of embarkation as well as of the expected date of arrival of such shipment at the designated port of arrival only for the Employer/ Employer's Engineer's information.
- 3) The Contractor's notification shall give complete shipping information concerning the weight, size and content of each package and such other information as the Employer may require. The packing material used should be duly certified by a Phytosanitary Certificate issued as per international norms.

b) INDIGENOUS SUPPLIES

- 1) The Contractor shall, wherever applicable, after proper painting, pack and crate all items in such a manner as to protect them from deterioration and damage during rail and road transportation, during storage at Contractor's Own Warehouse and at the site, as the case may be till the time of erection.
- 2) Without prejudice to any other liabilities or obligations of the Contractor, the Contractor shall be responsible for all damage(s) due to improper packing. The Contractor shall notify Employer/ Employer's Engineer of the date of each shipment from the works and expected date of arrival at the site for the information of Employer/ Employer's Engineer.
- 3) The Contractor's notification shall also give all shipping information concerning the weight, size and content of each packing and such other information as the Employer/ Employer's Engineer may require.

The following documents shall be sent to the Employer/ Employer's Engineer within 3 (three) days from the date of shipment:

- Invoice (2 copies)
- Packing List (2 copies)
- Test Certificate (4 copies)
- Railway Receipt/Lorry Receipt (2copies)
- Insurance Certificate (2 copies) or copy of Contractor's Policy
- Third Party Inspection Release Note or Inspection Certificate as per QAP approved by Employer/ Employer's Engineer or waiver certificate issued by Employer/ Employer's Engineer.

c) EQUIPMENT

The Contractor shall be exclusively responsible to arrange for importation into India in its own name on drawback or re-export or other basis all equipment, if any, required to be imported into India for the purposes of the work and to pay and bear the customs, import and other duties and levies (if any) payable thereon or in respect thereof, and will be solely responsible for the timely and proper compliance of all applicable terms and conditions and formalities relative thereto.

The Contractor shall within 4 (Four) Weeks from the date of receipt of Letter of Award, furnish to the Employer/ Employer's Engineer a list of the said equipment which he proposes to import into India on a draw-back/re export basis for the purposes of the work, together with complete details thereof. The Employer may without obligation or responsibility render such assistance as may be reasonably required by the Contractor from the Employer to enable the Contractor to obtain the relative Import License(s)/Permit(s) for the importation of the said equipment on a draw-back/re-export basis.

d) MISCELLANEOUS IMPORTS

- 1) The Contractor shall be exclusively responsible at his own costs and initiative to arrange for importation into India, to import into India, to pay Custom duties and Port and other charges and levies, to clear from Customs and to transport to job site all consumables, spares for the Contractor's equipment and other materials and things provided that the Employer may, without obligation or responsibility, render the Contractor such assistance by way of recommendation to the Import Control

authorities in India or otherwise as may be reasonably required by the Contractor from the Employer to enable the Contractor to obtain Import License(s)/Permit(s) for importation of such consumables, spares, material and other items as the Employer considers necessary for importation by the Contractor for the purpose of the Contract, taking into account local availability.

- 2) Any obligation undertaken or recommendation, facility or assistance provided by the Employer to the Contractor for or in relation to the importation of any equipment or material whatsoever into India by or on behalf of the Contractor pursuant to the provisions hereof or otherwise shall be without any responsibility or liability whatsoever upon the Employer and without right in the Contractor to raise any claim or demand or to seek extension of time on account of any delay or failure on the part of the Employer or any delay or failure by the Contractor in obtaining Import License(s) and/or permits for importation thereof into India.
- 3) All materials and equipment Imported into India by or on behalf of the Contractor for and in connection with the work and any obligation undertaken or recommendation, facility or assistance provided by the Employer relative thereto shall be on the clear understanding that the materials and equipment shall be utilised only for and relative to the performance of the work covered by the Contract.
- 4) All the equipment and temporary works and materials when brought to or erected on the job site, shall be exclusively intended for execution of works and the Contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the job site to another, without the prior consent in writing of the Employer/ Employer's Engineer.
- 5) Upon completion of the works, the Contractor shall within the scope of work remove from the job site all the equipment and temporary works remaining thereon.
- 6) All equipment, materials and temporary works shall at all times be and remain at the risks of the Contractor in all respects. The Employer shall not, at any time, be liable for the loss or destruction of or damage to any equipment, temporary works or materials for any reason whatsoever.

10.3.11 Notice Before Covering up the Work

The contractor shall give not less than seven day notice before covering up or otherwise placing beyond the reach of measurement any work, to the Employer/ Employer's Engineer in order that the same may be inspected and measured. If any work is covered up or placed beyond the reach of inspection/measurement without such notice or his consent being obtained the same shall be uncovered at the contractor expenses and he shall have to make it good at his own expenses without any claims whatsoever.

10.4 Maintenance during Construction Period

During the Construction Period, the Contractor shall maintain, at its cost, the existing facility of the Project roads and shall undertake the necessary repair and maintenance works for this purpose; provided that the Contractor may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficient progress of Works. For the avoidance of doubt, it is agreed that the Contractor shall at all times be responsible for ensuring safe operation of the Project site.

10.5 Extension of time for completion

10.5.1 Without prejudice to any other provision of this Agreement for and in respect of extension of time, the Contractor shall be entitled to extension of time in the Project Completion Schedule (the "**Time Extension**") to the extent that completion of any Project Milestone is or will be delayed by any of the following, namely:

- (a) delay in providing the environmental clearance, specified in [Clause 4.1.4](#);
- (b) Change of Scope (unless an adjustment to the Scheduled Completion Date has been agreed under [Article 13](#));
- (c) occurrence of a Force Majeure Event;
- (d) 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
- (e) any other cause or delay which entitles the Contractor to Time Extension in accordance with the provisions of this Agreement.

10.5.2 The Contractor shall, no later than 7 (seven) business days from the occurrence of an event or circumstance specified in [Clause 10.5.1](#), inform the Employer's Engineer 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 7 (seven) 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.

10.5.3 In the event of the failure of the Contractor to issue to the Employer's Engineer a notice in accordance with the provisions of [Clause 10.5.2](#) 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 10.5.3](#), the Employer shall be discharged from all liability in connection with the claim.

10.5.4 The Employer's Engineer shall, on receipt of the claim in accordance with the provisions of [Clause 10.5.2](#), examine the claim expeditiously within the time frame specified herein. In the event the Employer's Engineer requires any clarifications to examine the claim, the Employer's Engineer 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 Employer's Engineer requesting for clarification, furnish the same to the Employer's Engineer within 10 (ten) days thereof. The Employer's Engineer 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 10.5](#), the Employer's Engineer shall review previous determinations and may increase, but shall not decrease, the total Time Extension.

10.5.5 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 Employer's Engineer 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 Employer's Engineer shall examine the same in accordance with the provisions of [Clause 10.5.4](#) within a period of 60 (sixty) days of the receipt thereof.

10.6 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 of [Clause 10.3.2](#) 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 23.1](#).

10.7 Deleted

10.8 Carrying out part work at risk & cost of contractor

If Contractor fails to complete the work(s) or items of work with individual dates of completion, on or before the date(s) so determined, and does not complete them within the period specified in the notice given in writing in that behalf by the Employer/ Employer's Engineer.

The Employer/ Employer's Engineer without invoking action under [clause 23.0](#) of contract may, without prejudice to any other right or remedy against the contractor which have either accrued or accrue thereafter to Employer, by a notice in writing to take the part work/part incomplete work of any item(s) out of his hands and shall have powers to:

- a) Take possession of the site and any materials, constructional plant, implements, stores, etc., thereon; and/or
- b) Carry out the part work / part incomplete work of any item(s) by any means at the risk and cost of the contractor.

The Employer/ Employer's Engineer shall determine the amount, if any, is recoverable from the contractor for completion of the part work/ part incomplete work of any item(s) taken out of his hands and execute at the risk and cost of the contractor, the liability of contractor on account of loss or damage suffered by Employer because of action under this clause shall not exceed 10% of the tendered value of the work.

In determining the amount, credit shall be given to the contractor with the value of work done in all respect in the same manner and at the same rate as if it had been carried out by the original contractor under the terms of his contract, the value of contractor's materials taken

over and incorporated in the work and use of plant and machinery belonging to the contractor. The certificate of the Employer/ Employer's Engineer as to the value of work done shall be final and conclusive against the contractor provided always that action under this clause shall only be taken after giving notice in writing to the contractor. Provided also that if the expenses incurred by the Employer are less than the amount payable to the contractor at his agreement rates, the difference shall not be payable to the contractor.

If the contractor fails to pay the damages to the Employer within the aforesaid period of 30 days, the Employer/ Employer's Engineer shall have the right to sell any or all of the contractors' unused materials, constructional plant, implements, temporary building at site etc. and adjust the proceeds of sale thereof towards the dues recoverable from the contractor under the contract and if thereafter there remains any balance outstanding, it shall be recovered in accordance with the provisions of the contract.

In the event of above course being adopted by the Employer/ Employer's Engineer, the contractor shall have no claim to compensation for any loss sustained by him by reason of his having purchased or procured any materials or entered into any engagements or made any advance on any account or with a view to the execution of the work or the performance of the contract.

10.9 Mobilization of Men, Materials and Machinery:

All expenses towards mobilization at site and de-mobilization including bringing in equipment, work force, materials, dismantling the equipments, clearing the site etc. shall be deemed to be included in prices quoted and no separate payment on account of such expenses shall be entertained.

It shall be entirely the Contractor's responsibility to provide, operate and maintain all necessary construction equipments, scaffoldings and safety, gadget, lifting tackles, tools and appliances to perform the work in a workman like and efficient manner and complete all jobs as per the specifications and within the schedule time of completion of work. Further, contractor shall also be responsible for obtaining temporary electric and water connection for all purposes. The contractor shall also make standby arrangement for water & electricity to ensure un-interrupted supply.

It shall be the responsibility of the contractor to obtain the approval for any revision and/or modification desired by him from Employer before implementation.

The procurement and supply in sequence and at the appropriate time of all materials and consumable shall be entirely the contractor's responsibilities and his rates for execution of work shall be inclusive of supply of all these items.

It is mandatory for the contractor to provide safety equipments and gadgets to his all workers, supervisory and Technical staff engaged in the execution of the work while working. The minimum requirement (but not limited to) shall be gum boots, safety helmets, Rubber hand gloves, face masks, safety nets, safety belts, goggles etc. as per work requirements. Sufficient nos. of these equipments and gadgets shall also be provided to Employer by the contractor at his own cost for use of Employer's Officials and/ or workforce while working/supervision of work at site. No staff/ worker shall be allowed to enter the site without these equipments/ gadgets.

The cost of the above equipments/ gadgets are deemed to be included in the rates quoted by the contractor for the items & works and contractor shall not be entitled for any extra payment in these regard. The above norm is to be strictly complied with at site. In case the contractor is found to be deficient in providing Safety Equipments/ Gadgets in the opinion of Employer's Engineer, the Employer's Engineer at his option can procure the same at the risk & cost of

contractor and provide the same for the use of worksite and shall make the recoveries from the bills of the contractor for the same. The contractor shall abide by all rules & regulations pertaining to Health, Safety and Environment.

One copy of contract documents including drawings furnished to the contractor shall be kept at the site and the same shall at all reasonable times be available for inspection.

All materials, construction plants and equipments etc. once brought by the contractor within the project area, will not be allowed to be removed from the premises without the written permission of the Employer's Engineer. Similarly all enabling works built by the contractor for the main construction undertaken by him, shall not be dismantled and removed without the written authority of the Employer.

Contractor shall have to prepare the Bar Bending Schedule, shop and fabrication drawings along with bill of materials free of cost, if required for any of the items of work. Six copies of these drawings each including for revision will be submitted to Employer for approval. Before executing the item, shop drawings and bar bending schedule should be approved by Employer.

All contractors plant, machinery and equipment shall be kept in perfect condition during currency of the contract and shall adhere to the NGT & EC guidelines.

Detailed Engineering Drawings should be prepared in detail in CAD or any other software as instructed by the Employer and should cover all the details including the bar bending schedule, Bill of materials, Joints and weld details or other shop drawings as per the requirement.

Any comments/ changes in the Drawings due to the insufficient information or misinterpretation of available data shall be rejected and nothing extra shall be payable to the Contractor for the same.

All contractors' plant, machinery and equipment shall be kept in perfect condition during currency of the contract. As on date of tendering, the maximum. age of Equipment & Machinery including but not limited Excavators, Cranes, Rollers, Batching plant, Dumpers, tippers, Water trucks, etc. shall not be more than 5 years.

Record of all such equipment & m/c with all technical details, purchase details to be kept ready or updated on monthly basis.

10.10 Work in Monsoon and rains

- a) Contractor must take due cognizance of the presence of rainy season / days in his scheduled completion period and accordingly, shall take all necessary actions to protect, reorganize and progress the work , uninterrupted during the monsoon period .
- b) Contractor to collect all meteorological data from the local authority and collect necessary information about the intensity, frequency and period of rainy season.
- c) No extension of time due to interruption /suspension of work , water logging , reduced /slowing down of progress , non-availability of manpower etc. , whatsoever may be the reason, shall be tenable on account of monsoon and further no claim for stand-by of manpower and equipment, other resources etc. shall be paid for. The execution of the work may entail working in the monsoon also. The contractor must maintain labour force as may be required for the job and plan and execute the construction and erection according to the prescribed schedule. No special/ extra rate will be considered for such

work in monsoon. The bid shall be considered inclusive of cost of dewatering due to rains required if any and no extra rate shall be payable on this account. The stipulated period for completion of project includes the monsoon period, holidays, festivals and harvesting/cropping season.

- d) During the Monsoon season, the Contractor shall be responsible for making arrangements to combat monsoon to ensure uninterrupted site works, will make arrangements for keeping the cement godown, steel yard, prefabrication yard, and all other working area free of water logging and make necessary approach to work site as required.
- e) The execution of the work shall entail working in all seasons including the monsoons. In so far as necessary, the Contractor shall maintain at site at all times such material, labour, pumps, equipment and machinery as may be required for the performance of the work during the monsoon or other rains and shall plan well in advance for the collection of material and equipment and the erection of such tarpaulins, sheds, wind breakers and/or other Protection as shall or may be necessary for the work during the monsoon or other rains so that the rains or monsoon shall not hamper working. Contractor shall also arrange and bring to each job site such special equipment and machinery as may be necessary to enable work during the monsoon, and shall, at his own cost and initiative, arrange at all times for dewatering the job sites so as to keep the construction site and areas to be worked upon, free of water.
- f) Contractor shall provide scheme for suitable coverage of the work area in addition to other covered pre-fabrication yards proposed by them for continuity of works during monsoon and shall implement the schemes for effective mitigation of effects of monsoons at no extra cost to the Owner.
- g) All electrical installations, equipment shall be placed on plinths above ground under proper rain shed to avoid any inundation, short circuit and hazards of electrocution.
- h) Contractor shall organize his work particularly for the underground activities in foundation, excavation in a way that instead of opening up fronts everywhere and in scattered locations (provided there is no priority concern) only those many structures and /or areas should be worked where concerted and continuous effort and resources could be engaged to bring the work up to the desired level expeditiously to minimize any rework resulting from water accumulation / rain.
- i) To maintain the standard welding quality and progress, localized welding booth in sufficient numbers as per instruction of Engineer- in charge shall be installed for protection against wind and rain.

