

# **Surat Smart City Development Ltd.**

## **BIDDING DOCUMENT**

for the

**(Following single stage two envelope bidding procedure)**

### **Section 7 to 9 (Part I) – Technical Bid**

**Work for 24 x 7 Water Supply System under Smart City Mission in 07 (Seven) T.P. Schemes area of East and South East Zone of Surat Municipal Corporation including Refurbishment of existing network in part area of TP Scheme No. 53 (Magob Dumbhal), TP Scheme No. 64 (Magob-Dumbhal), TP Scheme No. 19 (Parvat-Magob) including all work of Mechanical, Electrical, SCADA, Household connections, consumer water meter fittings and work including Management of 24x7 Water Supply in SMART CITY for a period of 10 years**

**Issued on:**

**Invitation for Bids No.:**

**Employer:** Surat Smart City Development Ltd

**State:** Gujarat

**Country:** India

**Section-7**  
**General Conditions of Contract**

## Section 7 - General Conditions of Contract

The GCC in this Section, read in conjunction with the Particular Conditions of Contract in Section 8 and other documents listed therein should be a complete document expressing all the rights and obligations of the contracting parties.

### Table of Clauses

<b>A.</b>	<b>Contract and Interpretation.....</b>	<b>3</b>
	1. Definitions.....	3
	2. Interpretation.....	5
	3. Documents Forming the Contract.....	7
	4. Communications .....	7
	5. Law and Language & Other Provisions .....	7
	6. Corrupt Practices.....	9
<b>B.</b>	<b>Subject Matter of Contract .....</b>	<b>11</b>
	7. Scope of Works and Services .....	11
	8. Phases of the Contract.....	12
	9. Time for Commencement and Completion .....	12
	10. Contractor's Responsibilities .....	12
	11. Employer's Responsibilities .....	21
<b>C.</b>	<b>Payment.....</b>	<b>26</b>
	12. Contract Price.....	26
	13. Terms of Payment.....	26
	14. Measurement.....	29
	15. Variations .....	30
	16. Advance Payment .....	30
	17. Price Adjustment.....	31
	18. Retentions and Deductions.....	32
	19. Final Statement and Final Payment Certificate .....	33
	20. Discharge.....	33
	21. Securities.....	33
	22. Taxes and Duties .....	34
<b>D.</b>	<b>Intellectual Property .....</b>	<b>36</b>
	23. Copyright.....	36
	24. Confidential Information.....	36
<b>E.</b>	<b>Execution of Works and Services .....</b>	<b>37</b>
	25. Representatives .....	37
	26. Work Program .....	39
	27. Subcontracting .....	40
	28. Design Responsibility .....	41
	29. Customs .....	42
	30. Execution of Works and Services .....	43

31. Test and Inspection.....	61
32. Certificate of Completion, Initial Take Over Date & Final Take Over Date.....	64
33. Taking Over Certificate .....	65
34. As Built Drawings and Manuals.....	67
<b>F. Guarantees and Liabilities.....</b>	<b>68</b>
35. Completion Time Guarantee.....	68
36. Performance Obligations and Liquidated Damages .....	68
37. Defect Liability .....	69
38. Liability for Burst Mains and Water Interruptions.....	71
39. Limitation of Liability .....	71
<b>G. Risk Distribution .....</b>	<b>72</b>
40. Care of Works.....	72
41. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification .....	73
42. Insurance.....	74
43. Unforeseen Conditions .....	75
44. Change in Laws and Regulations.....	76
45. Force Majeure.....	76
46. War Risks.....	78
<b>H. Change in Contract Elements .....</b>	<b>80</b>
47. Change in the Works and Services.....	80
48. Extension of Time for Completion .....	83
49. Suspension .....	84
50. Termination.....	85
51. Assignment.....	91
<b>I. Claims, Disputes, Arbitration .....</b>	<b>92</b>
52. Contractor's Claims.....	92
53. Disputes and Arbitration.....	93
<b>APPENDIX A - General Conditions of Dispute Board Agreement .....</b>	<b>98</b>
Annex - DISPUTE BOARD GUIDELINES .....	102

## General Conditions

### A. Contract and Interpretation

#### 1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned them:

“Bill of Quantities” means the priced and completed Bill of Quantities forming part of the Bid and to be executed with in Construction Period.

“Completion Date” is the date of completion of the Works and Services as certified by the Engineer in accordance with GCC Sub-Clause 32.

“Construction Period” or “Design & Construction phase” means the initial period of contract where Construction Works to be completed within the period as per PCC

“Construction Works” means activities including the replacement of main pipelines and the installation of customer meters, Bulk meters, SCADA and other works that are covered under Bills of Quantity including works for DMA Establishment and Water Loss Management.

“Contract” is the Contract between the Employer and the Contractor to execute, complete and maintain the Works and Services. It consists of the documents listed in GCC Clause 3.

“Contract Commencement Date” means date as per PCC

“Contractor” is the party whose Bid to carry out the Works and Services has been accepted by the Employer.

“Contractor’s Bid” is the completed bidding document submitted by the Contractor to the Employer

“Contract Price” is the price stated in the Letter of Acceptance and subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.

“days” are calendar days; “months” are calendar months.

“defect” is any part of the Works and Services not completed in accordance with the Contract.

“Defects Liability Certificate” is the certificate issued by the Engineer upon correction of defects by the Contractor.

“Defect Liability Period” means the period calculated from the Completion Date where the Contractor remains responsible for remedying defects.

“Design & Construction Period” means same as Construction Period or ‘Design & Construction Phase’

“District Meter Area (DMA)” is a small hydraulically discreet part of the water distribution network, usually comprising less than 3,000 service connections may be higher in exceptional cases, generally with one but sometimes with two or more inflow points equipped with bulk water

meters.

“DMA Establishment Works” are specific and clearly defined civil works the Contractor is required to carry out during the initial Construction Period of the Contract, as defined in Section 6, Employer’s Requirements.

“DMA inflow chamber” is the chamber with all pipework, bypass, valves and other fittings, pressure-reducing valve, magnetic flow meter, data logger and above-ground box.

“Drawings” include calculations and other information provided or approved by the Engineer for the execution of the Contract.

“Dispute Board” (DB) means the person or persons named as such in the PCC appointed by agreement between the Employer and the Contractor to make a decision on or to settle any dispute or difference between the Employer and the Contractor referred to him or her by the parties pursuant to GCC Clause 53 hereof.

“Employer” means the person named as such in the PCC and includes the legal successors or permitted assigns of the Employer.

“Employer’s Requirements” means entire Section 6 of RFP document and is a part of Contract

“Engineer” means the person named in the PCC (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Engineer) who is responsible for supervising the execution of the Works and Services and administering the Contract.

“Equipment” is the Contractor’s machinery and vehicles brought temporarily to the Site to construct the Works.

“ Final take Over Date” as defined in GCC Clause 32 hereof

“GCC” means the General Conditions of Contract.

“ Initial take Over Date” as defined in GCC Clause 32 hereof

“Letter of Acceptance” means the formal acceptance by the Employer of the Bid and denotes the formation of the Contract at the date of acceptance.

“Materials” are all supplies, including consumables, used by the Contractor for incorporation in the Works and the provision of Services.

“Maintenance Phase” is a period of time after the Establishment of DMAs with in the Construction Period during which the water loss levels have to be maintained and the Contractor has to prepare for the final take-over of the works and system to O&M Phase.

“Mobilization Phase” is a period of time from the signing of the Contract to allow the Contractor to mobilize his team for the execution of the Works and Services.

“O&M Phase” is a period immediately after Construction Period and till contract completion date as per PCC. The contractor Obligations

with in this Phase are as per contract.

“PCC” means the Particular Conditions of Contract as per Section 8 & schedules attached to it.

“Pipe Replacement, Meter Installation and Unforeseen Works” also called as “Construction Works” are activities including the replacement of main pipelines and the installation of customer meters and other works that are not covered under DMA Establishment and Water Loss Management.

“Project Manager” means any person nominated by the Contractor and approved by the Employer in the manner provided in GCC Sub-Clause 25.2 hereof to perform the duties delegated by the Contractor.

“Service Level” means Contractors obligations as per Employers Requirements related to water supply service obligations including Water loss Reduction targets, achieving & maintaining Continuous pressurized water supply and resolve non commercial customer complaints with in a specified time period.

“SIP” means Service Improvement Plan to improve Service Level as per scope of contract

“Start Date” is given in the PCC. It is the latest date when the Contractor shall commence execution of the Works.

“Site” is the area defined as such in the PCC.

“Subcontractor,” is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.

“Water Loss Reduction and Management Services” means all interventions under the Contract which shall be carried out by the Contractor in order to achieve the annual minimum water loss levels& other Service Levels as defined in the Contract and receive the respective payments therefore.

“Water Loss Reduction Phase” is the period of time after the Mobilization Phase during which the Contractor has to complete SIP, DMA Establishment Works & Construction Works of individual DMA or Sub DMA& Maintenance Phase and Up to final take over date.

“Work Order” is an order issued by the Engineer to the Contractor authorizing the execution of Construction Works & Services as per contract.

“Variation” is the instruction given by the Engineer which varies the Work.

The “Works& Services” are what the Contract requires the Contractor to construct, install, operate and turn over to the Employer, as defined in the PCC.

“year” means 365 days

## 2. Interpretation

**2.1** In the Contract, except where the context requires otherwise:

(a) words indicating one gender include all genders;

- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be record in writing;
- (d) the word “tender” is synonymous with “bid”, “tenderer” with “bidder” and “tender documents” with “bidding documents”; and
- (e) “Written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

## **2.2 Entire Agreement**

Subject to GCC Sub-Clause 24.4 hereof, the Contract constitutes the entire agreement between the Employer and Contractor with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.

## **2.3 Amendment**

No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party hereto.

## **2.4 Independent Contractor**

The Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto. Subject to the provisions of the Contract, the Contractor shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Contractor in connection with the performance of the Contract shall be under the complete control of the Contractor and shall not be deemed to be employees of the Employer, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and the Employer.

## **2.5 Non-Waiver**

**2.5.1** Subject to GCC Sub-Clause 2.5.2 below, no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

**2.5.2** Any waiver of a party's rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.



	<p><b>2.6 Severability</b></p> <p>If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.</p>
<p><b>3. Documents Forming the Contract</b></p>	<p><b>3.1</b> The documents forming the contract shall be interpreted in the following order of priority:</p> <ul style="list-style-type: none"> <li>(a) Agreement</li> <li>(b) Letter of Acceptance</li> <li>(c) Contractor's Bid</li> <li>(d) General Conditions of Contract (GCC)</li> <li>(e) Particular Conditions of Contract (PCC)</li> <li>(f) Employer's Requirements</li> <li>(g) Drawings</li> <li>(h) Bill of Quantities</li> <li>(i) Any other document listed in the PCC as forming part of the Contract</li> </ul> <p><b>3.2</b>Acceptance of conditions compulsory before tendering the work</p> <p>Any contractor who does not accept these conditions shall not be allowed to submit the tender for works. The submission of tender means acceptance of all conditions of contract.</p>
<p><b>4. Communications</b></p>	<p><b>4.1</b> Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:</p> <ul style="list-style-type: none"> <li>(a) in writing and delivered against receipt; and</li> <li>(b) delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract Agreement.</li> </ul> <p>When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Engineer, a copy shall be sent to the Engineer or the other Party, as the case may be.</p>
<p><b>5. Law and Language &amp; Other Provisions</b></p>	<p><b>5.1</b>The Contract shall be governed by and interpreted in accordance with laws of the country specified in the PCC.</p> <p><b>5.2</b> The ruling language of the Contract shall be that stated in the PCC. <b>5.3</b> The language for communications shall be the ruling language unless otherwise stated in the PCC.</p> <p><b>5.3</b>Measurements and Arithmetic Conventions: All measurements and calculations shall be in metric system and calculations done to 2 decimal places, with the third digit of 5 or above being rounded up and below 5 being rounded down.</p> <p><b>5.4</b> Ambiguities and Discrepancies: In case of ambiguities or discrepancies</p>

within this Agreement, the following shall apply:

- a. between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
- b. between the written description on the drawings and the specifications and standards, the latter shall prevail;
- c. between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
- d. between any value written in numerals and that in words, the latter shall prevail.

**5.5 Operating Licence :**

Together with the Letter of Acceptance, the Employer shall issue to the Contractor the Operating Licence or equivalent legal authorization to enable the Contractor to operate and maintain the Works during the Operation Service Period.

The Operating License shall automatically come into full force and effect upon the issue of the Readiness Certificate upon completion of the Design & Construction works under Sub-Clause 32.2 [Initial take over date] and shall remain in force until the issue of the Contract Completion.

The Operating Licence shall only extend to those parts of the Site which it is required to occupy for the purposes of carrying out the Works and Operation Service as set out in the Contract. The Operating Licence granted pursuant to this Sub-Clause shall not operate nor be deemed to operate as a tenement or a demise of the Site or any part thereof. The Contractor shall not have or be entitled to any estate right, title, or interest in the Site. The licence shall immediately terminate upon the termination of this Contract for whatever reason.

**5.6 Assignment:** Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract.

**5.7 Care and Supply of Documents:** Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Employer's Representative six copies of each of the Contractor's Documents.

The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Employer's Requirements, the Contractor's Documents, and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.

If a Party becomes aware of an error or defect of a technical nature in a document, which was prepared for use in executing the Works, the Party shall promptly give Notice to the other Party of such error or

	<p>defect.</p> <p><b>5.8 Compliance with Laws:</b> The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in the Employer's Requirements:</p> <ul style="list-style-type: none"> <li>a. the Employer shall have obtained (or shall obtain) the planning, zoning, building permit, or similar permission for the Permanent Works and for the Operation Service, and any other permissions described in the Employer's Requirements as having been (or being) obtained by the Employer; and the Employer shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so;</li> <li>b. the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all further permits, licenses and approvals, as required by the Laws, in relation to the design, execution and completion of the Works and Operation Service and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so; and</li> <li>c. the Contractor shall at all times and in all respects comply with, give all notices under, and pay all fees required by any licence obtained by the Employer in respect of the Site or the Works or Operation Service, whether relating to the Works or Operation Service on or off the Site.</li> </ul> <p><b>5.9 Joint and Several Liability:</b> If the Contractor constitutes (under applicable Law?) consortium or other unincorporated grouping of two or more persons:</p> <ul style="list-style-type: none"> <li>a. these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;</li> <li>b. these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and</li> <li>c. the Contractor shall not alter his composition or legal status without the prior consent of the Employer.</li> </ul>
<p><b>6. Corrupt Practices</b></p>	<p><b>6.1 Anticorruption Policy</b> requires bidders, suppliers, and contractors under, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Employer:</p> <p>defines, for the purposes of this provision, the terms set forth below as follows:</p> <ul style="list-style-type: none"> <li>(i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;</li> <li>(ii) "fraudulent practice" means any act or omission, including a</li> </ul>

misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

- (iii) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
- (f) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract; and
- (g) will sanction a firm or an individual, at any time, in accordance with Employer’s Anticorruption Policy and Integrity Principles and Guidelines (both as amended from time to time), including declaring ineligible, either indefinitely or for a stated period of time, to participate in Employer-financed or Employer-administered activities or to benefit from an Employer-financed or Employer-administered contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive or other prohibited practices; and
- (h) will have the right to require suppliers and contractors to permit the Employer or its representative to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Bank.

## **B. Subject Matter of Contract**

<p><b>7. Scope of Works and Services</b></p>	<p><b>7.1</b></p>	<p>Unless otherwise expressly limited in Section 6, Employer's Requirements, the Contractor's obligations cover the design, execution and maintained of all Works, provision of all equipment and materials and the performance of all Services required to reduce water losses, provide continuous pressurized potable quality water supply and provide support services to Employer for timely resolution of customer complaints within the Site specified in the Employer's Requirements. The Works and Services include the (i)Design &amp;Construction Phase Works includes preparation of SIP, DMA Establishment Works, Construction Works, Water Loss Reduction and , (ii) O&amp;M Services with performance standards in waterloss reduction, Continuous pressurized water supply, faster resolution to customer complaints (including billing but excluding collection&amp; commercial issues) and maintaining water quality.</p> <p>Construction Works including Pipe Replacement, Meter Installation and Unforeseen Works in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in Section 6, Employer's Requirements. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labor, materials, equipment, construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and services that will be provided or performed by the Employer, as set forth in Section 6, Employer's Requirements.</p> <p><b>7.2</b> The execution of Construction Works shall be requested by the Engineer who will issue a Work Order defining the requested works to be carried out by the Contractor, based on the activities and prices in the Bill of Quantities. The Work Order shall specify the activities to be carried out and the corresponding price. The contractor shall confirm his acceptance by signing the Work Order.</p> <p><b>7.2.1</b> Work Orders shall be issued in writing and shall include the date on which the Work Order was issued and signed by the Engineer. Two (2) copies of the Work Order shall be transmitted to the Contractor by the Engineer, and the Contractor shall immediately countersign one (1) copy including the date of acceptance, and return the same to the Engineer.</p> <p><b>7.2.2</b> If the Contractor has any objection to a Work Order, Project manager shall notify the Engineer of his reasons for such objection within ten (10) days of the date of issuing the Work Order. Within five (5) days of the WaterLoss Manager's objection, the Engineer shall cancel, modify or confirm the Work Order in writing.</p>
--	-------------------	---

	<p><b>7.3</b> The Contractor shall, unless specifically excluded in Section 6, Employer's Requirements perform all such work and/or supply all such items and materials as being required for attaining completion of the Works and Services.</p>
<p><b>8. Phases of the Contract</b></p>	<p><b>8.1</b> The Contract is divided into two phases:</p> <p>(a) Design &amp; Construction Phase –the period of time given to the Contractor as specified in the PCC from the signing of the Contract to construction completion period it includes Mobilization, SIP, Construction Works, Establishment of DMAs, Pipe Replacement, Meter Installation and Unforeseen Works for Waterloss reduction, conversion to continuous pressurized water supply and O&amp;M from Initial Take over date for DMAs commissioned before final takeover date as defined in contract. At the end of Construction Phase, the Contractor will receive a Certificate of Completion following the requirements of GCC Clause 32</p> <p>(b) O&amp;M Phase – the period of time as specified in the PCC</p> <p>which begins from Final take Over Date as defined in PCC after the receipt of the Certificate of Completion by the Contractor as per GCC Clause 32 for which the Contractor is obligated to maintain the Service levels as specified in the PCC. At the end of the O&amp;M Phase the Contractor will receive a Taking-Over Certificate following the requirements of GCC Sub-Clause 33.1</p>
<p><b>9. Time for Commencement and Completion</b></p>	<p><b>9.1</b> The Contractor shall commence the Works and Services within the period specified in GCC Clause 8 and the PCC and without prejudice to GCC Sub-Clause 35.2 hereof, the Contractor shall thereafter proceed in accordance with the time schedule specified in the PCC.</p> <p><b>9.2</b> The Contractor shall attain completion of the Works and Services or of a part where a separate time for completion of such part is specified in the PCC, within the time stated in the PCC or within such extended time to which the Contractor shall be entitled under GCC Clause 48 hereof</p> <p><b>9.3 Bar Chart</b></p> <p>The contractor shall be required to submit a detailed programme for completion of work within the stipulated period including the period for flushing, disinfection and commissioning of pipeline in the form of a Bar Chart, covering all major activities and indicating milestones to the Engineer within 30days from the date of award of work. Modifications suggested by the Engineer shall be incorporated in the Bar Chart. It will be ensured by the contractor that the time schedule as laid down in the aforesaid Bar Chart is adhered to. Action for not achieving the milestones as mentioned in the Bar chart shall be taken as per the provisions given in the Clauses of contract.</p>
<p><b>10. Contractor's Responsibilities</b></p>	<p><b>10.1</b> The Contractor shall design and carry out the Works and Services, including associated purchases and/or subcontracting, necessary to comply with the requirements established in Section 6, Employer's</p>

Requirements with due care and diligence.

- 10.2** The Contractor confirms that it has entered into this Contract on the basis of a proper examination and interpretation of the data relating to the Works and Services provided by the Employer, and on the basis of information that the Contractor could have obtained from a visual inspection of the Site if access thereto was available and of other data readily available to it relating to the Works and Services as of the date twenty-eight (28) days prior to bid submission. The Contractor understands that leak detection might be technically difficult given the low-pressure situation in the Site. The Contractor acknowledges that any failure to acquaint itself with all such data and information shall not relieve it of its responsibility for properly estimating the difficulty or cost of successfully performing the Works and Services.
- 10.3** The Contractor shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported contractor's equipment. The Contractor shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Employer under GCC Sub-Clause 11.4 hereof and that are necessary for the performance of the Contract.
- 10.4** The Contractor shall comply with all laws in force in the country where the Works and Services are to be implemented. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind the Contractor. The Contractor shall indemnify and hold harmless the Employer from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to GCC Sub-Clause 11.1 hereof.
- 10.5** Any materials and services that will be incorporated in or be required for the Works and Services and other supplies shall have their origin in an eligible country as defined under Section 5, Eligible Countries. Any subcontractors retained by the Contractor shall be from an eligible country as specified in Section 5, Eligible Countries.
- 10.6** The Contractor shall permit the Employer to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Bank, if so required by the Bank.
- 10.7** If the Contractor is a joint venture or consortium of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfillment of the provisions of the Contract and shall designate one of such persons to act as a leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior

consent of the Employer.

10.8 The Easementary Rights are granted to the Contractor for the purpose of fulfilling the obligations of the Contractor under this Agreement and not for any other purposes.

10.9 The Contractor shall not part with or create any Encumbrance on the whole or any part of the Service Area.

10.10 Contractor and Employer shall prior to transfer of the Project Facilities shall

(a) Jointly create and agree upon an inventory of Existing Assets, their condition and status, current performance indicators. This would act as the baseline inventory for implementation of the Project. The details arrived from this joint survey shall be as per Employers requirements.

**10.11 O & M Obligations of Contractor**

10.11.1 The O&M of a zone of selected area shall vest with Employer till Initial take over date of the zone. There after the O&M of the zone shall vest with the Contractor and O&M obligations shall be carried out by operation.

- i. The Contractor shall during the O&M Period, undertake all services relating to operation and maintenance of the Project Facilities in conformity with Employer's Requirements. During development period the obligations shall vest with Employer.
- ii. The Contractor shall along with the Approved Implementation Plan, submit to the Employer / Engineer-in-Charge a plan for operation and maintenance of the Project Facilities ("O&M Plan") in conformity with the Employers Requirements and Performance Standards.
- iii. The O&M Plan shall set out in detail the standards, schedules, procedures, type, periodicity and other details of the operation and maintenance activities to be carried out for the Project during the Agreement Period so as to meet the Employer's Requirements as well as details of the management information system to be incorporated, reports to be submitted and procedure for reviews, including developing a mechanism for grievance redressal.
- iv. Within 30 days of receipt of the O&M Plan, the Employer / Engineer-in-Charge shall review the same and convey its comments/observations to the Contractor on the O&M Plan, including the need, if any, to modify the same. If the comments/observations of the Employer / Engineer-in-Charge



require the O&M Plan to be modified, the Contractor shall suitably modify the O&M Plan. The O&M Plan shall be finalized with mutual consent.

- v. Notwithstanding any review or failure to review by the Contractor or the comments/ observations of the Employer / Engineer-in-Charge, the Contractor shall be solely responsible for the adequacy of the O&M Plan and the conformity thereof with the Performance Standards, Employer Requirements and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- vi. The Contractor shall within a reasonable period inform Employer details of its key personnel responsible for O&M and subsequent changes, if any, from time to time.
- vii. The Contractor shall incorporate good management practices and appropriate technologies required for meeting the Performance Standards.
- viii. The Contractor shall, during the Agreement Period;
  - a. have requisite organization and designate and appoint suitable officers / representatives as it may deem appropriate to supervise the Project, to deal with the Employer / Engineer-in-Charge and to be responsible for all necessary exchange of information required pursuant to this Agreement;
  - b. for the purposes of determining that the Project Facilities are being maintained in accordance with the Employer's Requirements, the Contractor shall with due diligence carry out all necessary and periodical Tests in accordance with the instructions and under the supervision of the Employer / Engineer-in-Charge. The Contractor shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
  - c. conduct all Tests to ascertain compliance with Employer's Requirements.
- ix. suspend forthwith the whole or any part of the O&M activities upon receiving a written notice from the Employer / Engineer-in-Charge, who may require the Contractor to suspend the activities in whole or part if in the reasonable opinion of the Employer / Engineer-in-Charge, the operations are being carried on in a manner that is not in conformity with the Employers Requirements.
- ix. The Contractor shall as per pre agreed format record the system performance and periodically provide the same to Employer / Engineer-in-Charge.