10.11 Work on Sundays, Holidays and during Night

For working on Sundays/Holidays, the contractor shall obtain the necessary permission from Employer/ Employer's Engineer in advance. Any liaisoning or approval required from the Government Authorities shall be in scope of the contractor. The contractor shall be permitted to work beyond the normal hours with prior approval of Employer/ Employer's Engineer and the contractors quoted rate is inclusive of all such extended hours of working and no extra amount shall be payable by the owner on this account. The contractor shall have no claim on this account whatsoever. If work demand, the contractor shall make arrangements to carry out in two, three shifts with the approval of Employer/ Employer's Engineer at no extra cost to Employer.

10.12 Watch, Ward and Lighting of Work Place

The contractor shall at his own cost take all precautions to ensure safety of life and property by providing necessary barriers, Obstructions, lights, watchmen etc. during the progress of work as directed by Employer/ Employer's Engineer.

10.13 Cement, Steel and material Stockyard

10.13.1 Cement shall be procured by Contractor confirming to BIS: 8112 and / or BIS: 1489 Specification latest edition or higher Grade as per approved list attached. The cement shall be procured directly from the reputed manufacturers/ stockiest as per approved list of Employer/ Employer's Engineer. Relevant vouchers and test certificates will be produced as and when required. The cement shall be stored by the contractor in such suitable covered and lockable stores, well protected from climate and atmospheric effects. The cement go-down shall be constructed by the contractor as per the best Industry Standards at his own cost. The cement will remain under double lock, one from Employer and other from Contractor. The cement in bags shall be stored in go-downs in easy countable position. Cement bags shall be used on first in first out basis. Cement stored for beyond 90 days will be required to be tested at contractors cost, before use in works.

10.13.2 Steel confirming to BIS specifications (latest edition) shall be procured by the contractor directly from reputed manufacturers/producers as per approved list of Employer. The manufacturer has to give a certificate that the material supplied is not a re-rolled product. Relevant vouchers & test certificates will be produced by the contractor. Re-rolled sections will not be allowed. Reinforcement steel, structural steel shall be stored and stacked in such manner so as to facilitate easy identification, removal etc. The contractor shall take proper care to prevent direct contact between the steel and the ground/water for which he shall provide necessary arrangement at his own cost including ensuring proper drainage of area to prevent water logging as per directions of the Employer/ Employer's Engineer. Steel shall also be protected, by applying a coat of neat cement slurry over the bars for which no extra payment shall be made. Test certificates for each consignment of steel shall be furnished and tests to be got carried out from the authorized laboratory as per the directions of Employer/ Employer's Engineer, before incorporating the materials in the work.

All steel to be procured as per office memorandum "DG/CPWD works manual / 350" issued by Authority of Director General CPWD on 29-06-2017 w.e.f 01-07-2017 with its Annexure-I.

10.14 Records of Consumption of Cement and Steel

10.14.1 For the purpose of keeping a record of cement and steel Procured by the contractor received at site and consumed in works, the contractor shall maintain a properly bound register in the form approved by the Employer, showing columns like quantity received and used in work and balance in hand etc.

10.14.1 The register of cement & steel shall be kept at site in the safe custody of Employer/ Employer's Engineer during progress of the work. This provision will not, however, absolve the contractor from the quality of the final product.

10.15 Furnished Office Accommodation & Mobility Communication To Be Arranged By Contractor

10.15.1 Contractor, after approval of the Employer, shall provide fully furnished site office for Employer staff, Employer engineer staff. Should there a situation of relocation arise during the Contract period, it will be done without any consideration of extra time and cost to the Employer.

10.15.2 The contractor shall maintain the aforesaid facilities intact/operational during the tenancy of the contract or maximum up to 6 months beyond the stipulated contractual completion date if the work is delayed due to any reasons. Operation and maintenance cost of all such materials, equipments / services shall be borne by the contractor.

10.15.3 The Site office shall be provided with all office utilities required during the currency of the project for Employer/Employer's engineer (PMC) based on the space & capacity illustrated below for entire office complex the air conditioning, wall mounted fans, adequate nos. of cabinets in each rooms & halls, furniture, work stations, sofas at receptions/waiting area.

- i. One (01) Room of min. 100 sq.ft area with attached toilet of adequate size & one (01) room having four(04) seats of area 50 sq.ft.
- ii. One (01) Room/hall for min. 45 persons of area 50 sq.ft each.
- iii. Four (04) rooms 100 sq.ft area each, ten (10) nos. Cubical of area 70 Sq.ft each .
- iv. 1 no. large meeting room for min. 40 persons with LCD Projector & screen of size 6" x 5", LED screen of 50" and white board of 6" x 5".
- v. Two (02) nos. of smaller meeting with LCD projector & screen for six persons each.
- vi. One (01) reception and waiting area of 120 Sq.ft.
- vii. Gents' toilet with minimum five (06) Urinals, three (03) WC, three (03) wash basins and ladies toilet with two (02) WC and one (02) wash basins.
- viii. All office spaces shall be provided with good Wi-Fi & LAN connectivity and intercom facility with telephone sets for each room and workstations.
- ix. One (01) no. large Storage Room of min. 800 Sq.ft. for samples with adequate nos. proper sturdy MS Racks and adequate nos. of closed almirahs.
- x. One (01) no. record room for storage of files, bills etc. - 500 Sq. ft. with Almirahs, Racks etc. for storage.
- xi. Two (02) nos. pantry of adequate capacity (01 for employer + 01 for PMC) with following facilities in each.
 - a. Gas stove & Cylinder (including refilling),
 - b. Microwave Oven of 20 L capacity,
 - c. Min. 200 Ltr. Fridge,
 - d. Water cooler cum purifier (including refilling cartridge),
 - e. Utensils & cutlery as per requirement of standard quality.
 - f. Cafe coffee day vending Machine with the options of tea, coffee (Hot & cold) , Soup & Other Beverages,
 - g. Kitchen cabinet
 - h. All the consumable as and when required.
- xii. Paved and shaded parking shall be provided for min. 20nos Cars and adequate nos. of Motor cycles.
- xiii. Three (03) nos. pantry boys (01 for Employer office + 02 for PMC office) and one (01) nos. office boy for printing, binding & copying.
- xiv. One (01) driver room of adequate size with adequate nos. of fans, coolers, sitting and toilet facilities.

Requirements of Site Office (List of Approved Makes)		
ELECTRICAL		
Sl. No.	Details of Materials	Brands/ Manufacturer's Name
1	MS Conduit (ISI Mark) (ISI Mark)	BEC/ NIC/ Steel Craft / AKG
2	PVC/ FR Conduit (ISI Mark)	BEC/POLYPACK/ PRECISION/ AKG
3	MCB (10KA)	MDS/SIEMENS/MERLIN GERIN/ L&T HANGER/ ABB
4	Distribution Board	MDS/SIEMENS/SCHNEIDER/ABB
5	ELCB/ ELMCB/RCCB	DATAR/MDS/SIEMENS/SCHNEIDER/ABB
6	PVC Insulated Copper Conductor FRLS Flexible / Standed Wire	POLYCAB/ SKYLINE/ HAVELL'S / FINOLEX/ RAJANI GANDHA/ DELTON
7	Modular Switches & Sockets	NORTHWEST/MK/CRABTREE/CLIPSAL/PRECISION
8	Lighting Fixtures	WIPRO/ TRULITE/ ARTLITE/PHILIPS
9	Telephone Tag Box	KRONE/TVS/R&M
10	WALL MOUNTED FAN	CROMPTON/ KHAITAN /HAVELLS
11	Change over Switch	HH-ELCON/HPL/SOCOMAC/L&T/ ASKON
PLUMBING		
1	CHINAWARE	HINDWARE/ PARRYWARE <u>or equivalent</u>
2	C. P. Fittings	JAQUAR <u>or equivalent</u>
3	KITCHEN Sink	Franke/Jayna <u>or equivalent</u>
CIVIL		
1	PAINT	BERGER <u>or equivalent</u>
2	FALSE CEILING	GYPSUM <u>or equivalent</u>
3		
OFFICE EQUIPMENTS & FURNITURE		
1	One (01) nos. multipurpose online colour printer, photocopier & scanner	Sharp / cannon or equivalent
2	One (01) nos. multipurpose offline colour printer, photocopier & scanner	Sharp / cannon or equivalent
3	One online plotter	HP or equivalent
4	Internet broadband / Wi-fi connection of minimum 16 mbps	Airtel/ Reliance or equivalent
4	Complete Furniture	GODREJ or Equivalent
5	Air conditioning	Hitachi, O General, Daikin

10.15.4 The contractor shall make all arrangements for ground breaking ceremony/inaugural function etc. or any such functions or ceremonies for the project as required and the cost towards it deemed to be included in his offer. Any expenditure already incurred/to be incurred by Employer in this regards, shall be recovered from the contractor.

10.16 Labour Laws

10.16.1 Labour Laws to be complied by the Contractor

The contractor shall obtain a valid license under the contract labour (Regulation & Abolition) Act 1970 and the contract labour Act (Regulation & Abolition) Central Rules 1971 and amended from time to time, and continue to have a valid license until the completion of the work including defect liability period. The contractor shall also adhere by the provision of the child labour and submit an undertaking as per Schedule-R-Annexure-V (Prohibition and Regulation) Act. 1986 and as amended from time to time.

The contractor shall also comply with provisions of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. The contractor shall also comply with the provisions of the building and other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996 and the building and other Construction Workers Welfare Cess Act, 1996. Contractor shall follow all the provisions of EC (Environmental clearance) dated 29th August 2017 for the project.

Any failure to fulfil above requirement shall attract the penal provisions of this contract arising out the resultant for non-execution of the work before the commencement of work. No labour below the age of 18 years shall be employed on the work.

10.16.2 Payment of wages:

- i) The contractor shall pay to labour employed by him either directly or through subcontractors, wages not less than fair wages as per the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the contract Labour (Regulation and Abolition) Central Rules, 1971, wherever applicable.
- ii) The contractor shall, notwithstanding the provisions of any contract to the contrary, cause to be paid fair wage to labour indirectly engaged on the work, including any labour engaged by his sub-contractors in connection with the said work, as if the labour had been immediately employed by him
- iii) In respect of all labour directly or indirectly employed in the works for performance of the contractor's part of this contract, the contractor shall comply as per the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, and the Contract Labour (Regulation and Abolition) Central Rules, 1971, wherever applicable.
- iv) (a) The Employer/ Employer's Engineer concerned shall have the right to deduct from the moneys due to the contractor any sum required or estimated to be required for making good the loss suffered by a worker or workers by reason of non-fulfilment of the conditions of the contract for the benefit of the workers, non-payment of wages or of deductions made from his or their wages which are not justified by their terms of the contract or non-observance of the Regulations.

(b) Under the provision of Minimum Wages (Central) Rules, 1950, the contractor is bound to allow to the labours directly or indirectly employed in the works one day rest for 6 days continuous work and pay wages at the same rate as for duty. In the event of default, the Employer's Engineer shall have the right to deduct the sum or sums not paid on account of wages for weekly holidays to any labours and pay the same to the persons entitled thereto from any money due to the contractor by the Employer's Engineer concerned.

- v) The contractor shall comply with the provisions of the Payment of Wages Act, 1936, Minimum Wages Act, 1948, Employees Liability Act, 1938, Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947, Maternity Benefits Act, 1961, and the Contractor's Labour (Regulation and Abolition) Act 1970, or the modifications thereof or any other laws relating thereto and the rules made there under from time to time.
- vi) The contractor shall indemnify and keep indemnified Employer against payments to be made under and for the observance of the laws aforesaid.
- (vii) The laws aforesaid shall be deemed to be a part of this contract and any breach thereof shall be deemed to be a breach of this contract.

10.16.3 Labour Safety Provision

The contractor shall be fully responsible to observe the labour safety provisions:

The contractor shall at his own cost take all precautions to ensure safety of life and property by providing necessary barriers, lights, watchmen etc. during the progress of work as directed by Employer/ Employer's Engineer. In case of all labour directly or indirectly employed in work for the performance on the contractor's part of this contract, the contractor shall comply with all rules framed by Govt. from time to time for the protection of health and sanitary arrangements for workers.

10.16.4 Observance of Labour Laws

- a) The contractor shall be fully responsible for observance of all labour laws applicable including local laws and other laws applicable in this matter and shall indemnify and keep indemnified Employer against effect or non-observance of any such laws. The contractor shall be liable to make payment to all its employees, workers and sub-contractors and make compliance with labour laws. If Employer is held liable as "Principal Employer" to pay contributions etc. under legislation of Government or Court decision in respect of the employees of the contractor, then the contractor would reimburse the amount of such payments, contribution etc. to Employer and/ or same shall be deducted from the payments, Retention Money etc. of the contractor.
- b) The contractor shall also ensure the compliance of EPF & MP Act, 1952 by the sub-contractors, if any, engaged by the contractor for the above said work. The contractor shall submit affidavit to indemnify and save harmless Employer from and against all actions, suits, proceedings, losses, costs, damages, charges, claims and demands of every nature and description brought or recovered against Employer by reasons of any act or omission of the Contractor, his agents or employees in connection with complying the provisions of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 as amended from time to time. All sums payable by way of compensation / penalty / damages / interest on the outstanding amounts payable by the Contractor shall be considered as reasonable and be payable by the Contractor to Employer immediately and if the Contractor does not pay the amount immediately the same will be deducted from the Retention Money or earnest money or any other amount available with Employer or any money payable to the Contractor by Employer. Contractor should submit a Compliance Certificate along with the details of employees and recoveries made to the employer as per the proforma approved by Employer mentioned in every bill as per the provisions of the EPF and ESI Act as amended from time to time.

- c) The Contractor shall submit proof of having valid EPF registration certificate. He shall within 7 days of the close of every month, submit to Employer a statement showing the recoveries of contributions in respect of each employee employed by or through him and shall furnish to Employer such information as the Employer is required to furnish under the provisions of para 36 B of the EPF scheme 1952 to the EPF authorities and other information required by EPFO authorities from time to time. He shall also submit a copy of challan every month in token of proof of having deposited the subscription and contribution of workers engaged on the project.
- d) The Contractor shall submit proof of having valid ESI registration for Construction site workers located in the ESI implemented areas for every construction site workers before his/her engagement on the Employer site of works as per requirement of ESI act, 1948 amended upto date and rules made thereunder.
- e) The contractors are required to ensure that in ESI implemented areas, every construction site worker has been registered online and they are required to ensure that these workers and their families have got their photography and capturing of biometrics at nearest ESIC branch office and got their respective Pehchan cards (from ESIC office) issued for extension of ESI benefits to all the engaged construction site workers.
- f) The contractors are required to submit proof of having registered / got issued Pehchan cards in respect of every Construction site workers in ESI implemented areas before engagement at site of works.
- g) The contractors are required to comply with all the relevant provisions of ESI act, 1948 as amended from time to time and deposit of his contribution as may be required under the above said act to the ESI authorities at required intervals / time of deposit and submit the proof to Employer.
- h) The contractor shall at all times indemnify Employer against all claims, damages or compensation under the provision of ESI Act, 1948 or any modifications thereof or as consequence of any accident or injury to any workman or other persons in or about the works, whether in the employment of the contractor or not, against all costs, charges and expenses of any suit, action or proceedings arising out of such incident or injury and against all sum or sums which may with the consent of the contractor be paid to compromise or Compound any such claim.