In the event the Contractor has failed to operate and maintain the Project in accordance with the Employers Requirements, and such

failure has not been remedied despite a notice to that effect issued by the Employer / Engineer-in-Charge (**"Notice to Remedy"**), Employer may, without prejudice to any of its other rights / remedies under this Agreement, be entitled to operate and maintain the Project or cause to repair and maintain the Project Facilities at the risk and cost of the Contractor. The Contractor shall reimburse all 150% of the costs incurred by Employer on account of such operation and maintenance or repair and maintenance within 7 days of receipt of Employer claim therefor.

- x. The Contractor shall be deemed to be in material breach of Employers Requirements if the Employer / Engineer-in-Charge acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Contractor:
  - a. there has been failure / undue delay in carrying out scheduled / planned maintenance or the scheduled / planned maintenance has not been carried out in accordance with the Employers Requirements;
  - b. the maintenance of the Project Facilities or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the Employers Requirements;
  - c. there has been a serious or persistent let up in adhering to the Employer's Requirements and thereby the Project Facilities or any part thereof is not safe for operations;
  - d. there has been persistent breach of Employers Requirements. For avoidance of doubt, persistent breach shall mean:
    - i. any breach of Employers Requirements by the Contractor which has not been remedied by the Contractor despite a Notice to Remedy in respect thereof issued by the Employer / Engineer-in-Charge ;
    - ii. recurrence of a breach by the Contractor, during the pendency of Notice to Remedy by the Employer / Engineer-in-Charge requiring the Contractor to remedy a breach, and
    - iii. repeated occurrence of a breach notwithstanding that earlier breach has been remedied pursuant to Notice to Remedy or otherwise.

Upon occurrence of a material breach of Employers Requirements, Employer shall, without prejudice to and notwithstanding any other consequences provided therefore under this Agreement, be entitled to terminate this Agreement as per clause 50.2.

#### 10.11.2 General Obligations

The Contractor shall

- a. from the Initial Take Over Date of a zone of selected service area, undertake all services relating to operation and maintenance of the Project Facilities in conformity with Employers Requirements.
- b. supply Treated Water to Consumers within the Selected Service Area and shall meet its Performance Standards.
- c. identify Critical Measurement Points in the distribution network, in consultation with Employer / Engineer-in-Charge for installation of pressure measurement data loggers.
- d. carryout repair to any leakages in the distribution network during O&M.
- e. repair or replace the defective water meters or in the events where the water meters are damaged due to mis-handling or negligence of the same by Consumer, to repair or replace it and advice Employer to collect charges for the same from such Consumer as per the Applicable Law..
- f. During O&M period only, carry out the following activities in the Service Area:
  - i. Undertake repairs and maintenance of the Project Facilities, at its own cost and expense.
  - ii. Ensure that the Treated Water shall be supplied at a positive pressure being never less than 8 (Eight) meters after Final take Over date, measured at all the Critical Measurement Points in the Selected Service Area at all times.
  - iii. Continuously log pressure readings at all pressure-metering points installed at Critical Measurement Points, which shall also include a point where pressure is routinely experienced at the minimum level in the Service Area, and monitor continuous pressured water supply on a daily basis in accordance with the prudent utilities practice.
  - iv. Upon instructions by Employer, provide connection to a property within a period of seven (7) days from such instruction.
  - v. carry on basic plumbing and shall replace, as per instructions of the Employer, illegal property water connections with legal connections where the property owner accepts to legitimize the connection, and if the property owner does not so opt to legitimize the connection, to facilitate in disconnection of such unauthorised connections by Employer.

- vi. be expected to co-operate with Employer in the implementation of the communications program to foster ownership of the Project by the local stakeholders and encourage their support for the work. The Contractor shall disseminate to the Consumers the communication materials prepared by the Employer by effecting their availability at the Consumer Service Centers established in the Service Area. The communication material shall include information on significance of safe quality water supplied including water conservation and benefits of continuous water supply to the Consumers. The Contractor shall do nothing that would hinder the work of those involved in implementing the communications program.
- vii. report to Employer in respect of unauthorized water connections. Within 30 days or as per policy of Employer of such intimation Employer shall undertake remedial actions by way of either regularizing the unauthorized connections or disconnecting such properties from the network within the Service Area and initiate proceedings as necessary for collecting the dues from such connections. Contractor shall provide the plumbing support.
- viii. Set up water quality surveillance program to undertake daily, weekly and monthly testing of water quality at Consumer taps for checking the residual chlorine content and also chemical and bacteriological quality of the supplied water.

#### 10.11.3 Other Operation and Maintenance Obligations

The Contractor shall

- a. achieve the Performance Standards in accordance with the Employers requirements.
- b. ensure that the total water losses including Leakage Losses are minimized and are in adherence to the Performance Standards as set out in Employers requirements.
- c. set up two Consumer Service Centre (Back Office) in the Selected Service Areas, at an appropriate location designated by Employer, which would have a minimum of three (3) operational dedicated phone lines for receiving the complaints from EMPLOYER.. The effective and consumer oriented functioning of service centre shall vest with Employer Contractor shall provide support to Employer to undertake prudent consumer grievance redressal mechanisms, which shall be duly documented.

d. Customer Services shall continue with Employer. Contractor shall be responsible for back office support to resolve the complaints (other than commercial complaints and billing issues) within specific time limit in the contract. Attend the consumer complaints received through Employer by personal visit of consumer, letters, telephone calls, emails, sms, etc. and respond to the consumer through Employer's designated officers / staff within 24 hours from the time of receipt of such complaint and resolve the complaint within 5 working days from the time of receipt of the said complaint. Any complaints related to no water or poor quality water shall be attended within 6 hours from the time of receipt of complaint and resolved within 24 hours.

e. initiate innovative steps without additional cost to Employer, to improve system efficiency i.e. efficiency in Consumer service (non commercial), non-revenue water management and manpower deployment etc. in water supply and distribution.

f. maintain daily records of the following and submit the same to Employer and the Employer / Engineer-in-Charge by the 10th day of every Month or in case the 10th day of a Month is a holiday then on the following working day of such Month:

i. Quantum of Treated Water as measured at the Inlet/outlet of ESR/GSR/DMA's

ii. Results of the residual chlorine measurement in the network and the periodical measurement for chemical and bacteriological analysis of the water supplied to the Consumers

iii. Quantum of Treated Water supplied to the Consumers based on the Water Supply and Consumption Statement

iv. Estimation of the Leakage Losses and

v. Pressure at the Critical Measurement Points

vi. Redressal of Consumer complaints.

g. provide to the Employer, a report on the project operational data ("Project Operational Data"), including technical and cost data, , in relation to the period of twelve weeks commencing from the Initial Takeover Date and for every subsequent period of twelve weeks commencing from expiry of the previous twelve week period. The last report on Project Operational Data should represent the period from expiry of the previous twelve-week period to the expiry of the Agreement. Every report on Project Operational Data shall include description of service levels, state of Project

h. Facilities, physical improvements carried and consequent investments made, operational issues including Consumer service, and, maintenance of records, connections and disconnections.

Continuously log pressure readings at pressure-metering points installed at Critical Measurement Points on the distribution network as approved by the Employer including a point where pressure is routinely experienced at the minimum level in Service Area and to measure and monitor continuous pressured water supply on a daily basis in accordance with the Prudent Utility Practice.

i. take necessary action as may be appropriate and in accordance with Prudent Utility Practices in the event of an emergency or risk of danger or damage to persons or property (including the Project Facilities).

GIS based asset information system:- The Contractor shall update the information every quarter on regular basis.

j. During the subsistence of a Water Shortage Period, Contractor shall undertake such measures so as to minimize the supply interruptions to the Consumers

#### 10.11.4 O&M Cost Obligation

The O&M fees includes following O&M Cost obligation with other contractual obligation within the project area.

- (i) Establishment cost.
- (ii) Maintenance & repairs of Project facilities
- (iii) O&M obligations under this contract from initial take over date.

#### 10.11.5 Obligation to make new connections/convert existing connections to a water main

(i) Employer shall forward to Contractor the eligible application form of consumer seeking connection. The Contractor shall prepare the estimate as per approved rates of Employer for providing water connection in which the cost of plumbing upto water meter and water meter shall be included. Apart from inclusion of applicable cost and charges in accordance with Employer's water supply bye laws, the cost shall also include the cost of road cutting if any and restoration to original or better condition thereof. The demand note for the above cost shall be issued by the Employer to the intending consumer. On payment to Employer by intending consumer the cost of new connection as per demand note and receipt of a copy of agreement from the Employer, the Contractor shall provide such connection within seven days upon completion of all connection work and affixation of a metering device. The Employer shall reimburse to the Contractor the cost of providing water connection. The Contractor shall be fully responsible for the restoration of road cutting to the original or better condition thereof.

#### 10.11.6 Joint inspection prior to contract completion

Not less than six months prior to the expiry date of the Operation Service Period, the Employer's Representative and the Contractor shall carry out a joint inspection of the Works and, within 28 days of the completion of the joint inspection, the Contractor shall submit a report on the condition of the Works identifying maintenance works (excluding routine maintenance works and the correction of defects), replacements and other works required to be carried out to satisfy the requirements of the Operation and Maintenance Plan after the Contract Completion Date. The Contractor shall submit a programme for carrying out such works over the remainder of the Operation Service Period.

Following receipt of the Contractor's report, the Employer's Representative may, throughout the remainder of the Operation Service Period, instruct the Contractor to carry out all or part of the works identified in the Contractor's report at contractor's cost.

Upon satisfactory completion of the items identified in this Sub-clause the Employer shall instruct the Contractor to commence the Tests Prior to Contract Completion.

#### 10.12 Changes in constitution of firm to be notified

In case of tender by partners, any changes in the constitution of a firm shall be forthwith notified by the contractor to the Engineer - in - Charge for his information. Change in JV partners are not allowed .

#### 11. Employer's Responsibilities

- 11.1** The Employer shall apply due diligence to ensure the accuracy of all information and/or data to be supplied as described in Section 6, Employer's Requirements,
- 11.2** The Employer does not warrant the accuracy of data specifically, the water distribution network drawings, water loss levels, and general conditions of the infrastructure.
- 11.3** The Employer shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in Section 6, Employer's Requirements. The Employer shall give full possession of and accord all rights of access thereto on or before the date(s) specified in the PCC.
- 11.4** The Employer shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the country where the Site is located which (a) such authorities or undertakings require the Employer to obtain in the Employer's name, (b) are necessary for the execution of the Contract, including those required for the performance by both the

Contractor and the Employer of their respective obligations under the Contract, and (c) are specified in Section 6, Employer's Requirements.

**11.5** If requested by the Contractor, the Employer shall use its best endeavors to assist the Contractor in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Contractor or Subcontractors or the personnel of the Contractor or Subcontractors, as the case may be, to obtain.

**11.6 Grant of Rights to The Contractor**

11.6.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, Employer hereby authorizes the Contractor:

- a. To investigate, study, design, engineer, procure, construct, augment, rehabilitate, operate and maintain the Project Facilities and to exercise and / or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement to provide the Services in Service Area as per Employers requirements.
- b. To enter upon and use the Service Area as per Employers requirements during the Agreement Period of as per PCC including all rights of way and easements relating to the Project and access to the Project Facilities, including the Existing Assets, so that the Contractor, its agents, sub-contractors and any third party it might designate may perform its rights and obligations under this Agreement, including the right to conduct any kind of work in the streets and other public places of the Service Area, in order to have access to the Project Facilities.
- c. To receive Treated Water to WDS/ESR /OHR to supply in a zone of selected areas wherein Construction works are completed in all respect, without interruption in accordance with the provisions of this Agreement. The maximum quantum of treated water supply quantum contemplated by Employer in the year through shall be as given in Employers requirements but shall not be less than the domestic demand at lpcd rate specified in PCC and add non domestic demand as assessed after completion for consumer survey by Contractor. *Employer shall arrange additional water provided Contractor meets the revised yearly target as per Employers requirements.*
- d. To fulfill its obligations under this Agreement, the Contractor shall have the right to undertake activities either by itself or through subcontracting arrangements as per PCC.



- e. To exercise such other rights as Employer may determine as being necessary or desirable and which it consents to in writing, for the purposes incidental and necessary for the provision of the Services having regard to the needs of the Consumers.
- f. (i) Undertake Construction works in accordance with contract  
(ii) To receive payment based on the accepted bid of the Contractor
- g. Provided that the Contractor may, with the prior written consent of Employer, carry out suitable temporary or permanent modifications to the Existing Assets.