10.17 Minimum Wages Act

The contractor shall comply with all the provisions of the minimum wages Act, 1948, contract labour Act (Regulation & Abolition) 1970, and rules framed there under and other labour laws/local laws affecting contract labour that may be brought into force from time to time.

10.18 Labour Records

10.18.1 The contractor shall submit by the 4th & 19th of every month to the Employer/ Employer's Engineer a true statement, showing in respect of the second half of the preceding month and the first half of the current month, respectively, of the following data:

- a) The number of the labour employed by him (category-wise).
- b) Their working hours.

- c) The wages paid to them.
- d) The accidents that occurred during the said fortnight showing the circumstances under which they happened and the extent of damage and injury caused.
- e) The number of female workers who have been allowed Maternity Benefits and the amount paid to them.
- f) Any other information required by Employer's Engineer

Failing which the contractor shall be liable to pay to Employer, a sum not exceeding Rs.200/- for each default or materially incorrect statement.

- 10.18.2 In respect of all labour directly or indirectly employed in the works for the performance of the contractor's part of this contract, the contractor shall comply with or cause to be complied with all the rules framed by Government from time to time for the protection of health and sanitary arrangements for workers employed by the Employer and its contractors.
- 10.18.3 Leave and pay during leave shall be regulated as per the latest provisions/ amendments in the relevant act.
- 10.18.4 In the event of the contractor(s) committing a default or breach of any of the provisions of the Labour Regulations and Model Rules for the protection of health and sanitary arrangements for the workers as amended from time to time or furnishing any information or submitting or filing any statement under the provisions of the above Regulations and' Rules which is materially incorrect, he/they shall, without prejudice to any other liability, pay to Employer a sum not exceeding Rs.200/- for every default, breach or furnishing, making, submitting, filing such materially incorrect statements and in the event of the contractor(s) defaulting continuously in this respect, the penalty may be enhanced to Rs.200/- per day for each day of default subject to a maximum of 5 per cent of the estimated cost of the work put to tender. The decision of the Employer shall be final and binding on the parties.

10.19 Labour Accommodation

Should it appear to the Employer that the contractor is not properly observing and complying with the provisions of the Labour Regulations and Model Rules and the provisions of the Contract Labour (Regulation and Abolition) Act 1970, and the Contract Labour (R&A) Central Rules 1971, for the protection of health and sanitary arrangements for work-people employed by the contractor (hereinafter referred as "the said Rules") the Employer shall have power to give notice in writing to the contractor requiring that the said Rules be complied with and the amenities prescribed therein be provided to the work-people within a reasonable time to be specified in the notice. If the contractor shall fail within the period specified in the notice to comply with and/observe the said Rules and to provide the amenities to the work-people as aforesaid, the Employer shall have the power to provide the amenities hereinbefore mentioned at the cost of the contractor. The contractor shall erect, make and maintain at his/their own expense and to approved standards all necessary huts and sanitary arrangements required for his/their work-people on the site in connection with the execution of the works, and if the same shall not have been erected or constructed, according to approved standards, the Employer shall have power to give notice in writing to the contractor requiring that the said accommodation and sanitary arrangements be remodeled and/or reconstructed according to approved standards, and if the contractor shall fail to remodel or reconstruct such accommodation and sanitary arrangements according to approved standards within the period specified in the notice, the Employer shall have the power to remodel or reconstruct such huts and sanitary arrangements according to approved standards at the cost of the contractor.

The contractor(s) shall at his/their own cost provide his/their labour with a sufficient number of huts (hereinafter referred to as the camp) of the following specifications on a suitable plot of land outside the battery limit and to be approved by the Employer/ Employer's Engineer.

10.20 Labour Cess

The rates of the contractor shall be inclusive of labour cess Employer shall make a recovery @ 1% on account of labour cess from each Stage payment of the contractor and labour cess so recovered/deducted shall be deposited with the Labour Board of the concerned state.

Every contractor, sub-contractor, affiliates, their legal assigns or heirs as the case may, shall be responsible for registration of every Building worker who has completed eighteen years of age but has not completed sixty years of age and who has been engaged in any Building or Other Construction Work for not less than Ninety Days during the preceding twelve months; with the Board / Funds as applicable under various sections of "The Buildings And Other Construction Workers (Regulation Of Employment And Conditions Of Service) Act, 1996 And The Building And Other Construction Workers' Welfare Cess Act, 1996.

The contractor shall also be responsible for maintaining register of beneficiaries i.e. the workers in such form as may be prescribed by the competent authority & the same shall be kept open at all reasonable times for inspection of relevant authority and officials of Employer.

The contractor shall be further responsible for maintaining such register & records; giving such particulars of Building workers employed by him, the work performed by them, the number of hours of work which shall constitute a normal working day, the wages paid to them, the receipts given by them and, such other particulars in such form as may be prescribed by the Employer.

In the event of contractor failing to comply with the above clause(s) in part or in full, Employer, without prejudice to any other rights or remedy available under law or any other clause(s) of contract, shall be at absolute liberty to forfeit any sum or sums that are payable or could become payable on account of execution of contract work and decision of Employer / Employer's Engineer shall be final & binding in this regard on the contractor.

10.21 Recovery of Compensation Paid To Workmen

In every case in which by virtue of the provisions sub-section (1) of Section 12, of the Workmen's Compensation Act, 1923, Employer is obliged to pay compensation to a workman employed by the contractor, in execution of the works, Employer will recover from the contractor, the amount of the compensation so paid; and, without prejudice to the rights of the Employer under sub-section (2) of Section 12, of the said Act, Employer shall be at liberty to recover such amount or any part thereof by deducting it from the Retention Money or from any sum due to the contractor whether under this contract or otherwise. Employer shall not be bound to contest any claim made against it under sub-section (1) of Section 12, of the said Act, except on the written request of the contractor and upon his giving to Employer full security for all costs for which Employer might become liable in consequence of contesting such claim.

10.22 Ensuring Payment and Amenities to Workers If Contractor Fails

In every case in which by virtue of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, and of the Contract Labour (Regulation and Abolition) Central Rules, 1971, Employer is obliged to pay any amounts of wages to a workman employed by the contractor in execution of the works, or to incur any expenditure in providing welfare and health amenities required to be provided under the above said Act, or under the Rules framed by Government from time to time for the protection of health and sanitary arrangements for workers, Employer will recover from the contractor, the amount of wages so paid or the amount of expenditure so incurred; and without prejudice to any other right or remedy available under this contract, Employer shall be at liberty to recover such amount or any part thereof by deducting it from the Retention Money or from any sum due by Employer to the contractor whether under this contract or otherwise Employer shall not be bound to contest any claim made against it under sub-section (1) of Section 20, sub-section (4) of Section 21, of the said Act, except on the written request of the contractor and upon his giving to the Employer full security for all costs for which Employer might become liable in contesting such claim.

ARTICLE-11

11. Quality Assurance, Monitoring and Supervision

11.1 Quality of Materials and workmanship

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

11.2 Quality control system

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

11.2.2 The Contractor shall, within 4(four) weeks of the letter of Award, submit to the Employer's Engineer its Quality Assurance Plan which shall include the following:

- (a) organisation, 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 Specifications and Standards and Good Industry Practice; and
- (c) internal quality audit system.

The Employer's Engineer shall convey its comments to the Contractor within a period of 21 (twenty-one) days of receipt of the QAP stating the modifications, if any, required, and the Contractor shall incorporate those in the QAP to the extent required for conforming with the provisions of this [Clause 11.2](#).

11.2.3 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.

11.2.4 The cost of testing of Construction, Materials and workmanship under this [Article 11](#) shall be borne by the Contractor.

11.3 Methodology

The Contractor shall, at least 15 (fifteen) days prior to the commencement of the construction, submit to the Employer's Engineer for review the methodology proposed to be adopted for executing the Works, giving details of equipment to be deployed, traffic management and measures for ensuring safety. The Employer's Engineer shall complete the review and convey its comments to the Contractor within a period of 10 (ten) days from the date of receipt of the proposed methodology from the Contractor.

11.4 Inspection and technical audit by the Employer

The Employer or any representative authorised 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 Contractor for taking remedial action in the event the Works are not in accordance with the provisions of this Agreement.

11.5 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 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 11.5](#), the external technical audit shall not affect any obligations of the Contractor or the Employer's Engineer under this Agreement.

11.6 Inspection of construction records

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

11.7 Monthly progress reports

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 Employer's Engineer a monthly report on progress of the Works and shall promptly give such other relevant information as may be required by the Employer's Engineer.

11.8 Inspection

11.8.1 The Employer's Engineer 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.
- (c) Third party inspections shall be carried out for Indian & imported materials. All expenses towards the Inspections for contractor/ Sub contractor including travel (India or overseas), boarding, visa, permit, insurances, accommodation and fooding shall be borne by the Contractor. However the expenses towards the travel, accommodation, fooding for the Employer/ Employer's representative shall not be borne by the contractor. For testing of imported equipments, the contractor shall hire third party inspection agency of International repute such as TUV, SGS, Lloyd or equivalent. The cost of hiring such party shall be borne by the Contractor.

No material shall be dispatched from the works without written consent of the Employer/ Employer's Engineer.

11.8.2 The Contractor shall give the Employer's Engineer and its authorized agents access, facilities and safety equipment for carrying out their obligations under this Agreement.

11.8.3 Deleted.

11.8.4 The issue of this inspection/rejection report does not acquiesce or condone the late delivery and does not intend or amount to an extension of the delivery period or keeping the contract alive. The goods are being passed / rejected without prejudice to the rights of the Government of India under the terms and conditions of the contract.

11.9 Samples

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

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

11.9.1 Cost of Samples and Testing

- (a) Samples for testing, as per approved Quality Assurance Plan, shall be provided by contractor at his cost. The Engineer may require additional samples for testing at Employer's cost.
- (b) Cost of assistance, labour, electricity, fuel, stores, apparatus and instruments, consumables and tests performed at site shall be borne by contractor.
- (c) The Contractor shall pay for all tests whether at site, outside laboratories, (preferably National Test house) factories etc. in India or in any other country. Nothing shall be payable on this account to the Contractor. All expenses towards the tests for contractor/ Sub contractor including travel (India or overseas), boarding, visa, permit, insurances, accommodation and fooding shall be borne by the Contractor.

11.10 Tests

11.10.1 For determining that the Works conform to the Specifications and Standards, the Employer's Engineer 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 Employer's Engineer 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.

11.10.2 In the event that results of any tests conducted under this [Clause 11.10](#) establish any Defects or deficiencies in the Works, the Contractor shall carry out remedial measures and furnish a report to the Employer's Engineer in this behalf. The Employer's Engineer 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.

11.11 Examination of work before covering up

In respect of the work which the Employer's Engineer 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 Employer's Engineer whenever any such work is ready and before it is covered up. The Employer's Engineer shall then either carry out the examination, inspection or testing without unreasonable delay, or promptly give notice to the Contractor that the Employer's Engineer 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, the 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 Employer's Engineer 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 Employer's Engineer within a period of 3 (three) business days from the date on which the Contractor's notice hereunder is delivered to the Employer's Engineer, the Contractor shall be entitled to assume that the Employer's Engineer would not undertake the said inspection.

11.12 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 Employer's Engineer 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 Employer's Engineer 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.

Such examination of work by the Employer's Engineer shall not relieve or absolve the contractor of its obligation & liabilities under this Agreement in any manner whatsoever.

11.13 Remedial work

11.13.1 Notwithstanding any previous test or certification, the Employer's Engineer 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 21.6](#) shall apply.

11.13.2 If the Contractor fails to comply with the instructions issued by the Employer's Engineer under [Clause 11.13.1](#), within the time specified in the Employer's Engineer's notice or as mutually agreed, the Employer's Engineer 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.

11.14 Delays during construction

Without prejudice to the provisions of [Clause 10.3.2](#) in the event the Contractor does not achieve any of the Project Milestones or the Employer's Engineer 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 Employer's Engineer 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.

11.15 Quality control records and Documents

The Contractor shall hand over to the Employer's Engineer a copy of all its quality control records and documents before the Completion Certificate is issued pursuant to [Clause 12.2](#).

11.16 Video recording

During the Construction Period, the Contractor shall provide to the Employer for every calendar quarter, a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of Works in that quarter. The video recording shall be provided to the Employer no later than 15 (fifteen) days after the close of each quarter after the date of LOA.

In addition to above clause additional requirements as per Schedule-S, ANNEXURE:II (R) should be adhered to.

11.17 Suspension of unsafe Construction Works

11.17.1 Upon recommendation of the Employer's Engineer 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 Employer's Engineer, such work threatens the safety of the Users and pedestrians.

11.17.2 The Contractor shall, pursuant to the notice under [Clause 11.17.1](#), 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 Employer's Engineer 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 Employer's Engineer, 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 11.17](#) shall be repeated until the suspension hereunder is revoked.

11.17.3 Subject to the provisions of [Clause 21.6](#), 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.

11.17.4 If suspension of Works is for reasons not attributable to the Contractor, the Employer's Engineer shall determine any Time Extension to which the Contractor is reasonably entitled.

11.18 Aerial Photography- Deleted

11.19 Certificate of Verification of Materials and Good Condition

11.19.1 The Contractor shall, before supply of material covered within the scope of supply, at his own risks, costs and initiative, undertake or cause to be undertaken all tests, analysis and inspections as shall be required to be undertaken with regard to the materials under the specifications and any codes, practices, orders and instructions with respect thereto and shall cause the results thereof to be recorded, reported or certified, as the case may be, and shall not offer for delivery or deliver any material(s) which has/have not passed such tests/analysis or inspection and which are not accompanied by the tests results, reports and/or certificates in this behalf provided in the applicable specifications, code(s) and/or practices.

11.19.2 On arrival of the material at site, the Contractor shall give written notice thereof to the Employer's Engineer and Inspection Agency notified by the Employer in this behalf, to inspect the materials, and shall keep in readiness for inspection, the materials and the relevant tests results, reports and certificates hereto.

Notwithstanding any other provisions in the contract documents for analysis or tests of materials and in addition thereto, the Contractor shall, if so required by the Employer's Engineer or Inspection Agency in writing at his own risks and costs, analyse, test, prove and weigh all materials (including materials incorporated in the works) required to be analysed, tested, proved and/or weighed by the Employer/ Employer's Engineer or Inspection Agency in this behalf and shall have such analysis or tests conducted by the agency(ies), or authority(ies) if any specified by the Employer's Engineer or Inspection Agency. The Contractor shall provide all equipment, labour, materials and other things whatsoever required for testing, preparation of the samples, measurement of work and/or proof of weighment of the materials as directed by the Employer's Engineer or Inspection Agency.

11.19.3 If on Inspection or proof, analysis or tests as aforesaid the Employer's Engineer or Inspection Agency nominated by the Employer in this behalf is prima facie satisfied that the material received is in conformity with the material requirements of the Bill of Materials and description given in the shipping documents and in the Contractor's invoices in this behalf and that the test reports/results/certificates given in respect thereof are prima facie in conformity with the relevant result/reports/certificates required in respect thereof in terms of the specifications and/or relevant codes and practices, and that the material appears to be prima facie in good order and condition, the Employer's Engineer shall issue to Contractor, a Certificate of Verification and Good Condition in respect of such material, and this shall constitute the Certificate of Verification and Good Condition elsewhere envisaged in the contract documents. Such certificate is only intended to satisfy the Employer that prima facie the material supplied by the Contractor is in order and shall not anyway absolve the Contractor of his/its full responsibility under the contract in relation thereto, including in relation to specification fulfillment and/or performance or other guarantees.