#### 11.7 Actions in support of Contractor

Employer ensures the maintenance of law and order at the Project Facilities, and provide, at no cost to the Contractor such police personnel, as may be necessary, for the maintenance or reinstatement of law and order at the Project Facilities and further alert and warn Contractor of any information or intelligence it may receive relating to a threat towards the security of the Project Facilities.

#### 11.8 Specific Obligations

Employer shall

- a. Provide the Contractor the permission to repair and replace the Project Facilities which the Contractor is responsible for, and the right to lay new water mains on behalf of Employer, including the right of way to carry out the Services;
- b. Handover to the Contractor, the “as-built drawings” and all other technical and financial information of the Existing Assets and Consumers in the Service Area as available on the Appointed Date;
- c. Receive applications for approvals of new connections, reconnection and disconnections in the Service Area and inform the Contractor for further action within a reasonable time;
- d. During the period upto taking over of each zone of selected area, the obligation to supply water to the Service Area shall be that of the Employer and the Contractor shall not be held responsible for the same;

11.9 Continue existing/ arrange for electricity connection / disconnection for project facilities as per requirements of Contractor and pay the bills to service provider.

11.10 The Employer shall allow the Contractor to utilize the space (or spaces) for stores and workshop on free occupation basis.

11.11 Employer shall provide spaces from the available premises.

11.12 Cost of Obligation

- a. Employer to share hundred percent of Employer's estimated cost for Construction Works.
- b. Replacement cost of old pipes of after Final take Over date unless it is replaced by Contractor during Construction period.
- c. Energy cost for entire contract period for pumps & project facilities handed over to Contractor.
- d. Bulk water cost for entire contract period in project areas.
- e. Payment to Contractor as per contract.
- f. Road repairs & restoration fees to concerned authorities during contract period.
- g. Capital cost outside the project area for improvement of water supply or for whatsoever reasons.
- h. To full fill the Employer obligation as per this contract.

11.13 Water Shortage Period

1 A Water Shortage Period shall commence when Employer has failed to supply designated quantity of Treated Water to the reservoirs for zones of selected area for any of the following reasons not attributable to the negligence of Contractor: If supply is reduced by more than 10% on any given date shall be termed as water shortage.

- i. Employer notifying the commencement of a Water Shortage Period or
- ii. The determination by Contractor of shortage of water and certification thereof by the Employer

Employer shall notify the commencement of a Water Shortage Period to the Consumers through suitable means, which shall be deemed to have commenced from the first hour of such notification.

The Water Shortage Period shall cease when the Employer notifies and supplies the designated quantity of Treated Water to the zone of selected area.

Provided that during a Water Shortage Period or otherwise, Employer shall have rights to direct the Contractor to modify the water supply and regulate the allocation of potable water among the Consumers.

11.14 O&M of a zone / existing project facilities till the initial take over date.

11.15 Opening of Escrow Account – Deleted

## C Payment

### 12. Contract Price

**12.1** The Contract Price shall be included in Section 4, Bid Forms.

**12.2** Subject to GCC Sub-Clauses 10.2, 11.2 and 43 hereof, the Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

#### 12.3 Payment

The Contractor must understand clearly that the rates quoted are for completed items of work & include all taxes, levy & duties etc., cost due to labour, all leads & lifts involved & scaffolding, plants, supervision, service roads, dewatering, power, etc. & to include all expenses to cover the cost of night & round the clock work as & when required & no claim for additional payment beyond the prices or rates quoted will be entertained. The contractor will not be entitled subsequently to make any claim on the ground of any representation or on any promise by any person or on the ground of any failure on his part to obtain all necessary information for the purpose of making, his tender & fixing the several prices & rates therein & shall not relieve him from any risks or liabilities arising out of or consequence upon the submission of the tender.

### 13. Terms of Payment

**13.1** The Contract Price for the Design & Construction Works and O&M Services shall be paid as follows:

(a) Design & Construction Works

(i) Construction Works: Monthly bill payment as per unit price included in Bills Of Quantity against actual measurement; as per methods & terms defined in PCC.

(b) O&M Services:

O&M payment shall be made from Initial take over date as per the schedule in price bid.

#### 13.2. (i) The Payment for Construction Works

The payment of monthly R.A. bill is normally released in 30 days from the date of acceptance of the bill recorded in the measurement book. No excuse for delay in completion of work / prolongation of the contract shall be entertained on account of the reason of delay in payment. The bidder therefore, must take into consideration of his / their financial capability to carry out and to continue the work without any constraints.

It shall be the contractual obligations on the part of the contractor to submit with each running bill photocopies of the

- (i) Purchase vouchers / bills for the main items purchased for the works like CI/DI/MS/RCC/PSC Pipes, meter, manhole frame and covers, footrests, sluice valves, fire hydrants and other fixtures and accessories used in the works;
- (ii) Guarantee certificates, wherever applicable;
- (iii) Manufacturer's test reports of cement, steel , MS plates, sluice valves etc.;
- (iv) Contractors All Risk Insurance policy for the value of work and all necessary insurance policies mandated by law for labour working at site.
- (v) Copy of the inspection note / observations / compliance of the observations shall be placed on record with the running bills before passing of running account bills.
- (vi) At the time of final bill, clearance from state labour department will be required.
- (vii) Labour license from labour office for construction works.

The original vouchers shall be produced before the Engineer for verification, as and when desired by him.

### **13.3 Monthly Statements**

**13.3.1** The Contractor shall submit to the Engineer monthly statements of the value of Works and Services in GCC Sub- Clause 13.1 (a) to (a) in separate items for the corresponding monthly in a form acceptable to the Engineer.

**13.3.2** The Engineer shall check the Contractor's monthly statement and certify within twenty one (21) days the amount to be paid to the Contractor.

**13.3.3** The Engineer may exclude any item certified in a previous certificate of payment or reduce the proportion of any item previously certified in any certificate in the light of new information.

**13.4** Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Engineer in accordance with GCC Clause 13.2, within forty two (42) days from the date of each certificate. If the Employer

makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest as mentioned in PCC.

**13.5** If an amount certified is increased in a later certificate of payment or as a result of an award by the Dispute Board, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute. The interest rate shall be determined as per GCC Sub-Clause 13.3.

**13.6** The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.

**13.7** No payment made by the Employer herein shall be deemed to constitute acceptance by the any part(s) thereof.

**13.8** In the event that the Employer fails to make any payment by its respective due date or within the period set forth in the Contract, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the rate(s) stated in GCC Sub Clause 13.3 for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.

**13.9** The currency or currencies in which payments are made to the Contractor under this Contract shall be specified in the PCC subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Contractor's bid.

**13.10 Lump sums in estimates**

When the estimate on which a tender is made includes lump sums in respect of parts of the work the contractor shall be entitled to payment in respect of the items of work involved or the part of work in question at the same rates as are payable under this contract of each item, or if the part of work in question is not in the option of the Engineer capable of measurement, the Engineer may as his discretion pay the lump sum amount entered in the estimate and the certificate in writing of the Engineer shall be final and conclusive against the contractor with regard to any sum or sums payable to him under the provision of this clause.

**13.11 Contractor's percentage whether applied to net or gross amount of bill**

The percentage referred to in the contract price shall be deducted from/ added to the gross of the bill before deducting the value of any stock issued.

**13.12** All quarry fees, royalties and ground rent for stacking materials if any should be paid by the contractor.

	<p>(a) When the work is carried in the proximity to any place where there is a risk or drawing all necessary equipment shall be provided and kept ready for use and all necessary steps shall be taken for the prompt rescue of any person in danger.(c) Adequate provisions shall be made for prompt first aid treatment of all injuries likely to be sustained during the course of the work.</p> <p><b>13.13 Method of payment</b></p> <p>Payments to contractors shall be made as defined in PCC</p>
<b>14. Measurement</b>	<p><b>14.1. Deleted</b></p> <p><b>14.2</b> O&amp;M Services will be measured in accordance with the methodology described in PCC</p> <p><b>14.3</b> Construction Works will be measured on the basis of the agreed Work Orders and in accordance with the unit of measurement used for the unit prices of items included in the Bill of Quantities as per PCC</p> <p><b>14.3.1</b> Payment on intermediate certificate to be regarded as advances</p> <p>No payment shall be made for any work, estimated to cost less than rupees one thousand till after the whole of work shall have been completed and a certificate of completion given. But in the case of works estimated to cost more than rupees one thousand the Contractor shall on submitting a monthly bill therefore be entitled to receive payment proportionate to the part of the work than approved and passed by the Engineer, whose certificate of such approval and passing of the sum so payable shall be final and conclusive against the Contractor. All such intermediate payments shall be regarded as payment by way of advance against the final payment only and not as payment for work actually done and completed and shall not preclude the Engineer from requiring any bad, unsound imperfect or unskillful work to be removed or taken away and reconstructed, or re-erected nor shall any such payment be considered as an admission of the due performance of the contract or any part thereof in any respect or the occurring of any claim nor shall it conclude, determine or effect in any other way powers of the Engineer as to the final settlement and adjustment of the accounts or otherwise, or in any other way vary or effect the contract. The final bill shall be submitted by the Contractor within one month of the date fixed for the completion of the work, otherwise the Engineer-in Charges certificate of the measurements and of the total amount payable for the work shall be final and binding on all parties.</p> <p><b>14.3.2</b> Payment on reduced rates on account of items of work not accepted as completion as per discretion of Engineer</p> <p>The rates of several items of work estimated to cost more than Rs. 1000/- agreed to within, shall be valid only when the item concerned is accepted as having been completed fully in accordance with the sanctioned specifications. In case where the item of work are not accepted as so completed by the Engineer-in Charge may make</p>

	<p>payment on account of such item at such reduced rates as he may consider reasonable in the preparation of final or on account bills.</p> <p><b>14.3.3 Bill to be submitted monthly</b></p> <p>A bill shall be submitted by the Contractor in each month on or before the date fixed by the Engineer for all work executed in the previous month and the Engineer shall take or cause to be taken the requisite measurement for the purpose of having the same verified and the claim, so far as it is admissible, shall be adjusted, if possible, within 10 days from the presentation of the bill. If the contractor does not submit the bill within the time fixed as aforesaid, the Engineer may depute a subordinate to measure up the said work in the presence of the contractor or his duly authorized agent whose countersignature to the measurement list shall be sufficient warrant, and the Engineer may prepare a bill from such a list which shall be binding on the contractor in all respects.</p> <p><b>14.3.4 Bill to be on printed forms</b></p> <p>The contractor shall submit all bills on the printed forms to be had in the application at the office of the Engineer. The charges to be made in the bill shall always be entered at the rates specified in the tender or in the case of any extra work ordered in pursuance of these conditions, and not mentioned or provided for in the tender at the rates hereinafter provided for such work.</p>
<b>15. Variations</b>	<p><b>15.1</b> Items of the Construction Works for which no rate or price has been entered in the Bill of Quantities will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract except if it is a Variation ordered by the Engineer in accordance with PCC.</p> <p><b>15.2</b> The Contractor shall provide the Engineer with a quotation for carrying out the Variation when requested to do so by the Engineer. The Engineer shall assess the quotation, which shall be given within seven days (7) of the request or within any longer period stated by the Engineer and before the Variation is ordered. If the work in the Variation corresponds with an item description in the Bill of Quantities the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work. If the Contractor's quotation is unreasonable, the Engineer may order the Variation and make a change to the Contract Price, which shall be based on the Engineer's own forecast of the effects of the Variation on the Contractor's costs</p>
<b>16. Advance Payment</b>	<p><b>16.1</b> The Employer shall make advance payment to the Contractor of the amounts and by the date stated in the PCC, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee</p>

	<p>shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment</p> <p><b>16.2</b> The Contractor is to use the advance payment only to pay for equipment, materials, and mobilization expenses required specifically for the execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Engineer.</p> <p><b>16.3</b> The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works and Services on a payment basis as indicated in the PCC.</p> <p><b>16.4</b> All amounts whatsoever which the contractor is liable to pay to the Corporation in connection with the execution of the work including the amount payable in respect of (i) materials and or stores supplied /issued hereunder by the Corporation to the Contractor (ii) hire charges in respect of heavy plant, machinery and equipment given on hire by the Corporation to the contractor for execution by him of the work and/or on which advances have been given by the Corporation to the contractor shall be deemed to be arrears of the Land Revenue and the Corporation may without prejudice to any other rights and remedies of the Corporation recover the same from the contractor as arrears of revenue.</p>
<p><b>17. Price Adjustment</b></p>	<p><b>17.1</b> Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the PCC. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due and shall be paid as defined in PCC.</p>



## 18. Retentions and Deductions

**18.1** The Employer shall retain a percentage indicated in the PCC from each payment due to the Contractor for Design & Construction Works and O&M services.

**18.2** On completion of the Works & Services end of the O&M Phase and the calculation of the Final Contract Achievement in Section 6, Employer's Requirements, the total amount retained as per GCC Sub-Clause 18.1 shall be repaid to the Contractor.

**18.3** Penalty & Deductions against failure to meet project miles stone during Design & Construction Phase shall be as per employer's requirement.

**18.4** On the date stated in taking over certificate as per GCC sub clause 33. Design & Construction Works and O&M as per GCC Sub-Clause 18.4, fifty percent (50%) of the total amount retained shall be immediately repaid to the Contractor and the other fifty percent (50%) shall be repaid six (6) months thereafter and after the Engineer has certified that all defects, if any, notified by the Engineer to the Contractor have been corrected before the end of this period.

**18.5** At the final take over date, the Contractor may substitute retention money with an "on demand" Bank guarantee.

**18. 6** The deduction on account of performance standards as per PCC Schedule 5 is non refundable deduction for contractor

**18.7 Deleted.**

18.8 Deleted.

### **18.9 Road Maintenance and Inter-Utility Code of Conduct**

The contractor shall be under contractual obligations to follow the provisions under the contract for road maintenance and inter-utility services. Under the contract as stipulated in the conditions contractor is required to provide proper G.I. sheet barricading, provide board indicating the name of work etc, to take up the work in the limited stretches, removing the surplus earth / malba so as to avoid any bottle neck to the flow of traffic and inconvenience to the public, and take all necessary precautions for the safety of the trenches, workers, prevention of damage to the property, service etc. etc. Proper road maintenance and inter-utility code of contract to be followed by the contractor shall be subjected to the check by the Engineer of the area or any of the other authorities. In case of any lapse noticed necessary penalty as per details given hereunder shall be imposed on the contractor, which shall be final and binding.

a)	Non-installation of Boards on either ends of trenches	Rs. 500/- per day till implementation.
b)	Non shoring of walls of trenches to prevent collapse of the excavated portion. (Beyond 1.5 m and where proper stepping is not provided.)	Rs. 1000/- per day till the shoring is fixed.
c)	Digging of trenches beyond a stretch of 500 m for Employer and others while 1000m in case of telephones.	Rs. 500/- per day till the damage is restored.

	d)	Non barricading of trenches with the depth of more than 1.5 meter.	Rs. 500/- per day till completed.
	e)	Excavation of trenches across and along roads during day time(8 AM to 8 PM) without permission	Rs. 500/- per day
	f)	Non removal of excess earth and other stones etc. which are causing inconvenience to the road users	Rs. 1000/- per day till completed.
	g)	Non consolidating the earth while back filling into the trenches to the required level	Rs. 500/- per day till completed.
	h)	Non-submission of prescribed forms for re-instatement of trenches	Rs. 500/- per day
	i)	Road cutting without permission	Rs. 1250/- per day
	j)	Non-stacking of materials pipe etc. in an orderly manner during execution causing inconvenience to the road users.	Rs. 1000/- .
	k)	Failure to observe provisions of para 5.4.3 of the code.	Rs. 250/- till completed
<b>19. Final Statement and Final Payment Certificate</b>			
<b>19.1</b> The Contractor shall supply the Engineer with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Engineer shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within fifty-six (56) days of receiving the Contractor's account if it is correct and complete. If it is not, the Engineer shall issue within fifty-six (56) days a schedule that states the scope of the corrections or additions that are necessary. If the Final Statement is still unsatisfactory after it has been resubmitted, the Engineer shall decide on the amount payable to the Contractor and issue a Final Payment Certificate.			
<b>20. Discharge</b>			
<b>20.1</b> Upon submission of the Final Statement, the Contractor shall give to the Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after the payment due under the Final Payment Certificate issued pursuant to GCC Clause 19 has been made and the performance security referred to in GCC Sub-Clause 21.3, if any, has been returned to the Contractor.			
<b>21. Securities</b>			
<b>21.1</b> Issuance of Securities  The Contractor shall provide the securities specified below in favor of the Employer at the times, and in the amount, manner and form specified below.			
<b>21.2</b> Advance Payment Security			
<b>21.2.1</b> The Contractor shall, within twenty-eight (28) days of the			

	<p>notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with the PCC, and in the same currency or currencies.</p> <p><b>21.2.2</b> The security shall be in the form provided in the bidding documents or in another form acceptable to the Employer. The amount of the security shall be reduced in proportion to the value of the Works and Services executed by and paid to the Contractor from time to time, and shall automatically become null and void when the full amount of the advance payment has been recovered by the Employer. The security shall be returned to the Contractor immediately after its expiration.</p> <p><b>21.3 Performance Security</b></p> <p><b>21.3.1</b> The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a security for the due performance of the Contract in the amount specified in the PCC.</p> <p><b>21.3.2</b> The security shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Employer, and shall be in one of the forms of bank guarantees provided in the bidding documents, as stipulated by the Employer in the PCC, or in another form acceptable to the Employer.</p> <p><b>21.4</b> Unless otherwise specified in the PCC, the security shall be reduced by half on the date of completion of the take over date as per GCC sub clause 33. The Security shall become null and void, seventy two months after final take over date or one hundred and eighty (180) days after Taking Over certificates, whichever occurs first; provided, however, that if the Defects Liability Period has been extended on any part of the Works pursuant to GCC Sub-Clause 37.8 hereof, the Contractor shall issue an additional security in an amount proportionate to the Contract Price of that part. The security shall be returned to the Contractor immediately after its expiration.</p>
<p><b>22. Taxes and Duties</b></p>	<p><b>22.1</b> Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Works and Services in and outside of the country where the Site is located.</p> <p><b>22.2</b> If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the country where the Site is located, the Employer shall use its best endeavors to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.</p> <p><b>22.3</b> For the purpose of the Contract, it is agreed that the Contract Price specified in the Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date twenty-eight (28) days prior to the date of bid submission in the country where the Site is located. If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of</p>

Contract, which was or will be assessed on the Contractor, Subcontractors or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction therefrom, as the case may be, in accordance with GCC Clause 44 hereof.

**22.4** Employer would indemnify Contractor for paying service tax liability over Contractor's remuneration or part of its remuneration. However Contractor shall be responsible for payment of service tax on services of sub-contractor appointed by Contractor.

**22.5** In case of materials that may remain surplus with the contractor from those issued for the work contracted for, the date of ascertainment of the materials being surplus will be taken as the date of sale for the purpose of Sales Tax and the Sales Tax will be recovered on such sale

### D. Intellectual Property

<b>23. Copyright</b>	<p><b>23.1</b> The copyright in all drawings, documents and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Employer directly or through the Contractor by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.</p>
<b>24. Confidential Information</b>	<p><b>24.1</b> The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this GCC Clause 24.</p> <p><b>24.2</b> The Employer shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the Works. Similarly, the Contractor shall not use such documents, data and other information received from the Employer for any purpose other than the design, procurement of Plant, construction or such other work and services as are required for the performance of the Contract.</p> <p><b>24.3</b> The obligation of a party under GCC Sub-Clauses 24.1 and 24.2 above, however, shall not apply to that information which</p> <ul style="list-style-type: none"> <li>(a) now or hereafter enters the public domain through no fault of that party</li> <li>(b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto</li> <li>(c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.</li> </ul> <p><b>24.4</b> The above provisions of this GCC Clause 24 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Works or Services or any part thereof.</p> <p><b>24.5</b> The provisions of this GCC Clause 24 shall survive termination, for whatever reason, of the Contract.</p>

## E. Execution of Works and Services

### 25. Representatives

#### 25.1 Engineer

If the Engineer is not named in the Contract, then within fourteen (14) days from the signing of the Contract, the Employer shall appoint and notify the Contractor in writing of the name of the Engineer. The Employer may from time to time appoint some other person as the Engineer in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of the Works and Services. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Engineer shall represent and act for the Employer at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Engineer, except as herein otherwise provided. All notices, instructions, information and other communications given by the Contractor to the Employer under the Contract shall be given to the Engineer, except as herein otherwise provided.

#### 25.1.1 Project Monitoring

- Project Monitoring by Employer / Engineer-in-Charge

#### 25.2 Key -Personal requirements (Mandatory Provisions)

1. In general, staffing levels and qualifications are to be decided by the Contractor apart from minimum and mandatory personnel requirements specified in in this section, the following minimum number of experienced key-personnel has to be available for entire project period for the scope of services under this assignment. The number of Key man-months for each position is to be understood as the absolute minimum requirement. Evidence of the physical presence of these listed staff members have to be provided in the quarterly Progress Reports. Non-availability of key persons shall result into imposition of penalty as per contract agreement.
2. It has to be understood that it might be necessary to bring significantly more specialists to the Site in order to achieve the objectives of the Contract. All costs of such additional personnel have to be included in the Contract Price.
3. Project Manager cum O&M specialist- having a minimum of 120 man-months of a person meeting the following minimum experience criteria shall be required during entire project duration:
  - (a) 15 years experience with water distribution networks
  - (b) Technical University degree, for example Water and Sanitary Engineering, Civil Engineering or Mechanical Engineering

(c) Project Management & operation Experience

(d) Experience of 24x7 Water supply operations in large city (atleast one project)

**25.2.1** If the Project Manager is not named in the Contract, then within fourteen (14) days from the signing of the Contract, the Contractor shall appoint one and shall request the Employer in writing to approve the person so appointed. If the Employer makes no objection to the appointment within fourteen (14) days, the Project Manager shall be deemed to have been approved. If the Employer objects to the appointment within fourteen (14) days giving the reason therefore, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this GCC Sub-Clause 25.2.1 shall apply thereto.

**25.2.2** The Project Manager shall represent and act for the Contractor at all times during the performance of the Contract and shall give to the Engineer all the Contractor's notices, instructions, information and all other communications under the Contract. All notices, instructions, information and all other communications given by the Employer or the Engineer to the Contractor under the Contract shall be given to the Project Manager. The Contractor shall not revoke the appointment of the Project Manager and Other Key Personals without the Employer's prior written consent, which shall not be unreasonably withheld. If the Employer consents thereto, the Contractor shall appoint some other person as the Key -Personals, pursuant to the procedure set out in GCC Sub-Clause 25.2.1.

**25.2.3** The Project Manager may, subject to the approval of the Employer which shall not be unreasonably withheld, at anytime delegate to any person any of the powers, functions and authorities

vested in him or her. Any such delegation Section may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Project Manager, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Employer and the Engineer.

Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC Sub-Clause 25.2.3 shall be deemed to be an act or exercise by the Key -Personals.

**25.2.4** From the commencement of the Contract at the Site until completion of the O&M Phase, the Project Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Project Manager is absent from the Site, a deputy project manager shall be in charge. Whatsoever be the reason , all the key personnel shall not leave the project city at same period and ensure the availability of minimum one key person at project city.

**25.2.5** The Employer may by notice to the Contractor object to any representative or person employed by the Contractor in the execution of the Contract who, in the reasonable opinion of the Employer, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC Sub-Clause 30.4. The Employer shall provide evidence of the same, whereupon the Contractor shall remove such person from the Site.

**25.2.6** If any representative or person employed by the Contractor is removed in accordance with GCC Sub-Clause 25.2.5, the Contractor shall, where required, promptly appoint a replacement.

## **26. Work Program**

### **26.1 Contractor's Organization**

At the start of the Mobilization Phase the Contractor shall supply to the Employer and the Engineer a chart showing the proposed organization to be established by the Contractor for carrying out the Works and Services. The chart shall include the identities of the key personnel and the curriculum vitae of such key personnel to be employed as included in the Contractor's Bid. The Contractor shall promptly inform the Employer and the Engineer in writing of any revision or alteration of such an organization chart. Failure by the Contractor to deploy the key personnel as included in the Contractor's Bid within the period as specified in the Program of Performance in GCC Clause 26.2 entitles the Employer to deduct a penalty if indicated in the PCC.

### **26.2 Program of Performance**

Within three (3) months from the start of the Design & Construction Phase, the Contractor shall submit to the Engineer a detailed



program of performance of the Contract, made in a form to be agreed with the Engineer, and showing the sequence in which it proposes to design and carry out the Works and Services. The Contractor shall update and revise the program as and when appropriate or when required by the Engineer, but without modification to the Time for Completion given in the PCC and any extension granted in accordance with GCC Clause 48, and shall submit all such revisions to the Engineer.