11.19.4 Notwithstanding that any area(s) or source(s) has/have been suggested by the Employer to the Contractor from which any material for incorporation in the works can be obtained, the Contractor shall independently satisfy himself of the suitability, accessibility and sufficiency of the source(s) of supply suggested by the Employer and suitability of the material available from such source(s) with the intent that any suggestion as aforesaid shall not anyway relieve the Contractor of his full liability in respect of the suitability and quality of the material(s) obtained from said source(s) and the Contractor shall obtain material(s) therefrom and incorporate the same within the permanent works entirely at his own risks and costs in all respects, with the intent that any such suggestion by the Owner shall only be by way of assistance to the Contractor and shall not entail any legal responsibility or liability upon the Employer.

11.20 Quality Control Checklist

List of items for which formats shall be prepared by the Contractor & submitted for approval of Employer-

1. Excavation Checklist
2. Formwork Checklist
3. Concrete checklist
4. Piling works checklist
5. Structural Steel (Fabrication, Erection, Painting etc.) Checklist
6. Finishing (Plastering, Painting, False Ceiling, flooring etc.) checklist
7. Waterproofing checklist
8. Road works (Excavation, WMM, Bituminous work etc.)
9. Façade works Checklist
10. Lighting (external, Internal, Fixtures etc.) checklist
11. HVAC works
12. Plumbing (Sanitary fixtures, pumps etc.)Works
13. Fire Fighting Works
14. Cable laying, Piping etc.
15. STP, WTP
16. UG tanks

but not limited to these items in order to complete the scope of the project.

ARTICLE-12

12. Completion Certificate

12.1 Tests on completion

12.1.1 At least 30 (thirty) days prior to the likely completion of the Project Works, or a Section or any Part thereof, the Contractor shall notify the Employer's Engineer of its intent to subject the Project Works or a Section/ or any part thereof, to Tests. The date and time of each of the Tests shall be determined by the Employer's Engineer in consultation with the Contractor, and notified to the Employer who may designate its representative to witness the Tests. The Contractor shall either conduct the Tests as directed by the Employer's Engineer or provide such assistance as the Employer's Engineer may reasonably require for conducting the Tests. In the event of the Contractor and the Employer's Engineer failing to mutually agree on the dates for conducting the Tests, the Contractor shall fix the dates by giving not less than 10 (ten) days' notice to the Employer's Engineer.

12.1.2 All Tests shall be conducted in accordance with Schedule-K. The Employer's Engineer shall either conduct or observe, monitor and review the Tests conducted by the Contractor, as the case may be, and review the results of the Tests to determine compliance of the Project Works or a Section or any part thereof, with Specifications and Standards and if it is reasonably anticipated or determined by the Employer's Engineer 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. Upon completion of each Test, the Employer's Engineer shall provide to the Contractor and the Employer copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Employer's Engineer 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 or any part thereof with the Specifications and Standards.

12.1.3 Integrated Testing and System Commissioning -

i) Mechanical Completion

Contractor shall notify Employer in writing that the site is mechanically completed and all the major pre-commissioning check list points are liquidated and unit is ready for start-up and commissioning & trial runs.

When the construction of the site has been completed including completion of all punch list items as provided by Employer/ or its representative and regulatory bodies like Factory Inspector etc. to make the system ready for pre-Commissioning, other than in minor respects which do not prevent commissioning, all civil works is completed, all equipment and machinery are installed and aligned, all piping and instrumentation work is completed including insulation & painting, all electrical work is completed, all hydrostatic/ pneumatic testing is done, speed and direction of rotation of all prime movers is checked, relays are set and all scales, meters, measuring devices and recorders are calibrated, all instrumentation jobs are completed in all respect all the loops and interlocks are tested and set as per requirements, The date of completion of pre-commissioning as aforesaid shall be deemed to be the date of Mechanical Completion of the site for the purpose of this contract.

ii) Performance Guarantee

The Contractor shall be responsible for performance guarantees in terms of product quality and rated capacity including turn down capacity of unit and/ or facility and/ or systems so far as relate to or depend upon or arise out of any study performed and/ or done and/ or designs, drawings and/ or specifications.

iii) Start-Up and Commissioning

After completion of erection and prior to startup of the Unit/ Facility, Employer will inspect the Unit/ Facility as to their being erected in accordance with the requirements and as to their readiness for start-up in all respects. All modifications required for safe and smooth startup of the plants and facilities will be incorporated by Contractor in their detail engineering and will be implemented before commissioning. Contractor shall also arrange services of Licensor for necessary assistance during inspection & start-up at site.

In course of such an inspection, Employer/ Employer's Engineer shall indicate in writing those adjustments, alternations and/ or repair relating to the Unit/ Facility/ equipment as it deems necessary for start-up, commissioning and performance test run and such adjustments, alterations, and/ or repairs shall be immediately arranged to be carried out by Contractor as part of start-up operation. The time required for these adjustments, alterations and/ or repairs shall be mutually agreed between Contractor and Employer but it would not be considered for any time and cost extension whatsoever.

Contractor shall submit list of systems and prepare list of pre-commissioning activities to be performed for all applicable disciplines against each system, including flushing schemes for piping sub-systems. These documents shall be prepared, discussed and submitted to Employer/ Employer's Engineer at least 90 days before start up pre-commissioning activities for all the facilities.

Requisite documentation formats and procedures for carrying out pre-commissioning start up and commissioning activities will be prepared by the Contractor and firmed up in consultation with Employer/ Employer's Engineer in line with pre-commissioning schedule requirements.

Contractor will arrange their own operating manpower as required for commissioning of facilities such as:

- i.) Commissioning Co-coordinator
- ii.) Shift In-charge
- iii.) Control Room Co-coordinator
- iv.) Field Supervisors
- v.) Trained Operators
- vi.) Technicians for Equipment & Instrument troubleshooting

Contractor shall arrange the vendor representatives required for commissioning at his own cost.

12.2 Provisional Certificate

- 12.2.1 Subject to the provisions of [Clause 12.2.5](#), upon completion of all Works forming part of the Project Works, save and except the Works for which Time Extension has been granted under [Clause 10.5](#), the Employer's Engineer shall, at the request of the Contractor, issue a provisional certificate of completion substantially in the form set forth in Schedule-L (the "**Provisional Certificate**") if the Tests for and in respect of the completed Works are successful. The Provisional Certificate shall have appended thereto a list of outstanding items

of work (the "**Punch List**") that need to be completed in accordance with the provisions of this Agreement. The Contractor undertakes to complete the minor outstanding items of works in respect of those Sections of the Project Works for which the Provisional Certificate has been issued, within a period of 30 (thirty) days of the date of Provisional Certificate, and those parts of the Works in respect of which Time Extension has been granted, within the extended period thereof. For the avoidance of doubt, the Parties agree that the Punch List shall include all Works for which Time Extension has been granted and shall also include any minor outstanding items of work forming part of the completed Sections if such works do not materially affect the use of the completed Sections for their intended purpose. The Parties further agree that Provisional Certificate shall not be issued if the completed Works cannot be safely and reliably placed in service of the Users thereof.

- 12.2.2 Upon issue of Provisional Certificate, the provisions of [Articles 14](#) and [17](#) shall apply to the completed parts of the Project Works and the property and ownership of all such completed Works shall vest in the Employer.
- 12.2.3 If the Employer's Engineer determines that the Project Works or any completed part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in operation, it shall forthwith make a report in this behalf and send copies thereof to the Employer and the Contractor and withhold issuance of the Provisional Certificate until the Defects or deficiencies are rectified by the Contractor and Tests are successful in accordance with this [Article 12](#).
- 12.2.4 Notwithstanding anything to the contrary contained in [Clause 12.2.3](#), the Employer may, at any time after receiving a report from the Employer's Engineer under that Clause, direct the Employer's Engineer to issue a Provisional Certificate under [Clause 12.2.1](#) and such direction shall be complied forthwith.
- 12.2.5 No Provisional Certificate shall be issued under the provisions of this [Clause 12.2](#) until the Contractor has submitted valid claims for payment of at least 80% (eighty per cent) of the amount arrived at after reducing the lump sum price specified in [Clause 19.1.1](#) by the amount attributable to works which have been withdrawn under the provisions of [Clause 8.3.3](#). For the avoidance of doubt and by way of illustration, the Parties agree that the works withdrawn under [Clause 8.3.3](#) have a value of 10% of the contract price, a Provisional Certificate shall not be issued until valid claims for payment of an amount of 80% of the contract price have been submitted by the Contractor in accordance with the provisions of this Agreement. It is further agreed that all price adjustments made in pursuance of [Clause 19.10](#) shall not be reckoned for computation of the claims for payments referred to in this [Clause 12.2.5](#).

12.2.6 **Contract Closure Procedures**

- a) Contractor after completing the works in all respects as specified elsewhere in the BID documents required to complete the following activities in [Clause 12.2.7](#) but not limited to the same for closing of the contract.
- b) Payment against Contractor's Final Bill shall be released upon the satisfactory completion of activities pertaining to closing of the contract.

12.2.7 **Requirement for Contract Closing**

The EPC Contractor shall be required to submit the following documents but not limited to the same on completion of work along with the final bill:

- a) Certificate for successful completion of Commissioning and Performance test.

- b) Certificate of submission of Approved or certified As-built documents / drawings.
- c) Reconciliation of Free Issue Material, if any.
- d) Reconciliation of materials procured by the Contractor.
- e) Site clearing as per Contract.
- f) Handing over of spares and surplus materials after reconciliation, codification & acceptance for two years of DLP and as per the equipment maintenance schedule.
- g) Supply and acceptance of special tools and tackles
- h) Submission of Operating/Maintenance Manuals.
- i) List of all equipments, items to be handed over to the Employer from O&M perspectives.
- j) Submission of any balance documents to the Employer for claiming Tax Benefits, as applicable.
- k) Requisite approvals from Statutory Authorities and Government bodies.
- l) No dues certificate from Statutory Authorities and Government bodies.
- m) Settlement of all extra claims with Employer, if any.
- n) No claims certificate
- o) Contractor Demobilization checklist as per Attachment-I.
- p) Completion of Contract closeout checklist.
- q) Detailed contract close out report.
- r) Any other documents to be submitted as specified elsewhere in the contract.
- s) No liability certificate: Self-certification from the contractor that no payment is balance to their subcontractors and suppliers on account of service rendered /materials supplied by them or provide list of balance payments due indicating reason for non-payment/ time frame for payment.

12.2.8 Checklist for Contract Closeout.

The broad check list is enclosed in the Schedule-L. However, Contractor to prepare his own exhaustive checklist including detailed procedure for contract closeout and get it reviewed by Employer before implementation.

12.3 Completion of remaining Works

All items in the Punch List shall be completed by the Contractor in accordance with the provisions of this Agreement. For any delay in their completion other than for the reasons solely attributable to the Employer or due to Force Majeure, the Employer shall be entitled to recover Damages from the Contractor in accordance with the provisions of [Clause 10.3.2](#) of this Agreement.

12.4 Completion Certificate

- 12.4.1 Upon completion of all Works, including the items specified in the Punch List, and the Employer's Engineer determining the Tests to be successful, it shall forthwith issue to the Contractor and the Employer a certificate substantially in the form set forth in Schedule-L (the "**Completion Certificate**").
- 12.4.2 Upon receiving the Completion Certificate, the Contractor shall remove its equipment, materials, debris and temporary works from the Site within a period of 30 (thirty) days thereof, failing which the Employer may remove or cause to be removed, such equipment, materials, debris and temporary works and recover from the Contractor an amount equal to 120% (one hundred and twenty per cent) of the actual cost of removal incurred by the Employer.
- 12.4.3 Without prejudice to the obligations of the Contractor specified in [Articles 14](#) and [17](#), the property and ownership of all the completed Works forming part of the Project Works shall vest in the Employer.
- 12.4.4 The Project shall be deemed taken over on successful commissioning of the same with supply of all documents, spares, surplus material, as built drawings etc. as per contractual provisions by the Contractor and acceptance of the same by the Employer.

12.5 Rescheduling of Tests

If the Employer's Engineer certifies to the Employer and the Contractor that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Contractor shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

12.6 Site Clearance

- a) The contractor shall ensure that the working site is kept clean and free of obstructions with regular site-keeping/ housekeeping schedule approved by Employer's Engineer or as directed by Employer for easy access to job site and also from safety point of view. Before handing over the work to the Employer the contractor shall remove all temporary structures like the site offices, cement go-down, stores etc., scaffolding rubbish, debris etc. left over materials tools and plants, equipments etc., clean the site to the entire satisfaction of the Employer/ Employer's Engineer. If this is not done the same will be got done by Employer at his risk and cost.
- b) The contractor shall clean all floors, remove cement/ lime/ paint drops and deposits, clean joinery, glass panes etc., touching all painter's works and carry out all other necessary items of works to make the premises clean and tidy before handing over the building, and the rates quoted by the contractor shall be deemed to have included the same.
- c) On completion of Work the Contractor shall also clear away the labour camps, hutments and other related installations and restore the land which is outside the site battery limit, to its original condition to the satisfaction of the Employer within 45 (forty five) days of the physical completion of Work. The cost on account of delay in return of land and reinstatement of original condition within the stipulated time as determined by Employer's Engineer will be recovered from the Contractor's dues.

- d) No final payment in settlement of the accounts for Works shall be made or held to be due to the Contractor, till, in addition to any other condition necessary for such final payment, site clearance and clearances of labour camps etc. shall have been effected by him. Such clearance may be made by the Engineer through any other agency at the expense of the Contractor in the event of the Contractor's failure to comply with this provision within 7 days after receiving notice to that effect from the Engineer. All expenses on such removal / clearance shall be debitable to the Contractor as loans due from the Contractor to the Employer, and the Employer shall be competent to recover the same from Contractor's on-account or final bills, or from Performance Security amount or from any other amount payable to the Contractor in any other Contract.

12.7 Set-Off of Contractor's Liabilities

Employer shall have the right to deduct or set off the expenses incurred or likely to be incurred by it in rectifying the defects, works delayed by the Contractor, works damaged and not rectified by the Contractor, extra/ additional / substituted items left delayed even after approval and/or any claim under this agreement against the Contractor from any or against any amount payable to the contractor under this agreement including Retention Money and proceeds of performance guarantee.

12.8 Possession Prior To Completion

- a) Employer shall have the right to take possession of or use any completed or partially completed work or part of the work. Such possession or use shall not be deemed to be any acceptance of any work not completed in accordance with the contract agreement. If such prior possession or use by Employer delays the progress of work an equitable adjustment in the time of completion will be made and the contract agreement shall be deemed to be modified accordingly. The decision of Employer in such case shall be final binding and conclusive.
- b) When the whole of the works or the items or the groups of items of work have been completed the contractor will give a notice to that effect to the Engineer in writing at least 15 days in Advance. The Engineer shall within 7 days of the date of receipt of such notice inspect the works and give instructions in writing to the contractor specifying the balance items of work which are required to be done by the contractor and shall also notify the contractor of any defect in the works affecting completion.
- c) The contractor shall during the course of execution prepare and keep updated a complete set of 'as built' drawings to show each and every change from the contract drawings, changes recorded shall be countersigned by the Employer/ Employer's Engineer and the contractor. Four copies of 'as built' drawings shall be supplied to the Employer by the contractor within 30 days of the completion. All costs incurred in this respect shall be borne by the contractor.

ARTICLE -13

13. Change of Scope

13.1 Change of Scope

13.1.1 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 [Article 13](#).

13.1.2 Change of Scope shall mean:

- (a) change in specifications of any item of Works given in the tender ;
- (b) omission of any work from the Scope of the Project except under [Clause 8.3.3](#); provided that, subject to [Clause 13.5](#), the Employer shall not omit any work under this Clause in order to get it executed by any other authority; and / or
- (c) Any additional work, Plant, Materials or services which are not included in the Scope of the Project, including any associated Tests on completion of construction.

13.1.3 If the Contractor determines at any time that a Change of Scope will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Employer of executing, maintaining or operating the Project Works, (iii) improve the efficiency or value to the Employer of the completed Project Works, or (iv) otherwise be of benefit to the Employer, it shall prepare a proposal with relevant details at its own cost. The Contractor shall submit such proposal, supported with the relevant details and the amount of reduction in the Contract Price to the Employer to consider such Change of Scope. The Employer shall, within 15 (fifteen) days of receipt of such proposal, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this [Article 13](#) or reject the proposal and inform the Contractor of its decision. 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.

13.2 Procedure for Change of Scope

13.2.1 In the event of the Employer determining that a Change of Scope is necessary, it may direct the Employer's Engineer to issue to the Contractor a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**")

13.2.2 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;
- (i) Proposed design for the Change of Scope; and
- (iii) proposed modifications, if any, to the Project Completion Schedule of the Project Works.

For the avoidance of doubt, the Parties expressly agree that, subject to the provisions of Clause 13.4.2, the Contract Price shall be increased or decreased, as the case may be, on account of Change of Scope.

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

- (a) the latest available edition of Delhi Schedule of Rates (DSR) Published by CPWD 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) the market rates substantiated with well negotiated 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 (b). These rates shall be considered only after approval of Employer / Employer's Engineer.
- (c) In the case of substituted items (items that are taken up with partial substitution or in lieu of items of work in the contract), the rate for the agreement item (to be substituted) and substituted item shall also be determined in the manner as mentioned in the following para:
 - i) If the market rate for the substituted item so determined is more than the market rate of agreement item (to be substituted), the rate payable to the contractor for the substituted item shall be the rate for the agreement item (to be substituted) so increased to the extent of the difference between the market rates of substituted item and the agreement item (to be substituted).
 - ii) If the market rate for the substituted item so determined is less than the market rate of the agreement (to be substituted), the rate payable to the contractor for the substituted item shall be the rate for the agreement item (to be substituted) so decreased to the extent of the difference between the market rates of substituted item and the agreement item (to be substituted)
- (d) Market Rates to be determined as per various sub-clauses in [Article 13](#) and shall be on the basis of prevailing rates of Material (unless mentioned otherwise), Relevant Labour authority rate for Labour, market rates of T&P etc. plus 15% towards Contractors Profits and Overheads.

The following factors may be considered in the justification of rates on which Contractor s overhead & profit shall not be applicable:

- i) Buildings and Other Construction Worker Cess as applicable in the state of work place

- ii) EPF (Employer Contribution) component, as per EPF act on the portion of labour s wages
- iii) GST

13.2.4 Upon reaching an agreement, the Employer shall issue an order (the "**Change of Scope Order**") requiring the Contractor to proceed with the performance thereof. In the event that the Parties are unable to agree, the Employer may:

- (a) issue a Change of Scope Order requiring the Contractor to proceed with the performance thereof at the rates and conditions approved by the Employer till the matter is resolved in accordance with [Article 26](#); or
- (b) Proceed in accordance with [Clause 13.5](#).
- (c) The contractor shall submit the Change Management request as per Appendix attached.

13.2.5 The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Contractor under this [Article 13](#).

13.3 Payment for Change of Scope

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

13.4 Restrictions on Change of Scope

13.4.1 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.

13.4.2 Unless the Parties mutually agree to the contrary, the total value of all Change of Scope Orders shall not exceed 10 (ten) per cent of the Contract Price.

13.4.3 Notwithstanding anything to the contrary in this [Article 13](#), 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.

13.5 Power of the Employer to undertake works

13.5.1 In the event the Parties are unable to agree to the proposed Change of Scope Orders in accordance with [Clause 13.2](#), the Employer may, after giving notice to the Contractor and considering its reply thereto, award such works or services to any person on the basis of open competitive bidding from amongst bidders who are pre-qualified for undertaking the additional work; provided that the Contractor shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Employer, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Contractor shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof. It is also agreed that the Contractor shall provide assistance and cooperation to the person who undertakes the works or services hereunder, but shall not be responsible for rectification of any Defects and/ or maintenance of works carried out by other agencies.

13.5.2 The works undertaken in accordance with this [Clause 13.5](#) shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes the disruption in operation of the Project Works. The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply *mutatis mutandis* to the works carried out under this [Clause 13.5](#).

13.6 Escalation

No claim on account of any escalation on whatsoever ground shall be entertained at any stage of works. All rates quoted by contractor shall be firm and fixed for entire contract period as well as extended period for completion of the works. No escalation shall be applicable on this contract unless concurred by Employer / Employer's Engineer in the very first place and thereafter approved on case to case basis with complete documentation as desired by Engineer / Employer's Engineer.

13.7 Material(s) supplied by the employer

Employer has the right to procure any of the materials if he desires to supply. A suitable adjustment in the Contract Price shall be decided by the employer.

Annexure I - Change Request (CR)

Doc No: IICC-GEN- CIV-ECR-0001

Scope	Specs	Cost	Time	Function	Design
Project Title:			CR No.:		
Originator:			Initiation Date:		
Employer:			Employer Contact:		

Description:

Justification:

**Time Implication
Cost Implication**

Spec Section: **A. Civil/Site** **B. Structural** **C. Mechanical** **D. Piping**

E. Electrical **F. Architectural** **G. Instrumentation**

**Employer's Engineer (PMC)
Recommendation:**

- Approved
- Conditional Approval
- Rejected :Take no further action

Reason for Rejection:

Employer's Engineer Dy. PD's Sign: _____ **Employer's Engineer PD's Sign:** _____

Date: _____

Employer Approval:

Employer's Observations / Comments:	
Employer's Signature:	Date :

Distribution: Employer, Employer's Engineer, PEAC, etc.

Annexure II - Change Authorization (CA)

Doc No: IICC-GEN- CIV-PCA-0001

Project Title:	CR/PCA No.:
Originator:	Initiation Date:
Employer:	Employer Contact

Description:

Justification:

Reference Documents:

SPECIFICATION SECTION: A. Civil/Site B. Structural C. Mechanical D. Piping
 E. Electrical F. Architectural G. Instrumentation

CR Amount Add Deduct } ₹ _____ Days _____

PCA Add Deduct } ₹ _____ Days _____

Method for Determining Change in the Contract Price

Price Lump Sum	Unit Price	Time & Material
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The Original Contract Price:

Net Change Authorizations previously approved:

Contract Price previous to this CA:

Amount of this CA:

Proposed Revised Contract Price:

Revised date of Substantial Completion:

Signature of EPC Contractor **Date**
Recommendation:

The cost and time impacts together with supporting documentation have been reviewed and are hereby recommended for

Approval	Rejection	the amounts indicated above
<p>Reasons for Approval: A. Employer Request B. Design Revision / Bulletin C. Scope Change D. Differing Site Condition E. Code Change F. RFI Response G. Shop Drawing H. Third Party I. Schedule Acceleration J. Schedule Impact K. Market Condition</p>		
<p>Reasons for Rejection:</p>		

Employer Engineer Team: Dy. Project Director Project Director Date

Employer's Approval

Employer's Observations / Comments :	
Employer's Signature	Date :

Distribution:

1. Employer / Employer's Engineer.
2. EPC Contractor with covering letter with approved authorization to proceed.

ARTICLE-14

14. Maintenance - Deleted

ARTICLE-15

15. Supervision and Monitoring During Maintenance –Deleted

ARTICLE-16

16. Traffic Regulation

16.1 Traffic regulation by the Contractor

- 16.1.1 The Contractor shall take all the required measures and make arrangements for the safety of Users during the construction and maintenance of the Project internal & external adjoining Roads under use during construction or a Section thereof in accordance with the Specifications. It shall provide, erect and maintain all such barricades, signs, markings, flags, and lights as may be required by Good Industry Practice for the safety of the traffic/ users passing through during construction or maintenance at its own cost
- 16.1.2 All works shall be carried out in a manner creating least interference to traffic passing through the Project area or a Section thereof. In sections where maintenance works on the carriageway are taken up, the Contractor shall ensure that proper passage is provided for the traffic. Where it is not possible or safe to allow traffic on part width, a temporary diversion of proper specifications shall be constructed by the Contractor at its own cost. The Contractor shall take prior approval of the Employer's Engineer for any proposed arrangement for traffic regulation/diversion on the adjoining roads during Construction and Maintenance, which approval shall not be unreasonably withheld.

ARTICLE-17

17. Defects Liability

17.1 Defects Liability Period

17.1.1 The Contractor shall be responsible for all the Defects and deficiencies, except usual wear and tear in the Project Works or any Section thereof, till the expiry of a period of 2 (two) years commencing from the date of Provisional Certificate (the "**Defects Liability Period**"). Provided further that in the event no Provisional Certificate is issued, the Defects Liability Period shall commence from the date of the Completion Certificate.

17.1.2 Extension of Defect Liabilities - Deleted.

17.2 Remediating Defects

The Contractor shall repair or rectify all Defects and deficiencies observed by the Employer's Engineer during the Defects Liability Period within a period of 15 (fifteen) days from the date of notice issued by the Employer's Engineer in this behalf, or within such reasonable period as may be determined by the Employer's Engineer at the request of the Contractor, in accordance with Good Industry Practice.

17.3 Cost of remedying Defects

For the avoidance of doubt, any repair or rectification undertaken in accordance with the provisions of [Clause 17.2](#), including any additional testing, shall be carried out by the Contractor at its own risk and cost, to the extent that such rectification or repair is attributable to:

- (a) The design of the Project;
- (b) Plant, Materials or workmanship not being in accordance with this Agreement and the Specifications and Standards;
- (c) Improper maintenance during construction of the Project Works by the Contractor; and/ or
- (d) Failure by the Contractor to comply with any other obligation under this Agreement.

17.4 Contractor's failure to rectify Defects

In the event that the Contractor fails to repair or rectify such Defect or deficiency within the period specified in [Clause 17.2](#), the Employer shall be entitled to get the same repaired, rectified or remedied at the Contractor's cost so as to make the Project Works conform to the Specifications and Standards and the provisions of this Agreement. All costs consequent thereon shall, after due consultation with the Employer and the Contractor, be determined by the Employer's Engineer. The cost so determined and an amount equal to twenty percent of the cost as Damages shall be recoverable by the Employer from the Contractor and may be deducted by the Employer from any monies due to the Contractor.

17.5 Contractor to search cause

17.5.1 The Employer's Engineer may instruct the Contractor to examine the cause of any Defect in the Works or part thereof before the expiry of the Defects Liability Period.

17.5.2 In the event any Defect identified under [Clause 17.5.1](#) is attributable to the Contractor, the Contractor shall rectify such Defect within the period specified by the Employer's Engineer, and shall bear the cost of the examination and rectification of such Defect.

17.5.3 In the event such Defect is not attributable to the Contractor, the Employer's Engineer shall, after due consultation with the Employer and the Contractor, determine the costs incurred by the Contractor on such examination and notify the same to the Contractor, with a copy to the Employer, and the Contractor shall be entitled to payment of such costs by the Employer.

17.6 Extension of Defects Liability Period

The defect Liability period shall be deemed to be extended till the defects identified under [clause 17.2](#) have been remedied.

ARTICLE-18

18. Employer's Engineer

18.1 Appointment of the Employer's Engineer

18.1.1 PMC has already been appointed as Employer's Engineer by the Employer for Program Management, Construction Management Supervision, Commissioning of the IICC Project and be the engineer under this Agreement (the "Employer's Engineer").

18.2 Duties and authority of the Employer's Engineer

18.2.1 The Employer's Engineer shall perform the duties and exercise the authority in accordance with the provisions of their Agreement with Employer to oversee the complete construction management supervision, commissioning of the Project.

18.2.2 Deleted

18.2.3 Deleted

18.3 Delegation by the Employer's Engineer

18.3.1 The Employer's Engineer may, by order in writing, delegate any of his duties and responsibilities to suitably qualified and experienced personnel who are accountable to Employer's Engineer, or may revoke any such delegation, under intimation to the Employer and the Contractor. Provided, however, that the Employer's Engineer shall be responsible and liable for all actions and omissions of such personnel.

18.3.2 Any failure of the Employer's Engineer to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Employer to reject the work, Plant or Materials, which is not in accordance with the provisions of this Agreement and the Specifications and Standards.

18.4 Instructions of the Employer's Engineer

18.4.1 The Employer's Engineer may issue to the Contractor instructions for remedying any Defect. The Contractor shall take such instructions from the Employer's Engineer, or from an assistant to whom appropriate authority has been delegated under Clause 18.3.

18.4.2 The instructions issued by the Employer's Engineer shall be in writing. 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.

18.4.3 In case the Contractor does not receive the confirmation of the oral instruction within the time specified in Clause 18.4.2, the Contractor shall seek the written confirmation of the oral instructions from the Employer's Engineer. The Contractor shall obtain acknowledgement from the Employer's Engineer of the communication seeking written confirmation.

18.4.4 Deleted

18.5 Determination by the Employer's Engineer-Deleted

18.6 Remuneration of the Employer's Engineer

The remuneration, cost and expenses of the Employer's Engineer shall be paid by the Employer as per their already awarded contract.

18.7 Termination of the Employer's Engineer – Deleted

PART IV - FINANCIAL COVENANTS

ARTICLE-19

19. Payments

19.1 Contract Price

- 19.1.1 The Employer shall make payments to the Contractor for the Works on the basis of the EPC price under various heads in Price-Bid, accepted by the Employer in consideration of the obligations specified in this Agreement for an amount of **Rs.** _____ **(Rs** _____ **only)** (The "**Contract Price**"), which shall be subject to adjustments in accordance with the provisions of this Agreement. The Parties further agree that save and except as provided in this Agreement, the Contract Price shall be valid and effective until issue of Completion Certificate.
- 19.1.2 The Contract Price includes all duties, taxes, royalty, GST and fees that may be levied in accordance with the laws and regulations in force as on the Base Date on the Contractor's equipment, Plant, Materials and supplies acquired for the purpose of this Agreement and on the services performed under this Agreement. Nothing in this Agreement shall relieve the Contractor from its responsibility to pay any tax including any tax that may be levied in India on profits made by it in respect of this Agreement. All payments under this Agreement shall be made in Indian Rupees.
- 19.1.3 The Contract Price shall not be adjusted for any change in costs stated in [Clause 19.1.2](#) above, except as stated in [Clause 19.17](#).
- 19.1.4 The Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs, unless otherwise provided for in this Agreement.
- 19.1.5 Unless otherwise stated in this Agreement, the Contract Price covers all the Contractor's obligations for the Works under this Agreement and all things necessary for the Construction and the remedying of any Defects in the Project Works.
- 19.1.6 50% of the payment transactions by employer to contractor, or by contractor to all its sub-contractors, both in value terms as well as in lieu of number of transactions shall be made through ECS/EFT mechanism instead of payments through Cheques.