#### **26.3 Quarterly Progress Report**

The Contractor shall monitor progress of all the activities specified in the program referred to in GCC Sub-Clause 26.2 above, and supply a quarterly progress report to the Engineer together with the quarterly statement as per GCC Sub Clause 13.2.

The progress report shall be in a form acceptable to the Engineer and shall indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken.

#### **26.4 Progress of Performance**

If at any time the Contractor's actual progress falls behind the program of performance referred to in GCC Sub-Clause 26.2, or it becomes apparent that it will so fall behind, the Contractor shall, at the request of the Employer or the Engineer, prepare and submit to the Engineer a revised program, taking into account the prevailing circumstances, and shall notify the Engineer of the steps being taken to expedite progress so as to attain completion of the Works and Services within the Time for Completion under GCC Sub-Clause 9.2, any extension thereof entitled under GCC Sub-Clause 48.1, or any extended period as may otherwise be agreed upon between the Employer and the Contractor.

#### **26.5 Procedures**

The Contract shall be executed in accordance with the Contract Documents including the procedures given in the Forms and Procedures in Section 6, Employer's Requirements.

The Contractor may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in Section 6, Employer's Requirements.

### **27. Subcontracting**

**27.1** The Contractor may subcontract activities listed in the PCC. Activities not in listed in the PCC may be subcontracted with the prior approval of the Engineer. Such approval by the Engineer to subcontract the activity shall not relieve the Contractor from any of its obligations, duties or responsibilities under the Contract.

**27.2** For items or parts of the Works and Services that are small as listed in the PCC, the Contractor may employ Subcontractors as it may select, at its discretion.

	<p><b>27.3</b> Each sub-contract shall include provisions which would entitle the Employer to require the sub-contract to be assigned to the Employer under GCC Sub Clause 27.4 (if and when applicable), or in event of termination by the Employer under GCC Sub Clause 50.2.</p> <p><b>27.4</b> If a sub-contractor's obligations extend beyond the expiry date of the relevant Defects Liability Period and the Engineer, prior to that date, instructs the Contractor to assign the benefits of such obligations to the Employer, then the Contractor shall do so.</p>
<p>28.</p> <p><b>Design Responsibility</b></p>	<p><b>28.1</b> Specifications and Drawings</p> <p><b>28.1.1</b> The Contractor shall execute the basic and detailed design and the engineering work where required in compliance with Section 6, Employer's Requirements, or where not so specified, in accordance with good engineering practice.</p> <p>The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Engineer or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Employer.</p> <p><b>28.1.2</b> The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the Employer, by giving a notice of such disclaimer to the Engineer.</p> <p><b>28.2</b> Codes and Standards</p> <p>Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of bid submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied subject to approval by the Employer and shall be treated in accordance with GCC Clause 47.</p> <p><b>28.3</b> Approval/Review of Technical Documents by Engineer</p> <p><b>28.3.1</b> The Contractor shall prepare and furnish to the Engineer the documents mentioned in Section 6, Employer's Requirements for its approval or review.</p> <p>Any part of the Works covered by or related to the documents to be approved by the Engineer shall be executed only after the Engineer's approval thereof.</p> <p>GCC Sub-Clauses 28.3.2 through 28.3.7 shall apply to those documents requiring the Engineer's approval, but not to those furnished to the Engineer for its review only.</p> <p><b>28.3.2</b> Within fourteen (14) days after receipt by the Engineer of any document requiring the Engineer's approval in accordance with GCC Sub-Clause 28.3.1, the Engineer shall either return one copy thereof</p>

to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefore and the modifications that the Engineer proposes.

If the Engineer fails to take such action within the said fourteen (14) days, then the said document shall be deemed to have been approved by the Engineer.

**28.3.3** The Engineer shall not disapprove any document, except on the grounds that the document does not comply with the Contract or that it is contrary to good engineering practice. If the Engineer disapproves a document, he shall specify the reasons for his decision.

**28.3.4** If the Engineer disapproves the document, the Contractor shall modify the document and resubmit it for the Engineer's approval in accordance with GCC Sub-Clause 28.3.2. If the Engineer approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.

**28.3.5** If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Engineer of any document and/or any modification(s) thereto that cannot be settled between the parties within a reasonable period, then such dispute or difference may be referred to a Dispute Board for determination in accordance with GCC Sub-Clause 53.3 hereof. If such dispute or difference is referred to a Dispute Board, the Engineer shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Engineer's instructions, provided that if the Dispute Board upholds the Contractor's view on the dispute and if the Employer has not given notice under GCC Sub-Clause 53.3 hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Dispute Board shall decide, and the Time for Completion shall be extended accordingly.

**28.3.6** The Engineer's approval, with or without modification of the document furnished by the Contractor, shall not relieve the Contractor of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Engineer.

**28.3.7** The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Engineer an amended document and obtained the Engineer's approval thereof, pursuant to the provisions of this GCC Sub-Clause 28.3.

If the Engineer requests any change in any already approved document and/or in any document based thereon, the provisions of GCC Clause 47 shall apply to such request.

## **29. Customs**

**29.1** The Contractor shall, at its own expense, handle all imported

materials and Contractor's equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Employer's obligations under GCC Sub-Clause 11.4, provided that if applicable laws or regulations require any application or act to be made by or in the name of the Employer, the Employer shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance that are not the fault of the Contractor, the Contractor shall be entitled to an extension in the Time for Completion, pursuant to GCC Clause 48.

**30. Execution of Works and Services**     **30.1 Setting Out/Supervision**

**30.1.1 Bench Mark**

- (a) The Contractor shall be responsible for the true and proper setting-out of the Works in relation to benchmarks, reference marks and lines provided to it in writing by or on behalf of the Employer.
- (b) If, at any time during the progress of the Works, any error shall appear in the position, level or alignment of the Works, the Contractor shall forthwith notify the Engineer of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Engineer.

**30.1.2 Contractor's Supervision**

The Contractor shall give or provide all necessary superintendence during the installation of the Works, and the Water Loss Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Contractor shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.

**30.1.3 Site Office**

The contractor shall construct a temporary site office for supervisory staff of the department and shall also provide necessary furniture including electricity as per requirement of the Engineer- in-charge. No extra payment for this shall be made on this account.

Employer may consider request for space required for storage of pipes, equipments and other material, etc if any space constraints are encountered at site of works. However, Tenderer himself will have to identify suitable land / premises under the control of Employer and shall have to segregate the same if required. No extra charges of any kind will be payable to the Contractor on this account. At the same time Employer shall not recover any storage charges from the contractor. After the successful completion of works, it will be the responsibility of the contractor to remove all the material / pipes / equipment from the said premises as per the directions of Engineer before final payments are released.

**30.1.4 Contractor to supply plant, ladder, scaffolding etc**

The contractor shall supply at his own cost all materials (except such

special material, if any as many in accordance with the contract, be supplied from the Engineering Departmental Stores), plant tools appliances implements, ladders, cordage, tackle scaffolding and temporary works requisite or proper for the proper execution of the work, whether, in the original, altered or substituted form and whether including in the specification or other documents forming part of the contract or referred to in these conditions or not and which may be necessary for the purpose of satisfying or complying with the requirement of the Engineer in -Charge as to any matter as to which these conditions, he is entitled to be satisfied, or which he is entitled to require together with the 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 in the measurement or examination at any time and from time to time of the work or the material, failing which the same may be provided by the Engineer at the expenses of the contractor and the expenses may be deducted from any money due to the contractor under the contract or from his security deposit or the proceeds of sale thereof, or of a sufficient portion thereof. The contractor shall provide all necessary fencing and lights required to protect the public from accidents, and shall also be bound to bare the expenses of defense of every suit, action or other legal proceedings, that may be brought by any person for injuries sustained obeying to neglect of the above precautions, and to pay any damages and costs which may be avoided in any such suit actions or proceedings to any such person, or which may with consent of the contractor to be paid for compromising any claim by any such person. List of machinery in contractor's possession and which they propose to use on the work should be submitted along with the tender.

(a) the contractor shall provide suitable scaffolds and

working platforms gangways and stairways and shall comply with the following regulations in connection therewith: -

(a) Suitable scaffolds shall be provided for workmen for all works that cannot be safely done from a ladder or by other means. (b) A scaffold shall not be constructed, taken down or substantially altered except- (i) Under the supervision of a competent and responsible person: and

(i) As far as possible by competent workers possessing adequate experience in this kind of work. (c) All scaffolds and appliances connected therewith and ladders shall (i) Be sound of material, (ii) Be of adequate strength having regards to the loads and strains to which they will be subjects, and (iii) Be maintained in proper condition (d) Scaffolds shall be so constructed that no part thereof can be displaced in consequence of normal use. (e) Scaffolds shall not be overloaded and so far as practicable the load shall be evenly distributed. (f) Before installing lifting gear on scaffolds special precautions shall be taken to ensure the

strength and stability of the Scaffolds. (g) Scaffolds shall be periodically inspected by a competent person. (h) Before allowing a scaffold to be used by his workmen the contractor shall, whether the scaffold has been erected by his workmen or not, take steps to ensure that it complies fully with the regulation herein in specified. (i) Working platform, gangways, stairways shall (ii) Be so constructed that no part of thereof can sag unduly or unequally. (iii) Be so constructed and maintained having regard to the prevailing conditions as to reduce as far as practicable risks of persons tripping or slipping, and (iv) Be kept free from any unnecessary obstruction. (j) In case of working platform, gangway, working places and stairways at a height exceeding three members. (i) Every working platform and every gangway shall be closely boarded unless other adequate measures are taken to ensure safety. (ii) Every working platform and gangway shall have adequate width and (iii) Every working platform, gangway, working place and stairway shall be suitable fenced. (k) Every opening in the floor of a building or in a working platform shall accept for the time and to the extent required to allow the excess of persons for the transport for shifting of materials to be provided with suitable means to prevent the fall of persons or materials. (l) When persons are employed on roof where there is a danger of falling from a height exceeding 3 meters. Suitable precautions shall be taken to prevent the fall of persons or material. (m) Suitable precautions shall be taken to prevent persons being struck by articles, which might fall from scaffolds or other working places. (n) Safe means of access shall be provided to all working platforms and other working places. (o) The contractor(s) will have to make payments to the laborers as per minimum wages Act.

(b) The contractor shall comply with the following regulations as regards the hoisting appliances to be used by him. (a) Hoisting machine and tackle, including the attachments anchorages and supports shall, (i) Be of good mechanical construction, sound material and adequate strength and free from patent defect and (ii) Be kept in good repair and in working order. (b) Every rope used in hoisting or lowering materials or as a mean of suspension shall be of suitable quality and adequate strength and free from patent defect. (c) Hoisting machines and tackle shall be examined and adequately tested after erection on the site and before used and be reexamined in position at intervals to be prescribed by the Corporation. (d) Every chain, ring, hook, shackle swivel and pulley block used in hoisting and lowering materials or as a mean of suspension shall be periodically examined. (e) Every crane driver or hoisting appliance Contractor shall be properly qualified. (f) No person who is below the age of 18 years shall be control of any hoisting machine, including any scaffold which, or give signals to the Contractor. (g) In case of every hoisting machine and of every chain, ring, hook, shackle, swivel pulley block used in hoisting or

Lowering or as a mean of suspension, the safe working load shall be as ascertained by adequate means.

(a) Every hoisting machine and all gear referred to in preceding regulation shall be plainly marked with the safe working load. (b) In the case of a hoisting machine having a variable safe working load each safe working load and the condition under which it is applicable shall be clearly indicated. (c) No part of any hoisting machine or of any geared referred to in regulation (g) above shall be loaded beyond the safe working load except for the purpose of testing. (d) Motors, gearing transmissions, electric wiring and other dangerous part of hoisting appliances shall be provided with efficient safeguards. (e) Hoisting appliances shall be provided with such means as will reduce to minimum, and the risk of the accidental descent of a load (f) Adequate precautions shall be taken to reduce to a minimum the risk of any part of a suspended load becoming accidentally displaced

### **30.2 Staff and Labor**

#### **30.2.1 Engagement of Staff and Labor**

- (a) Except as otherwise stated in Section 6, Employer's Requirements, the Contractor shall make arrangements for the engagement of all staff and labor, local or otherwise, and for their payment, housing, feeding and transport.
- (b) The Contractor shall employ the key experts staff named in the Contractor's Bid, to carry out the functions stated in Section 6, Employer's Requirements. However, the Contractor may replace the key staff in the Contractor's Bid provided that their relevant qualifications and abilities are substantially equal or better than those in the Contractor's Bid and provided further, that the Engineer approves the same.
- (c) The Contractor shall provide and employ on the Site in the installation of the Works and Services such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged to use local labor that has the necessary skills.
- (d) The Contractor shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labor and personnel to be employed on the Site into the country where the Site is located. The Employer will, if requested by the Contractor, use his best endeavors in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national or government permission required for bringing in the Contractor's personnel.
- (e) The Contractor shall at its own expense provide the means of

repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to the place where they were recruited or to their domicile. Its shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Employer may provide the same to such personnel and recover the cost of doing so from the Contractor.