19.2 Advance Payment

- 19.2.1 The Employer shall make an interest bearing advance payment @ Bank Rate + 10% per annum -(the "Advance Payment"), equal in amount to 10 (ten) percent of the Contract Price, for mobilisation expenses and for acquisition of equipment. The Advance Payment shall be made in three instalments. The first installment shall be an amount equal to 2% (two percent) of the Contract Price, the second installment shall be equal to 3% (Three percent) of the Contract Price, and the third instalment shall be equal to 5% (Five percent) of the Contract Price.
- 19.2.2 The Contractor may apply to the Employer for the first instalment of the Advance Payment at any time after the date of Letter of Award and in 30 days from LOA, along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten per cent) of such instalment, in the form provided at Annex-III of Schedule-G, to remain effective till the complete and full repayment thereof. Excavation has to start immediately at site after 15 days of LOA to make 1st Advance Payment admissible.

At any time after 30 (thirty) days from the date of Letter of Award , the Contractor may apply for the second instalment of the Advance Payment along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten per cent) of such instalment, in the form provided at Annex-III of Schedule-G, to remain effective till the complete and full repayment thereof along with proof of satisfactory utilization of first instalment of the Advance Payment. Contractor has to make Labour camp outside the site, at a location selected by them and concurred by Employer/ Employer's Engineer, set up the site office, all associated utilities at site and bring all the equipments/ machineries at site including Batching Plant, Tower cranes, setting up of site Laboratory. as per approved schedule by the Employer etc. to make 2nd Stage Advance payment, admissible.

At any time, after 60 (sixty) days from the date of letter of Award , the Contractor may apply to the Employer for the third instalment of the Advance Payment along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110%) (one hundred and ten per cent) of such instalment, in the form provided at Annex-III of Schedule-G, to remain effective till the complete and full repayment thereof along with proof of satisfactory utilization of second instalment of the Advance Payment. The Contractor has to place purchase orders as per the approved Project Procurement schedule for the period ending 90(ninety) days from the LOA before making the release of 3rd Stage of Payment admissible.

19.2.3 Deleted

19.2.4 Deleted

19.2.5 The first and the second instalments shall be paid by the Authority to the Contractor within 15 (fifteen) days of the receipt of its respective requests in accordance with the provisions of this [Clause 19.2](#).

19.2.6 Deleted

19.2.7 The advance payment shall be repaid through percentage deductions from the stage payments determined by the Employer/Employer's engineer in accordance with Sub-Clause 19.5, as follows: (a) deductions shall commence in the next Stage Payment Statement following that in which the total of all certified stage payments (excluding the advance payment and deductions and repayments of retention) exceeds 20% (twenty percent) of the Contract Price; and (b) Deductions shall be made at the rate of 10% (ten percent) of each Stage Payment Statement with interest until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid along with interest prior to the time when 80% (80 percent) of the Contract Price has been certified for payment.

19.2.8 If the Advance Payment has not been fully repaid prior to Termination under [Clause 21.7](#) or [Article 23](#), as the case may be, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Authority. Without prejudice to the provisions of [Clause 19.2.7](#), in the event of Termination for Contractor Default, the Advance Payment shall be deemed to carry interest at the rate of 10% (ten per cent) per annum from the date of Advance Payment to the date of recovery by encashment of the Bank Guarantee for the Advance Payment. For the avoidance of doubt, the aforesaid interest shall be payable on each instalment of the Advance Payment, regardless of whether the instalment or any part thereof has been repaid to the Authority prior to Termination.

19.3 Procedure for estimating the payment for the Works

19.3.1 The Employer shall not make interim payments to the Contractor before completion of a stage.

19.3.2 The Contractor shall base its claim for interim payment for the stages completed till the end of the previous month for which the payment is claimed, valued in accordance with [Clause 19.3.1](#), supported with necessary particulars and documents in accordance with this Agreement.

19.3.3 Any reduction in the Contract Price arising out of Change of Scope or the works withdrawn under [Clause 8.3](#) shall not affect the amounts payable for the items or stage payments thereof which are not affected by such Change of Scope or withdrawal.

19.4 Stage Payment Statement for Works

The contractor shall submit a monthly stage payment statement, towards cash flow approval, on the basis of approved resource schedule which shall be incorporated in the Agreement within 30 days of LOA

19.5 Stage Payment for Works

19.5.1 On the basis of this “Stage Payment Statement”, Contractor will put-up by the **seventh** day of the month quantity statement for all the items of works as per the approved stage payment statement.

Quantity statement of each month shall be prepared with end of the previous month as cut off for measurement consideration. The stage payment Statement of each month shall be accompanied with the progress reports and any supporting documents including all mandatory Labour compliances and obligations. The contractor shall not submit any claim for incomplete stages of work.

The corrections of the statement shall be verified by Employer in 21 working days. The Invoice (3 copies) shall be submitted on the basis of the verified statement as per the Schedule-O and the payment shall be released in 14 working days of the Invoice Submission.

19.5.2 Within 15 (fifteen) days of the receipt of the Stage Payment Statement referred to in [Clause 19.4](#), the Employer/Employer’s engineer shall determine and shall deliver to the Contractor an IPC certifying the amount due and payable to the Contractor, after adjusting the payments already released to the Contractor against the said statement. For the avoidance of doubt, the Parties agree that the IPC shall specify all the amounts that have been deducted from the Stage Payment Statement and the reasons therefor.

19.5.3 In cases where there is a difference of opinion as to the value of any stage, the Employer’s Engineer’s view shall prevail and interim payments shall be made to the Contractor on this basis; provided that the foregoing shall be without prejudice to the Contractor’s right to raise a Dispute.

19.5.4 The Employer's Engineer may, for reasons to be recorded, withhold from payment:

- (a) the estimated value of work or obligation that the Contractor has failed to perform in accordance with this Agreement and the Employer's Engineer had notified the Contractor; and
- (b) The estimated cost of rectification of work done being not in accordance with this Agreement.

- (c) non-Compliances of Non-conformance
- (d) Deduction due to safety score as per Audit rating

19.5.5 Payment by the Employer shall not be deemed to indicate the Employer's acceptance, approval, consent or satisfaction with the work done.

19.5.6 Payments against supply of Capital Goods/ Equipments/ Machinery at site as per approved Procurement Schedule/ plan

- a) On receipt at site with signed invoices, all bills of lading / airway/ certificate of origin /packing list/ phytosanitary certificate / Inspection release note/ quality tests reports – 65% of Invoice.
- b) On Installation complete in all respects – 25% of Invoice Value.
- c) On integrated Testing & Commissioning – 5 % of Invoice Value.
- d) On handing over – 5% of Invoice value.

19.5.7 Payments against – steel, cement, Structural Steel – at site as per approved Procurement Plan - 75% on receipt at site. (As advance)

This advance shall be recovered from the stage payment bill subsequent to the month, followed by next month of the delivery month.

19.5.8 All the Invoices for Items in [Clause 19.5.6](#), [19.5.7](#) have to be provided with Input Tax credit, if any, to the Employer.

19.5.9 If there are benefits from Imports the same have to be passed on the Employer under any Scheme, wherever as applicable.

19.6 Deleted

19.7 Deleted

19.8 Deleted

19.9 Time of payment and interest

19.9.1 The Employer shall pay to the Contractor any amount due under any payment certificate issued by the Employer's Engineer in accordance with the provisions of this [Article 19](#), or in accordance with any other clause of this Agreement as follows:

- (a) payment shall be made no later than 35 (thirty five) working days from the date of submission of the Stage Payment Statement by the Contractor to the Employer's Engineer for certification in accordance with the provisions of [Clause 19.4](#) for an IPC; provided that, in the event the IPC is not issued by the Employer's Engineer within the aforesaid period of 35 (thirty five) days, the Employer shall pay the amount shown in the Contractor's Stage Payment Statement and any discrepancy therein shall be added to, or deducted from, the next payment certificate issued to the Contractor; and

- (b) payment shall be made no later than 35 (thirty five) working days from the date of submission of the Final Payment Certificate for Works along with the discharge submitted to the Employer's Engineer in accordance with the provisions of [Clause 19.15](#) for certification.

19.9.2 In the event of the failure of the Employer to make payment to the Contractor within the time period stated in this [Clause 19.9](#), the Employer shall be liable to pay to the Contractor interest at the Bank Rate plus 2% (two percent), calculated at quarterly rests, on all sums remaining unpaid from the date on which the same should have been paid, calculated in accordance with the provisions of [Clause 19.9.1\(a\)](#) and (b) and till the date of actual payment.

19.10 Deleted

19.11 Deleted

19.12 Deleted

19.13 Final Payment Statement

19.13.1 Within 60 (sixty) days after receiving the Completion Certificate under [Clause 12.4](#), the Contractor shall submit to the Employer's Engineer for consideration six copies of a Final Payment Statement (the "**Final Payment Statement**") for Works, with supporting documents showing in detail, in the form prescribed by the Employer's Engineer:

- (a) the summary of Contractor's Stage Payment claims for Works as submitted in accordance with [Clause 19.4](#);
- (b) the amounts received from the Employer against each claim; and
- (c) any further sums which the Contractor considers due to it from the Employer.

If the Employer's Engineer disagrees with or cannot verify any part of the Final Payment Statement, the Contractor shall submit such further information as the Employer's Engineer may reasonably require. The Employer's Engineer shall deliver to the Employer:

- (i) an IPC for those parts of the Final Payment Statement which are not in dispute, along with a list of disputed items which shall then be settled in accordance with the provisions of [Article 26](#); or
- (ii) a Final Payment Certificate in accordance with [Clause 19.15](#) if there are no disputed items.

19.13.2 If the Employer's Engineer does not prescribe the form referred to in [Clause 19.13.1](#) within 15 (fifteen) of the date of issue of the Completion Certificate, the Contractor shall submit the statement in such form as it deems fit.

19.14 Discharge

Upon submission of the Final Payment Statement for Works under [Clause 19.13](#), the Contractor shall give to the Employer, with a copy to the Employer's Engineer, a written discharge confirming that the total of the Final Payment Statement represents full and final settlement of all monies due to the Contractor in respect of this Agreement for all the Works arising out of this Agreement, except for any monies due to either Party on account of any

Defect. Provided that such discharge shall become effective only after the payment due has been made in accordance with the Final Payment Certificate issued pursuant to [Clause 19.15](#).

19.15 Final Payment Certificate

19.15.1 Within 30 (thirty) days after receipt of the Final Payment Statement for Works under [Clause 19.13](#), and the written discharge under [Clause 19.14](#), and there being no disputed items of claim, the Employer's Engineer shall deliver to the Employer, with a copy to the Contractor, a final payment certificate (the "**Final Payment Certificate**") stating the amount which, in the opinion of the Employer's Engineer, is finally due under this Agreement or otherwise. For the avoidance of doubt, before issuing the Final Payment Certificate, the Employer's Engineer shall ascertain from the Employer all amounts previously paid by the Employer and for all sums to which the Employer is entitled, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be.

19.15.2 The Employer shall, in accordance with the provisions of [Clause 19.9](#), pay to the Contractor the amount which is stated as being finally due in the Final Payment Certificate.

19.16 Deleted

19.17 Change in law/Taxes

19.17.1 If as a result of Change in taxes, 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 Employer's Engineer of such additional cost due to Change in taxes during the currency of the project.

19.17.2 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 Employer's Engineer of such reduction in cost due to Change in Law.

19.17.3 The Employer's Engineer shall, within 15 (fifteen) 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.

19.18 Correction of Interim Payment Certificates

The Employer's Engineer may by an Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate issued by the Employer's Engineer.

19.19 Employer's claims

If the Employer considers itself to be entitled to any payment from the Contractor under any Clause of this Agreement, it shall give notice and particulars to the Contractor 20 (twenty) days before making the recovery from any amount due to the Contractor, and shall take into consideration the representation, if any, made by the Contractor in this behalf, before making such recovery.

19.20 Bonus for early completion

In the event that the Project Completion Date occurs prior to the Scheduled Completion Date, the Contractor shall be entitled to receive a payment of bonus equivalent to 1% (one per cent) calculated on monthly basis of the Contract Price by which the Project Completion Date precedes the Scheduled Completion Date, but subject to a maximum of 6 % (six per cent) of the Contract Price. Provided, however, that the payment of bonus, if any, shall be made only after the issue of the Completion Certificate. For the avoidance of the doubt, the Parties agree that for the purpose of determining the bonus payable hereunder, the Contract Price shall always be deemed to be the amount specified in Clause 19.1.1, and shall exclude any revision thereof for any reason. The Parties also agree that bonus shall be payable only if each work for which Extension of Time has been granted is completed within respective Extended Time.

19.21 Liquidated Damages – The contractor shall pay a penalty at rate of 0.5% (half percent) of the total contract price applicable for every week of delay in completion date or part thereof subject to a maximum of 10% of the total contract value.

19.22 Opening of Separate Bank Account for the Project

The Contractor shall be registered with separate account with a nationalized or commercial Scheduled Bank for the purpose of receiving all the payments under the Contract and for utilization of payments received from the Employer for disbursement to sub-contractors, sub-vendors, PRW's, suppliers etc. for this contract. The Contractor shall maintain separate books of account for all payments under this contract and the Employer shall have access to it at all times.

For tracking of utilization of funds received from the Employer, the Contractor shall submit a monthly statement by 7th of every month to the Employer / Employer's Engineer certifying the transactions pertaining to the above account along with the purpose of such transactions.

In case the Contractor wants to withdraw funds from the above bank account for any purpose other than the Contract, the contractor shall be required to submit an undertaking to the Employer / Employer's Engineer certifying that all due statutory payments, labour payments and payments to all his sub-contractors/ vendors have been disbursed by him corresponding to the total payment received under the contract.

19.23 Deductions of amount in relation with poor Safety Score

Sr.	Score	Description	Action
1	< 70%	Site is poorly managed from Safety perspectives	Needs definite improvement measures (deduction of 2% in the overall Bill) –subject to no limit.
2	> 70 to 80%	Just adequate management from safety perspectives	Definitely needs improvement (deduction of 1% from the overall bill)
3	> 80 to 90%	Good Management from Safety Aspects.	Scope of Further improvement (hold of 0.5% from the overall bill till the contractor achieves the higher rating)
4	> 90 to 100%	Excellent management from Safety aspects	Continue with Current Practices

19.24 Ccompliance of Non-Conformance

Amount withheld due to pending compliance of Non-Conformance (during the Billing Period)

The Non-Conformance shall be divided into two categories –

- a) Minor Non- Conformance – Any localized defects which can be rectified easily like surface finish, minor bulging, minor welding defects, minor paint defects etc. if not closed then an amount of Rs. 50,000 per occurrence shall be withheld.
- b) Major Non- Conformance – For major defects, an amount of Rs. 5,00,000 per occurrence shall be withheld.

19.25 Taxes and duties

- a) The contract price is inclusive of all taxes, duties, cess and statutory levies payable under any law by the contractor in connection with execution of the contract. In case of change in rate of tax or any provision relating to levy of tax resulting in increase in burden of tax on the contractor, the contractor shall not be entitled to receive any compensation for such increase in quantum of tax payable by the contractor. Similarly, no recovery shall be made from the contractor on account of decrease of rate of tax or any provision relating to levy of tax.
- b) Notwithstanding anything contained in clause a) above, the contractor shall ensure payment of appropriate tax on the supplies made under the contract. The contractor shall take registration under the applicable enactment levying tax on supply of goods or services under the contract and issue invoice having all the particulars prescribed under the applicable provisions of the law, including. description of goods/services, rate and amount of tax paid or payable on the supplies made under the contract, so that Employer can avail credit of such tax, wherever applicable. The contractor shall comply with all applicable provision of Goods and Service Tax (GST) levied by Union Government and State Governments (CGST, UTGST, SGST and IGST). The contractor shall get himself registered and discharge his obligations for payment of taxes, filing of returns etc. under the appropriate provisions of law in respect of all the tax, duties, levies, cess, etc. Employer would have right to seek necessary evidence that the contractor is registered under the law and duly discharging its obligations under the tax law, enabling Employer to avail input tax credit.
- c) In case any law requires Employer to pay tax on the contract price on reverse charge basis, the amount of tax deposited by Employer would be considered as paid to the contractor and, accordingly, the price payable to the contractor would stand reduced to that extent.
- d) In case the contractor does not deposit the tax payable on execution of the contract, or has not provided the tax invoice to Employer showing the amount of tax, or has not uploaded the document in computerized tax network as per prevailing law, leading to non-availability of inputs credit of the tax to Employer, the amount equivalent to such tax shall be deducted from the contract price.
- e) Stamp duty and registration charges, if any, payable on the executed contract document, shall be borne by the contractor.
- f) Tax deduction at source, if any, shall be made by Employer as per law applicable from time to time from the amount payable to the contractor.

- g) The Contractor would be liable to reimburse or make it good of any loss/ claim by Employer towards tax credit rejected/ disallowed by any of the tax authorities due to non-deposit of taxes or non-compliance of tax laws by the Contractor.
- h) The Contractor will be under obligation for charging correct rate of tax as prescribed under the respective tax laws. Further the Contractor shall avail and pass on benefits of all exemptions/ concessions available under tax laws.

ARTICLE-20

20. Insurance

20.1 Insurance for Works

20.1.1 The Contractor shall effect and maintain at its own cost the insurances specified in Schedule-P and as per the requirements under the Applicable Laws.

20.1.2 Subject to the provisions of [Clause 21.6](#), 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 [Article 20](#) or cannot be recovered from the insurers.

20.1.3 Subject to the exceptions specified in [Clause 20.1.4](#) 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.

20.1.4 Notwithstanding anything stated above in [Clause 20.1.3](#), 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.

20.1.5 Without prejudice to the obligations of the Parties as specified under [Clauses 20.1.3](#) and [20.1.4](#), the Contractor shall maintain or effect such third party insurances as may be required under the Applicable Laws.

- 20.1.6 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 5% (five per cent) of the Contract Price and shall be maintained until the end of the Defects Liability Period.
- 20.1.7 Transit Insurances including marine, air and rail or any other kind of transportation in India or Outside India shall be covered by the Contractor for a value (Rs. 50 crore – for total value of goods moving at one point of time) such that nothing within the project scope is left uncovered.
- 20.1.8 Motor Vehicle liability Insurances. - Contractor shall take out Insurance to cover all risks to Owner for each of his vehicles plying on works of this contract and these insurances shall be valid for the total contract period. No extra payment will be made for this insurance. Owner shall not be liable for any damage or loss not made good by the Insurance Company, should such damage or loss result from unauthorized use of the vehicle. The provisions of the Motor Vehicle Act would apply.
- 20.1.9 Latent Defect Insurances for a period of 10 years after completion certificate for all electro-mechanical equipments or machineries which are the part of all utility services of the project Infrastructure equivalent to 0.25% (Zero Point Two five Percent) of the contract value.

20.2 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 [Article 20](#). 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.

20.3 Evidence of Insurance Cover

- 20.3.1 All insurances obtained by the Contractor in accordance with this [Article 20](#) 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 notarised 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 nonrenewal 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.
- 20.3.2 The Contractor shall ensure the adequacy of the insurances at all times in accordance with the provisions of this Agreement.

20.4 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.

20.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Contractor pursuant to this [Article 20](#) 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.

20.6 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.

20.7 Cross liabilities

Any such insurance maintained or effected in pursuance of this [Article 20](#) shall include a cross liability clause such that the insurance shall apply to the Contractor and to the Employer as separately insured.

20.8 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.

20.9 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 [Article 20](#). Provided that for the purposes of this [Clause 20.9](#), 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 20.9](#) 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, when required, such policy of insurance and the receipt for payment of the current premium within 10 (ten) days of such demand being made by the Employer.

20.10 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.

20.11 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 affected in accordance with this Agreement.

The contractor shall at all times indemnify the Employer and Owner against all claims, damages or compensation under the provision of Payment of wages act-1936, Minimum Wages Act-1948, Employer's liability Act-1938, the workmen's compensation Act-1947, Industrial Disputes Act-1947 and Maternity Benefit Act-1961 or any modifications thereof or any other law in force or as consequence of any accident or injury to any workman or other persons in or about the works, whether in the employment of the contractor or not, against all costs, charges and expenses of any suit, action or proceedings arising out of such incident or injury and against all sum or sums which may with the consent of the contractor be paid to compromise or compound any such claim. Without limiting his obligations and liabilities as above provided, the contractor shall insure against all claims, damages or Compensation payable under the Workmen's Compensation Act 1923 or any modification thereof or any other law relating thereto.

PART V - FORCE MAJEURE AND TERMINATION

ARTICLE-21

21. Force Majeure

21.1 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 21.2, 21.3](#) and [21.4](#) 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.

21.2 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, Sub-contractors 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 21.3](#);
- (c) any failure or delay of a Sub-contractor but only to the extent caused by another Non-Political Event;
- (d) any judgment or order of any court of competent jurisdiction or statutory authority 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; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

21.3 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;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

21.4 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 19.17](#);
- (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 unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, 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, licence, authorisation, 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
- (e) any event or circumstances of a nature analogous to any of the foregoing.

21.5 Duty to report Force Majeure Event

21.5.1 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 [Article 21](#) 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.

21.5.2 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.

21.5.3 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 21.5.1](#), and such other information as the other Party may reasonably request the Affected Party to provide.

21.6 Effect of Force Majeure Event on the Agreement

21.6.1 Upon the occurrence of any Force Majeure after the Date of 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.

21.6.2 Save and except as expressly provided in this [Article 21](#), 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.

21.6.3 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.

21.7 Termination Notice for Force Majeure Event

21.7.1 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 [Article 21](#), 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.

21.8 Termination Payment for Force Majeure Event

21.8.1 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 23.5](#).

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.

21.8.2 If Termination is on account of an Indirect Political Event, the Termination Payment shall include:

- (a) any sums due and payable under [Clause 23.5](#); 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;

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.

21.8.3 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 23.6.2](#) as if it were an Employer Default.

21.9 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.

21.10 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.

ARTICLE -22

22. Suspension of Contractor's Rights

22.1 Suspension upon Contractor Default

Upon occurrence of a Contractor Default, the Employer shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend carrying out of the Works or any part thereof, and (ii) carry out such Works itself or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Employer to the Contractor and may extend up to a period not exceeding 90 (ninety) days from the date of issue of such notice.

22.2 Employer to act on behalf of Contractor

During the period of Suspension hereunder, all rights and liabilities vested in the Contractor in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Employer for discharging the obligations of the Contractor under and in accordance with this Agreement shall be deemed to have been done or taken for and on behalf of the Contractor and the Contractor undertakes to indemnify the Employer for all costs incurred during such period. The Contractor hereby licences and sub-licences respectively, the Employer or any other person authorised by it under [Clause 22.1](#) to use during Suspension, all Intellectual Property belonging to or licenced to the Contractor with respect to the Project Works and its design, engineering, construction, and which is used or created by the Contractor in performing its obligations under the Agreement.

22.3 Revocation of Suspension

22.3.1 In the event that the Employer shall have rectified or removed the cause of Suspension within a period not exceeding 60 (sixty) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Employer may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

22.3.2 Upon the Contractor having cured the Contractor Default within a period not exceeding 60 (sixty) days from the date of Suspension, the Employer shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement.

22.4 Termination

22.4.1 At any time during the period of Suspension under this [Article 22](#), the Contractor may by notice require the Employer to revoke the Suspension and issue a Termination Notice. The Employer shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with [Article 23](#).

22.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 90 (ninety) days from the date of Suspension hereunder, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Employer upon occurrence of a Contractor Default.

ARTICLE-23

23.0 Termination

23.1 Termination for Contractor Default

23.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Contractor fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, 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. The defaults referred to herein shall include:

- (a) the Contractor fails to provide, extend or replenish, as the case may be, the Performance Security in accordance with this Agreement;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with [Clause 7.3](#), the Contractor fails to cure, within a Cure Period of 30 (thirty) days, the Contractor Default for which the whole or part of the Performance Security was appropriated;
- (c) the Contractor does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-J, subject to any Time Extension, and continues to be in default for 45 (forty-five) days;
- (d) the Contractor abandons or manifests intention to abandon the construction or Maintenance of the Project Works without the prior written consent of the Employer;
- (e) the Contractor fails to proceed with the Works in accordance with the provisions of [Clause 10.1](#) or stops Works for 30 (thirty) days without reflecting the same in the current programme and such stoppage has not been authorised by the Employer's Engineer;
- (f) the Project Completion Date does not occur within the period specified in Schedule-J for the Scheduled Completion Date, or any extension thereof;
- (g) failure to complete the Punch List items within the periods stipulated therefor in [Clause 12.2.1](#);
- (h) 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 Employer's Engineer;
- (i) the Contractor subcontracts the Works or any part thereof in violation of this Agreement or assigns any part of the Works without the prior approval of the Employer;
- (j) the Contractor creates any Encumbrance in breach of this Agreement;
- (k) an execution levied on any of the assets of the Contractor has caused a Material Adverse Effect;
- (l) the Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Contractor or for the whole or material part of its assets that has a material bearing on the Project;
- (m) 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;

- (n) a resolution for winding up of the Contractor is passed, or any petition for winding up of the Contractor is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Contractor is ordered to be wound up by court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Contractor are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Contractor under this Agreement; and provided that:
 - (i) The amalgamated or reconstructed entity has the capability and experience necessary for the performance of its obligations under this Agreement; and
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Contractor as at the Appointed Date;
- (o) 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;
- (p) 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;
- (q) the Contractor has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (r) 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.

23.1.2 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.

23.1.3 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, Contractor's documents and other design documents made by or on behalf of the Contractor.

23.2 Termination for Employer Default

23.2.1 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 commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Contractor;

- (b) the Employer has failed to make payment of any amount due and payable to the Contractor within the period specified in this Agreement;
- (c) the Employer has failed to provide, within a period of 180 (one hundred and eighty) days from the date of Letter of Award, the environmental clearances required for construction of the Project Works;
- (d) 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
- (e) the Employer's Engineer fails to issue the relevant Interim Payment Certificate within 60 (sixty) days after receiving a statement and supporting documents.

23.2.2 Without prejudice to any other right or remedy which the Contractor may have under this Agreement, upon occurrence of an Employer 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.

23.3 Termination for Employer's convenience

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

23.4 Requirements after Termination

Upon Termination of this Agreement in accordance with the terms of this [Article 23](#), the Contractor shall comply with and conform to the following:

- (a) deliver to the Employer all Plant and Materials which shall have become the property of the Employer under this [Article 23](#);
- (b) deliver all relevant records, reports, Intellectual Property and other licences pertaining to the Works, other design documents and in case of Termination occurring after the Provisional Certificate has been issued, the "as built" Drawings for the Works;
- (c) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws; and
- (d) vacate the Site within 15 (fifteen) days.

23.5 Valuation of Unpaid Works

23.5.1 Within a period of 45 (forty-five) days after Termination under [Clause 23.1](#), [23.2](#) or [23.3](#), as the case may be, has taken effect, the Employer's Engineer shall proceed in accordance with [Clause 18.5](#) to determine as follows the valuation of unpaid Works (the "**Valuation of Unpaid Works**"):

- (a) value of the completed stage of the Works, less payments already made;
- (b) 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

23.5.2 The Valuation of Unpaid Works shall be communicated to the Employer, with a copy to the Contractor, within a period of 30 (thirty) days from the date of Termination.

23.6 Termination Payment

23.6.1 Upon Termination on account of Contractor's Default under [Clause 23.1](#), the Employer shall:

- (a) encash and appropriate the Performance Security and Retention Money, or in the event the Contractor has failed to replenish or extend the Performance Security, claim the amount stipulated in [Clause 7.1.1](#), as agreed pre-determined compensation to the Employer for any losses, delays and cost of completing the Works, if any;
- (b) encash and appropriate the bank guarantee, if any, for and in respect of the outstanding Advance Payment and interest thereon; and
- (c) 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.

23.6.2 Upon Termination on account of an Employer Default under [Clause 23.2](#) or for Employer's convenience under [Clause 23.3](#), 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 Employer's Engineer, 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 Employer's Engineer; and
 - (iv) 10% (ten per cent) of the cost of the Works that are not commenced or not completed, 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.

23.6.3 Termination Payment shall become due and payable to the Contractor within 30 (thirty) days of a demand being made by the Contractor to the Employer with the necessary particulars, and in the event of any delay, the Employer shall pay interest at the Base Rate plus 2% (two percent), calculated at quarterly rests, on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. 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.

23.6.4 The Contractor expressly agrees that Termination Payment under this [Article 23](#) 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.

23.7 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 23.6](#)
- (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.

23.8 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, Retention Moneys, 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.

PART VI - OTHER PROVISIONS

ARTICLE-24

24. Assignment and Charges

24.1 Restrictions on assignment and charges

This Agreement shall not be assigned by the Contractor to any person, save and except with the prior consent in writing of the Employer, which consent the Employer shall be entitled to decline without assigning any reason.

24.2 Deleted

ARTICLE-25

25. Liability and Indemnity

25.1 General indemnity

25.1.1 The Contractor will indemnify, defend, save and hold harmless the Employer, Employer's Engineer and its officers, servants, agents, Government Instrumentalities 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.

25.2 Indemnity by the Contractor

25.2.1 Without limiting the generality of [Clause 25.1](#), 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:

- (a) failure of the Contractor to comply with Applicable Laws and Applicable Permits;
- (b) 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
- (c) 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.

25.2.2 Without limiting the generality of the provisions of this [Article 25](#), the Contractor shall fully indemnify, hold harmless and defend the Employer Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Employer Indemnified Persons may hereafter suffer, or pay by reason of 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 licence, at no cost to the Employer, authorising continued use of the infringing work. If the Contractor is unable to secure such licence 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.

25.3 Notice and contest of claims

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 [Article 25](#) (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.

25.4 Defence of claims

25.4.1 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 [Article 25](#), 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 defence. 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.

25.4.2 If the Indemnifying Party has exercised its rights under [Clause 25.3](#), 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).

25.4.3 If the Indemnifying Party exercises its rights under [Clause 25.3](#), 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 authorised 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 defence 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 25.4.3](#) shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence 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.

25.5 No consequential claims

Notwithstanding anything to the contrary contained in this [Article 25](#), the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

25.6 Survival on Termination

The provisions of this [Article 25](#) shall survive Termination.