#### **30.2.2 Removal of Staff**

The Engineer may request the Contractor in writing to remove any member of the Contractor's staff and labor, including the Contractor's key staff, stating the reasons therefore, and the Contractor shall ensure that the person leaves the Site within seven (7) days and has no further connection with the work under the Contract. The Contractor must replace the key staff within 15 days from receipt of the Engineer's written request. Failure to do so entitles the Employer to deduct a penalty if specified in the PCC.

#### **30.2.3 Persons in the Service of Employer**

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

#### **30.2.4 Labor Laws**

- (a) The Contractor shall comply with all the relevant labor Laws applicable to the Contractor's personnel, including laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.
- (b) The Contractor shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labor of its Subcontractors.
- (c) The Contractor shall, in all dealings with its labor and the labor of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labor.

#### **30.2.5 Rates of Wages and Conditions of Labor**

- (a) The Contractor shall pay rates of wages, and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by Employers whose trade or industry is similar to that



of the Contractor.

- (b) The Contractor shall inform the Contractor's personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages and allowances as are chargeable under the laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws.
- (c) Wages to be paid to the skilled and unskilled labourers engaged by the Contractor. The contractor shall pay the labourers skilled and unskilled according to the wages prescribed by the Minimum Wages Act of 1948 applicable to the area in which the work of the contract is located. The contractor shall comply with the provisions of the Apprentices Act 1961 and the rules and Orders issued there under from time to time, if he fails to do so, his failure will be a breach of the contract and the Engineer, may in his discretion, cancel the contract. The contractor shall also be liable for any pecuniary liability arising on account of any violation by him of the provision of Act. The contractor shall pay the labourers skilled and unskilled according to wages prescribed by Minimum Wages Act applicable to the area in which the work lies.
- d. In case of any disputes with labour (skilled or unskilled) and charges are claimed against the contractor, the Engineer shall have the full authority to deduct the same from the bill of the contractor, so as to enable him to settle the disputes.

#### **30.2.6 Working Hours**

- (a) No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours stated in the PCC, unless:
  - (i) the Engineer gives consent, or
  - (ii) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer.
- (b) If and when the Contractor considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Engineer's consent thereto, the Engineer shall not unreasonably withhold such consent.
- (c) This GCC Sub-Clause 30.2.6 shall not apply to any work which is customarily carried out at night or by rotary or double-shifts as stated in the PCC. For this reason, the Employer's consent is deemed granted for all leak detection and related activities which are necessarily conducted during night hours.
- (d) The work is likely to be executed during night also. Nothing extra shall be paid on account of it.

#### **30.2.7 Facilities for Staff and Labor**

- (a) Except as otherwise stated in Section 6, Employer's

Requirements, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's personnel. The Contractor shall also provide facilities for the Employer's personnel as stated in the Specification.

(b) The Contractor shall not permit any of the Contractor's personnel to maintain any temporary or permanent living quarters within the structures forming part of the permanent works.

(c) Labour Camp and Hutments: It shall be the responsibility of the contractor to make his own arrangement for labour camp and hutments at the site. In case adequate space is available, the contractor shall provide labour camps there. Employer shall not recover any space charges from the contractor. If the space available is not sufficient to house the labour camp, the contractor shall arrange the land beyond the site as per his requirement. The Employer may extend help in getting permissions from the land owning agencies but it shall be the responsibility of the contractor for arranging the same at his own cost. No excuse whatsoever shall be entertained.

---

On completion of the work the contractor shall remove hutments failing which the department will dismantle and clear the site at his risk and cost.

The contractor shall at all the times during the progress of work take all requisite precautions and use his best endeavors for preventing any riotous or unlawful behavior by or among the workers and other employees at the work and shall preserve peace and protection of the inhabitants and the security of property in the neighborhood of the work.

If the contractor or his working people or servants break, deface, injure or destroy any part of building in which they may be working, or any building, road, road curb, fence, enclosure, water pipe, cables, drains electric or telephone post or wires, trees, grass or grasslands, or cultivated ground contiguous to the premises on which the work or any part is being executed or if any damage shall happen to the work while in progress, from any cause whatsoever, the contractor shall make the same good at his own expense or in default the Engineer cause the same to be made good by other workman and deduct the expense from any sums that may be due or at any time thereafter may become due to the contractor, or from his security deposit or the proceeds of sale thereof or of a sufficient portion thereof.

---

#### **30.2.8 Health, Safety & Welfare**

(a) **Compensation under Workmans Compensation Act:** The

contractor shall be responsible for and shall pay any compensation to his workmen payable under the Workmens Compensation Act 1923 (VIII of 1923) (hereinafter called the said Act) for injuries caused to the workmen. If such compensation is payable paid by corporation as principal under sub section (1) of section 12 of the said Act on behalf of the contractor under subsection (2) of the said section. Such compensation shall be recovered from contractor amount or through performance security.

(b) the contractor shall be responsible for and shall at the expenses of providing medical aid to any workmen who may suffer abodily injury as a result of an accident. If Corporation does it and incurs expenses the same shall be recoverable from the contractor forthwith and such expenses deducted from the contractor without prejudice to any other remedy of Corporation for any amount due or that may be due to the contractor.

(c) The contractor shall provide all necessary personal safety equipment's and first aid apparatus available for use of persons employed on site and shall maintain the same condition suitable for immediate use at any time and shall comply with the following regulations in connection therewith.

(a) The workers shall be required to use the equipment so provide by the contractor shall take adequate steps to ensure proper use of the equipment by those concerned.

(d) The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

(e) The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the performance of the Contract, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

(f) The Contractor shall send, to the Engineer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Engineer may reasonably require.

#### **30.2.9 Funeral Arrangements**

In the event of the death of any of the Contractor's personnel or accompanying members of their families, the Contractor shall be responsible for making the appropriate arrangements for their return or burial, unless otherwise specified in the PCC

**30.2.10 Records of Contractor's Personnel**

The Contractor shall keep accurate records of the Contractor's personnel, including the number of each class of Contractor's personnel on the Site and the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis in a form approved by the Engineer and shall be available for inspection by the Engineer until the Contractor has completed all work.

**30.2.11 Supply of Foodstuffs**

The Contractor shall arrange for the provision of a sufficient supply of suitable food if required by the PCC at reasonable prices for the Contractor's personnel for the purposes of or in connection with the Contract.

**30.2.12 Supply of Drinking Water and Sanitation**

The Contractor shall so far as reasonable, having regard for local conditions provide on the Site and at its expense, adequate supply of drinking water for the use of Contractor's and Employer's personnel and representatives, together with sanitary facilities (portable toilets or latrines), to the satisfaction of the Engineer.

**30.2.13 Measures against Insect and Pest Nuisance**

The Contractor shall at all times take the necessary precautions to protect the Contractor's personnel employed on the Site from insect and pest nuisance, and to reduce their danger to health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

**30.2.14 Alcoholic Liquor or Drugs**

The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift barter or disposal by Contractor's personnel.

**30.2.15 Arms and Ammunition**

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

**30.2.16 Prohibition of All Forms of Forced or Compulsory Labor**

The Contractor shall not employ "forced or compulsory labor" in any form. "Forced or compulsory labor" consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

**30.2.17 Prohibition of Harmful Child Labor**

The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

**30.2.18 Employment of female labour**

The employment of female labors on works in neighborhood of soldiers barracks should be avoided as far as possible. The contractor shall employ the labor registered with the nearest employment exchange.

30.2.19 The contractor shall duly comply with the provision of the Apprentices Act (III of 1961) the rules made there under and the orders that may be issued from time to time under the Act the said Rules.

30.2.20 No contractor shall employ donkeys or other animals with breeching of string or thin rope the breeching must be at least three inches wide and should be of tape (Nawar). No animals suffering from sores lameness or emaciation or which is immature shall be employed on the work.

30.2.21 The Engineer or his agent is authorized to remove from the work any person or animal found working which does not satisfy these conditions and no responsibility shall be accepted by Corporation for any delay caused in the completion of work by such removal.

30.2.22 If Government declares a state of scarcity or famine to exit in any village situated within 10 miles of the work, the contractor shall employ upon such parts of work, as are suitable for unskilled labour, any person certified to him by the Executive Engineer, or be any person to whom the Executive Engineer may have delegated this duty in writing to be in need of relief and shall be bound to pay to such person wages not below the minimum which government may have fixed in this behalf. Any disputes which may arise in connection with the implementation of this clause shall be decided by the Executive Engineer whose decision shall be final and binding on the contractor.

30.2.23 The contractor shall employ at least 80 percent of the total number of unskilled labour to be employed by him on the said work from out of the persons ordinarily residing in the district in which site of the said work is located. Provided, however; that if the required number of unskilled labour from that district is not available, the contractor shall in the first instance employ such number of persons as in available and thereafter may with previous permission in writing of the Executive Engineer of the said work, obtain the rest of the requirement of unskilled labour from outside district.

**30.3 Contractor's Equipment**

**30.3.1** All of Contractor's equipment brought by the Contractor onto the Site shall be deemed to be used exclusively for the execution

of the Contract. The Contractor shall not remove the same from the Site without the Engineer's consent that such Contractor's equipment is no longer required for the execution of the Contract.

**30.3.2** Unless otherwise specified in the Contract, upon completion of the Works and Services, the Contractor shall remove from the Site all equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.

**30.3.3** The Employer will, if requested, use its best endeavors to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract.

**30.3.4** The contractor shall provide list of machineries i.e. horizontal boring machines, equipments, tools and plants, heavy capacity big size pumps for dewatering and pumping out water, specialized and latest technology machines, JCB, Crane and Generator etc. Required for the trench less work, in the owner ship or collaboration of the firm.

#### **30.4 Site Regulations and Safety**

The Employer and the Contractor shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Contractor shall prepare and submit to the Employer, with a copy to the Engineer, proposed Site regulations for the Employer's approval, which approval shall not be unreasonably withheld.

Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety, gate control, sanitation, medical care, and fire prevention.

No blasting shall be allowed. Edges in the trench shall be got rounded off to prevent the damage of pipes.

#### **30.5 Opportunities for Other Contractors**

**30.5.1** The Contractor shall, upon written request from the Employer or the Engineer, give all reasonable opportunities for carrying out the work to any other contractors employed by the Employer on or near the Site.

**30.5.2** If the Contractor, upon written request from the Employer or the Engineer, makes available to other contractors any roads or ways the maintenance for which the Contractor is responsible, permits the use by such other contractors of the Contractor's equipment, or provides any other service of whatsoever nature for such other contractors, the Employer shall fully compensate the Contractor for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and

shall pay to the Contractor reasonable remuneration for the use of such equipment or the provision of such services.

**30.5.3** The Contractor shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors. The Engineer shall determine the resolution of any difference or conflict that may arise between the Contractor and other contractors and the workers of the Employer in regard to their work.

**30.5.4** The Contractor shall notify the Engineer promptly of any defects in the other contractors' work that come to its notice, and that could affect the Contractor's work. The Engineer shall determine the corrective measures, if any, required to rectify the situation after inspection of the Works. Decisions made by the Engineer shall be binding on the Contractor.

### **30.6 Emergency Work**

If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Works, the Contractor shall immediately carry out such work.

If the Contractor is unable or unwilling to do such work immediately, the Employer may do or cause such work to be done as the Employer may determine is necessary in order to prevent damage to the Works. In such event the Employer shall, as soon as practicable after the occurrence of any such emergency, notify the Contractor in writing of such emergency, the work done and the reasons therefore. If the work done or caused to be done by the Employer is work that the Contractor was liable to do at its own expense under the Contract, the reasonable costs incurred by the Employer in connection therewith shall be paid by the Contractor to the Employer. Otherwise, the cost of such remedial work shall be borne by the Employer.

### **30.7 Site Clearance**

#### **30.7.1 Site Clearance in Course of Performance**

In the course of carrying out the Contract, the Contractor shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Contractor's equipment no longer required for execution of the Contract.

#### **30.7.2 Clearance of Site after Completion**

After Completion of the Works, the Contractor shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site in a clean and safe condition.