ARTICLE-26

26. Dispute Resolution

26.1 Dispute Resolution

26.1.1 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 26.2](#).

26.1.2 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.

26.2 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 CEO 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 26.1.1](#) 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 26.3](#).

26.3 Arbitration

26.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 26.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with [Clause 26.3.2](#). 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 and Conciliation Act 1996. The venue of such arbitration shall be [New Delhi], and the language of arbitration proceedings shall be English.

26.3.2 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.

26.3.3 The arbitrators shall make a reasoned award (the "Award"). Any Award made in an arbitration held pursuant to this [Article 26](#) 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.

- 26.3.4 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.
- 26.3.5 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.
- 26.3.6 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.

26.4 Adjudication by Regulatory Authority, Tribunal or Commission

In the event of constitution of a statutory regulatory authority, 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 26.3](#), 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.

ARTICLE-27

27. Miscellaneous

27.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at [New Delhi] shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

27.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

27.3 Delayed payments – Deleted

27.4 Waiver

27.4.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement: -

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

27.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

27.5 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Employer or the Employer's Engineer of any Document or Drawing submitted by the Contractor nor any observation or inspection of the construction, or maintenance of the Project Works nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Contractor from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Employer shall not be liable to the Contractor by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

27.6 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

27.7 Survival

27.7.1 Termination shall:

- (a) not relieve the Contractor or the Employer, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

27.7.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

27.8 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

For the avoidance of doubt, the Parties hereto agree that any obligations of the Contractor arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

27.9 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

27.10 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

27.11 Third parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

27.12 Successors and assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

27.13 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Contractor, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Contractor may from time to time designate by notice to the Employer; provided that notices or other communications to be given to an address outside New Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the person as the Contractor may from time to time designate by notice to the Employer;

- (b) in the case of the Employer, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Managing Director with a copy delivered to the Employer Representative or such other person as the Employer may from time to time designate by notice to the Contractor; provided that if the Contractor does not have an office in New Delhi it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

27.14 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

27.15 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

27.16 Confidentiality

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.

27.17 Copyright and Intellectual Property rights

27.17.1 As between the Parties, the 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. The Contractor shall be deemed (by signing this Agreement) 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 this Agreement, including replacements of any computers supplied by the Contractor:

27.17.2 The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Employer for purposes other than those permitted under this [Clause 27.17](#).

27.17.3 As between the Parties, the Employer shall retain the copyright and other intellectual property rights in this Agreement and other documents made by (or on behalf of) the Employer. The Contractor may, at its cost, copy, use, and obtain communication of these documents for the purposes of this Agreement. They shall not, without the Employer's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the contract.

27.18 Limitation of Liability

27.18.1 Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with this Agreement, save and except as provided under [Articles 23](#) and [25](#)

27.18.2 The total liability of one Party to the other Party under and in accordance with the provisions of this Agreement, save and except as provided in [Articles 23](#) and [25](#), shall not exceed the Contract Price. For the avoidance of doubt, this Clause shall not limit the liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party causing any losses or damages or bodily injury or death to the other Party's and its personnel, officers etc.

ARTICLE -28

28. Definitions

28.1 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:

"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;

"Advances" shall have the aggregate Advance Payment;

"Advance Payment" shall have the meaning set forth in [Clause 19.2](#);

"Affected Party" shall have the meaning set forth in [Clause 21.1](#);

"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);

"Agreement" means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

"Applicable Laws" means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, 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;

"Applicable Permits" means all clearances, licences, permits, authorisations, 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;

"Approval or Approved" means Approval in writing including subsequent written confirmation of previous verbal approval.

"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;

"Employer" shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals and as DMICDC/SPV/Engineer-in-charge/client/owner. **DMICDC** shall mean **Delhi Mumbai Industrial Corridor Development Corporation Limited** a company registered under the Indian Company Act 1956, with its registered office at Room No. 341B, 3rd Floor Hotel Ashoka, Diplomatic Enclave, 50B, Chanakyapuri, New Delhi 110021 or its Administrative officers or its engineer or other employees authorized to deal with any matter with which these persons are concerned on its behalf

"Employer Default" shall have the meaning set forth in [Clause 23.2](#);

"Employer's Engineer" shall have the meaning set forth in [Clause 18.1](#) and is PMC for the project. It means any firm appointed by Employer to perform all the requirements of design – management, construction and project management till the Testing, commissioning and

handing over including the contract period upto defects liability.

"Employer Representative" means such person or persons as may be authorised in writing by the Employer to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Employer under this Agreement;

"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;

"Bank Rate" means the Repo rate of interest announced by the Reserve Bank of India for all its lending operations on the Base Date;

"Base Date" means the last date of that calendar month, which date precedes the Bid Due Date by at least 28 (twenty-eight) days;

"Battery Limit" shall mean the demarcated area within which the Project is to be located;

"Bid" means the documents in their entirety comprised in the bid submitted by the [selected bidder/Consortium] in response to the Request for Proposals in accordance with the provisions thereof;

"Bidder or Applicant or tenderer or Contractor" means the Person or Firm or Company or Consortium submitting a bid/Tender

"Bid Security" means the bid security provided by the bidder or Contractor to the Employer in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

"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 judgement 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;

"Change of Scope" shall have the meaning set forth in [Article 13](#);

"Change of Scope Notice" shall have the meaning set forth in [Clause 13.2.1](#);

"Change of Scope Order" shall have the meaning set forth in [Clause 13.2.4](#);

"Completion Certificate" shall have the meaning set forth in [Clause 12.4](#);

"Consortium" means the consortium of entities which have formed a joint venture for implementation of this Project;

"Construction" shall have the meaning set forth in [Clause 1.2.1 \(f\)](#);

"Construction Period" means the period commencing from the Date of Letter of Award and ending on the date of the issuance of Completion Certificate;

"Contract Price" means the amount specified in [Clause 19.1.1](#);

"Contractor" shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

"Contractor Default" shall have the meaning set forth in [Clause 23.1](#);

"Contractor's Equipment" means all machinery, apparatus, appliances, other things of whatsoever nature required for purpose of the Contract, including without limitation, Contractor's Plant and Equipment, or Materials to or from the Site, but does not include Plant, or Materials intended to form or forming part of the Permanent Works.

"Cure Period" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation subject to terms of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Contractor requires any reasonable action by the Contractor that must be approved by the Employer or the Employer's Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Employer or the Employer's Engineer to accord their approval;

This definition may be omitted if the Contractor is not a Consortium.

"Damages" shall have the meaning set forth in paragraph (w) of [Clause 1.2.1](#);

"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;

"Designer" means the Contractor, or part of the group forming the contractor, person, firm or company or group of companies, or any replacement, carrying out the Design of Works or part thereof.

"Defects Liability Period" shall have the meaning set forth in [Clause 17.1](#) is of Two years after Completion.;

"Dispute" shall have the meaning set forth in [Clause 26.1.1](#);

"Dispute Resolution Procedure" means the procedure for resolution of Disputes set forth in [Article 26](#);

"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;

"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;

"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;

"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 [Clause 9.1](#);

"**EPC**" means engineering, procurement and construction;

"**Extended Time**" shall mean the extension of time granted beyond scheduled completion date in accordance with [Clause 10.5.1](#);

"**Final Payment Certificate**" shall have the meaning set forth in [Clause 19.15.1](#);

"**Final Payment Statement**" shall have the meaning set forth in [Clause 19.13.1](#);

"**Force Majeure**" or "**Force Majeure Event**" shall have the meaning ascribed to it in [Clause 21.1](#);

"**GAD**" or "**General Arrangement Drawings**";

"**GOI**" or "**Government**" means the Government of India;

"**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 and which would be expected to result in the performance of its obligations by the Contractor in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

"**Government Instrumentality**" means any department, division or sub-division of the Government or the State Government and includes any commission, board, authority, agency or municipal and other local authority 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;

"**IRC**" means the Indian Roads Congress;

"**Indemnified Party**" means the Party entitled to the benefit of an indemnity pursuant to [Article 25](#);

"**Indemnifying Party**" means the Party obligated to indemnify the other Party pursuant to [Article 25](#);

"**Indirect Political Event**" shall have the meaning set forth in [Clause 21.3](#);

"**Insurance Cover**" means the aggregate of the maximum sums insured under the insurances taken out by the Contractor pursuant to [Article 20](#), and includes all insurances required to be taken out by the Contractor under [Clauses 20.1](#) and [20.9](#) 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;

"**Integrated Testing**" in the contracts where applicable means the programme of tests performed by the Contractor at the direction of the Engineer following satisfactory completion of Contractor's tests on all of his equipments, sub-systems or system to verify and confirm the compatibility and compliant performance of his equipment/ sub-system/ system with the equipment/ sub-system/ system provided by others.

"**Milestone Certificate**" means the certificate to be issued by the Engineer in relation to the achievement or otherwise of Milestones.

"**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;

"Interest" wherever applicable shall mean simple interest at the Base Rate announced by State Bank of India as on last date of previous calendar month.

"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;

"IS" means the **Indian Standard of Bureau of India Standards**

"Lead Member" shall, in the case of a consortium, mean the member of such consortium who shall have the authority to bind the contractor and each member of the Consortium; and shall be deemed to be the Contractor for the purposes of this Agreement;

"LOA" or means the **"Letter of Award"**;

"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;

"Materials" are all the supplies used by the Contractor for incorporation in the Works or for the maintenance of the Project Works;

"Mechanical Completion" shall mean the installation of all equipment and facilities and the completion of all Works required to complete the Unit(s) in all respects, and thereafter the completion of all activities to be performed by the Contractor including Pre-commissioning and Start up activities, completion of all punch list items as provided by Employer/ Employer's Engineer and/or Statutory bodies Pollution Control Authorities etc.

"MORTH" means the Ministry of Road Transport and Highways or any substitute thereof dealing with Highways;

"Non-Political Event" shall have the meaning set forth in [Clause 21.2](#);

"Operator" shall be appointed by the Employer during the design phase of EPC Contractor. Their main work shall start after the commissioning of the project for organizing events round the year in order to derive revenue for Employer out of such activities. They will be part of the design process. They will work during the construction period of 20 (twenty) months as per their scope defined in the EPC agreement.

"Parties" means the parties to this Agreement collectively and "Party" shall mean any of the parties to this Agreement individually;

"Performance Security" shall have the meaning set forth in [Clause 7.1](#);

"Plant" means the machinery, equipment, and apparatus and the likes, intended to form or forming part of the Permanent Works, including the supply-only items (if any), which are to be supplied by the Contractor as specified in the Contract or which are finalized by the Employer during the currency of the contract/ Agreement;

"PMC" shall have the meaning set forth in **Clause 4.1.1; Project Management Consultant**

"Political Event" shall have the meaning set forth in [Clause 21.4](#);

"Pre-commissioning" shall mean all activities required to be performed after final tests for all plant, equipment & machinery comprised within the Unit which is the subject matter of the Contract to bring the equipment covered from an inactive condition to a state ready for trial run and shall include but not be limited to checking of systems and vessels, flushing and steam blowing, air blowing of pipelines, system leak checking up to the specified pressure, purging the system using inert gas, checking of electrical equipment for proper earthing, installation of resistance, conducting operability tests on individual equipment, vessels & systems, integration of all control systems of the Unit or other installation(s) concerned and all other activities required to be performed in terms of the Contract before commissioning of the Unit.

"Programme" shall have the meaning set forth in [Clause 10.1.3](#);

"Project" 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;

"Project Assets" means all physical and other assets relating to (a) tangible assets such as civil works and equipment including foundations, embankments, pavements, road surface, interchanges, bridges, culverts, road over-bridges, drainage works, traffic signals, sign boards, kilometre-stones, [toll plaza(s)], electrical systems, communication systems, rest areas, relief centres, maintenance depots and administrative offices; and (b) Project Facilities situated on the Site;

"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;

"Project Completion Schedule" means the progressive Project Milestones set forth in Schedule-J for completion of the Project Works on or before the Scheduled Completion Date;

"Project Facilities" means all the amenities and facilities situated on the Site, as described in Schedule-C;

"Project Works" means Detailed Design, Construction, Testing & Commissioning of India International Convention & Expo Centre at Sector 25, Dwarka, New Delhi on EPC Basis , and its subsequent development and augmentation in accordance with this Agreement;

"Project Milestone" means the project milestone set forth in Schedule-J;

"Proof Consultant" shall have the meaning set forth in [Clause 10.2.2](#);

"Provisional Certificate" shall have the meaning set forth in [Clause 12.2](#);

"Punch List" shall have the meaning set forth in [Clause 12.2.1](#);

"Quality Assurance Plan" or **"QAP"** shall have the meaning set forth in [Clause 11.2](#);

"Re.", "Rs." or "Rupees" or **"Indian Rupees"** means the lawful currency of the Republic of India;

"Request for Qualification cum Request for Proposals" or "RFQ cum RFP" shall have the meaning set forth in [Recital 'C'](#);

"Retention Money" shall have the meaning set forth in [Clause 7.5.1](#);

"Project Site" 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;

"Safety Consultant" shall have the meaning set forth in [Clause 10.1.5](#);

"Scheduled Completion Date" shall be the date set forth in [Clause 10.3.1](#);

"Scope of the Project" shall have the meaning set forth in [Clause 2.1](#);

"Section" means a part of the Project Works;

"Site" shall have the meaning set forth in [Clause 8.1](#);

"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 Schedule-D, 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;

"Stage Payment Statement" shall have the meaning set forth in [Clause 19.4](#);

"Structures" means an elevated , as the case may be;

"Sub-contractor" means any person or persons to whom a part of the Works or the Maintenance has been subcontracted by the Contractor and the permitted legal successors in title to such person, but not an assignee to such person;

"Suspension" shall have the meaning set forth in [Article 22](#);

"Taxes" means any Indian taxes including GST, 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;

"Temporary Works" means all temporary works of every kind (other than Contractor's Equipment) required for the execution and completion of the Works, and the remedying of any defects.

"Termination" means the expiry or termination of this Agreement;

"Termination Notice" means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

"Termination Payment" means the amount payable by either Party to the other upon Termination in accordance with [Article 23](#);

"Tests" means the tests set forth in Schedule-K to determine the completion of Works in accordance with the provisions of this Agreement;

"Time Extension" shall have the meaning set forth in [Clause 10.5.1](#);

"User" means a person who uses or intends to use on the Project Works or any part thereof;

"Valuation of Unpaid works" shall have the meaning set forth in [Clause 23.5.1](#);

"Variation" means any alteration and/ or modification to the Employer's Requirements, which is instructed by the Engineer or approved as a variation by the Engineer, in accordance with [Article 13](#).

"Works" means the work including survey, investigation, design, both permanent and temporary, or services to be carried out, designed, constructed, manufactured, fabricated, delivered to Site, erected, installed, completed, tested, commissioned, (including Integrated Testing and Commissioning) and remedying of any defects, and/ or supplied in accordance

Detailed Design, Construction, Testing & Commissioning of India International Convention & Expo Centre at Sector 25, Dwarka, New Delhi on EPC Basis

with the Contract and include Plant, Goods and Materials and their accessories and other necessary items/activities to complete the project/work with all the required spares, tools etc.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND

SIGNED, SEALED AND

DELIVERED

DELIVERED

For and on behalf of

For and on behalf of

THE Employer by:

THE CONTRACTOR by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

In the presence of: 1.

{ COUNTERSIGNED and accepted by:

Name and particulars of other members of the Consortium}