##### **30.7.2.1 Clearance of Site**

The site shall be cleared off all malba / debris etc. after completion of work and shall ensure removal of temporary structure erected

for execution of works, hutments put up by his laborer at site, if any before handing over site to the department in workable condition. No final payment for the work shall be made to the contractor till full satisfaction of the Engineer.

#### **30.7.3 Measure for prevention of fire**

---

The contractor shall not set fire to any standing jungle, trees, bush woods or grass without a written permit from the Executive Engineer. When such permit is given, and also in all cases when destroying cut or dug up trees bush wood, grass etc. by fire; the contractor shall take necessary measure to prevent such fire spreading to or otherwise damaging surrounding property. The contractor shall make his own arrangements for drinking water for the labors employed by him.

### **30.8 Watching and Lighting**

The Contractor shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Works, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.

#### **30.8.1 Watch and Ward**

Adequate arrangements shall be made for lighting, Chowkidar etc. to safeguard against accidents & suitable passageways shall be provided wherever needed during the progress of the work for access to the site/ buildings.

It shall be responsibility of the contractor to watch & ward all fittings and fixtures till such time the possession of the work is handed over to Engineer.

---

Wherever necessary the contractor shall at his own cost provide adequate temporary fencing to the whole or part of the site for the safety, convenience of workmen, public, live stock and for execution of works. Nothing extra shall be paid on this account unless otherwise specified in the Bill of Quantity.

### **30.9 Environmental Mitigation Measures**

#### **30.9.1 Site Environmental Plan**

The Contractor shall prepare a detailed Site Environmental Plan (SEP) for the work site, base camp, etc., showing arrangements for disposal of sanitary and other waste, location of fuel, oil and lubricant depots, sheds for equipment, labor and housing facilities, etc., prior to the construction for approval of the Engineer.

The contractors SEP shall also take into account the implementation of all measures stated in Environmental Management Plan and the Environmental Monitoring Plan in Section 6, Employer's Requirements.

#### **30.9.2 Safety, Security and Protection of the Environment**



The Contractor shall take all necessary precautions against pollution or interference with the supply, or obstruction of the flow of, surface or underground water. These precautions shall include but not be limited to physical measures such as earth bunds of adequate capacity around fuel, oil and solvent storage tanks and stores, oil and grease traps in drainage systems from workshops, vehicle and plant washing facilities and service and fueling areas and kitchens, the establishment of sanitary solid and liquid waste disposal systems, the maintenance in effective condition of these measures, the establishment of emergency response procedures for pollution events, and dust suppression, all in accordance with normal good practice and to the satisfaction of the Engineer. Should any pollution arise from the Contractor's activities he shall clean up the affected area immediately at his own cost and to the satisfaction of the Engineer, and shall pay full compensation to any affected parties.

#### **30.9.3 Protection of Trees and Vegetation**

The Contractor shall ensure that no trees or shrubs or waterside vegetation are felled or harmed except for those required to be cleared for execution of the Works. The Contractor shall protect trees and vegetation from damage to the satisfaction of the Engineer. No tree shall be removed without the prior approval of the Engineer and any competent authorities. Should the Contractor become aware during the period of the Contract that any tree or trees designated for clearance have cultural or religious significance he shall immediately inform the Engineer and await his instructions before proceeding with clearance. In the event that trees or other vegetation not designated for clearance are damaged or destroyed, they shall be repaired or replaced to the satisfaction of the Engineer, who shall also impose a penalty to twice the commercial value of any timber affected, as assessed by the Engineer.

#### **30.9.4 Use of Wood as Fuel**

The Contractor shall not use wood as a fuel for the execution of any part of the Works, including but not limited to the manufacture of bricks for use in the Works, and to the extent practicable shall ensure that fuels other than wood are used for cooking, and water heating in all his camps and living accommodations.

#### **30.10 Sign Board**

The contractor shall provide board indicating complete name of work, date of start, date of completion as per work order / actual, cost of work, name of the department, name of the Executive Engineer with office address and telephone number & name of the executing agency at his own cost at the site of work and at the site office.

---

Sign Board showing "Men at work" and "Work in Progress" & "EMPLOYER Work" are to be provided by the contractor at work

places at his own cost.

**30.11 Additional Conditions**

In the event of any restrictions being imposed by the Security agencies, EMPLOYER, Traffic or any other authority in the working area or movement. The contractor shall strictly follow such restrictions and nothing shall be excused from doing the stipulated work on this account. The loss of time on this account, if any, shall have to be made by generating additional resources etc. other restrictions are given as under:-

- a) The movement of trucks and vehicles shall be regulated in accordance with rules and Regulations as approved by competent authority.
- b) The Contractor shall inform in advance, the truck registration numbers, ownerships of the trucks, names and address of the drivers for necessary action by the security agency.
- c) Names and address of laborers/staff etc. Working at site shall be furnished to EMPLOYER in advance.
- d) The laborers/staff should not be changed too frequently once the verification of the character and antecedents is done.
- e) Uniform: The Contractor shall provide two Pairs of Uniforms (Winter and Summer) to his workers while on duty. The workers shall always be in uniform. Workers and Supervisors must wear neat and clean ironed uniform (including proper name badges).
- f) After verification of antecedents of workers, identification badges will be issued to them by the contractor. The cost of badges and uniforms etc would be borne by the contractor. Workers shall wear Identity Card and Uniform while on duty.
- g) The contractor shall be responsible for behavior and conduct of his laborers. No labourer with doubtful integrity or having a bad record shall be engaged by the concessionaire.
- h) The workers of the contractor should strictly observe code of conduct and manner befitting security. If any employee of the Contractor fails to absolve proper conduct, the contractor shall be liable to remove him from deployment, immediately in receipt of the instructions of the EMPLOYER.
- i) The Contractor shall be responsible for the conduct and behavior of its workers employed for the work.
- j) The EMPLOYER shall not be responsible for any compensation, which may be required to be paid to the

worker(s) of the Contractor consequent upon any injury/mishap.

---

### **30.12 Leveling Instrument/Survey Equipments**

The contractor must always make available an accurate leveling instrument at the site of work. Necessary levels will be given by the contractor or his authorized site engineer and the same will be checked by the site staff of the department.

### **30.13 Execution of Work**

The work is to be carefully executed strictly in accordance with the approved drawing submitted by the contractor or with such modifications as may be approved by the Engineer from time to time. Any additional amended, revised or detailed drawings that may be issued by the Engineer or approved in writing by him during the progress of the work are to be considered to form the part of the work and as such being included in the contract. No claim whatsoever shall be considered on this account.

The order of sequence of execution of the work and general condition of the work shall be subject to the approval and direction of the Engineer whose approval or direction shall however in no way relieve the contractor of the responsibility for the proper and satisfactory execution of the work according to the terms of contract and within stipulated period. No claim of the contractor whatsoever will be entertained on this account.

The information given in the drawing including the conditions of ground or the information regarding the depth of water to be met with means of access, or any other such matter shall not relieve the contractor from the fulfillment of the contract. The contractor is liable to check all the points mentioned in the drawing.

---

The contractor shall establish at his own cost at suitable points additional reference points lines Bench marks as may be necessary. The contractor will be responsible and must check and satisfy himself the accuracy of levels, lines positions, dimensions, sizes etc. of the finished work in accordance with the contract.

### **30.14 Materials Brought at Site**

Materials brought at site consisting of plant, machinery, tools, tackles, raw material etc. required for execution of work shall not be removed except for use in the work unless permission in writing is given by the Engineer. The contractor however, shall be responsible for loss or damage such materials and goods.

All the material / chemicals / consumables brought at site shall be protected suitably, duly wrapped / packed and stored so as to avoid any damage during loading / transportation / unloading & handling due to weather conditions etc. at any stage.

---

### **30.15 Covering of Works**

No work will be covered or put out of view without approval of the Engineer or his representative and the contractor shall afford full opportunity for the Engineer or his representative to examine and measure any work which is about to be covered up or put out of view.

### **30.16 Inconvenience to Public**

The contractor shall not dump / deposit materials on site, which will seriously cause inconvenience to the public. The Engineer may require the contractor to remove any materials, which are considered by him to be of danger, or to cause inconvenience to public and have them to be removed at the contractor's cost.

The bidder shall visit the site and examine the availability of space in detail for execution of the work and deployment of machinery. The Contractor has to ensure that the general public/ tourist are not hindered in any manner while operate and maintain the project.

---

The project is required in Public Place in EMPLOYER area as define herein which is a sensitive and high footfall/ crowded area. The contractor shall follow the security and safety requirements in his day-to-day work as per site condition.

### **30.17 Responsibility of Damage to Person or Property**

The contractor will be absolutely and solely responsible for any accident that may occur during the progress on the work and for injury or damage to the persons or property of any description whatsoever which may be caused by or result from the execution of the work. The contractor shall at his own expenses take all necessary and timely precautions against injury or accident to the work or any person or property and shall forth-with protect and support all such structures or properties or electric poles or the things which may be effected by the execution of the work and make good any damage so caused. In the event of the accident to any person or persons or death or injury of any descriptions to any person, structure, animal or things the contractor will be solely responsible for the same and will indemnify Employer for the same.

In the event of any damage occurring to any work, life and property during the execution of work included in the contract Clause due to settlement of ground slips, flooding from any sources breakage of water main/ sewer line or any other cause, the contractor will be solely responsible and must reconstruct, repair and make good all such at his own cost.

When the work is done near a place where there is risk of danger/ accident, all necessary equipments should be provided and kept ready for use and all necessary steps taken for prompt rescue of any person in danger and adequate provision should be made for prompt

first aid treatment of all injuries likely to be sustained during the course of the work.

---

If any accident occurs the contractor shall report to the Employer, within 24 hours of its occurrence.

### **30.18 Contractor to Indemnify**

The contractor shall be liable for and shall also indemnify the Employer against all liabilities, losses, claims, demands, proceedings, damages, costs, charges and expenses and further agrees to defend, indemnify and hold the PCMC harmless from any penalty whatsoever in respect of any injury, accident or damage to any property or to personnel during the execution of work or by the action of any central or state or local authority for violation by the contractor or sub-contractor engaged on the work.

---

### **30.19 Electricity**

The contractor shall pursue / arrange at his own cost the electricity / power connection of required capacity for carrying out the construction works. The Employer will issue the recommendation letter to concerned electrical authorities for getting the power connection. The persuasion, the formalities, the required monthly payments shall be made by the contractor and he will bear all the charges towards security installation, consumption of electricity / power etc. till completion of the work. The photocopy of the paid bills shall be enclosed with Running account bills in confirmation of timely payments made by the contractor to concerned electrical authorities.

The payment of final bill to the contractor shall be made by Employer on submission of no dues / clearance certificate from the Electric Power authority / the authority in-charge of the Electric power.

The temporary electric fitting shall be provided and maintained as per the power sanctioning/maintaining authority rules and regulations by the contractor at his own cost and nothing extra shall be paid by the Employer.

---

In case concerned Power authority is not in a position to sanction the electric connection, the contractor shall make his own arrangements i.e. required numbers of generators of adequate capacity to execute the work or in case the sanction of electric connection is delayed by the authority it shall also be on to the part of the contractor to arrange electricity at his own cost and no claim whatsoever shall be entertained on this account.

### **30.20 Generator Set**

Generators arranged by the contractor for the work shall be operated and maintained for use at his own cost during non-availability of power. It shall be contractor's responsibility to obtain

	<p>approvals &amp; permissions from any statutory authority in accordance with the statutory rules &amp; regulations.</p> <hr/> <p>The quoted rates shall be inclusive of POL cost and other miscellaneous expenditures to be incurred for running &amp; maintaining the generator set.</p> <p><b>30.21 Records &amp; Usage of Equipment/ Material</b></p> <p>The Contractor shall maintain a detailed report of all equipment/materials received at the site in his stores or storage and working areas in the vicinity of the site and shall make such records available to the Engineer at such times as the latter may reasonably require.</p> <p><b>30.22</b> The running and maintenance charges of machines i.e. cost of fuel, battery, lubricants, replacement of parts etc. shall be borne by the Contractor.</p> <hr/> <p>All machines provided by Contractor shall be exclusively for use in Project Area.</p>
<p><b>31. Test and Inspection</b></p>	<p><b>31.1</b> The Contractor shall at its own expense carry out on the Site all such tests and/or inspections of the Works as are specified in Section 6, Employer's Requirements, as well as tests not explicitly listed but required by the Engineer, and in accordance with the procedures described in Section 6, Employer's Requirements.</p> <p><b>31.2</b> The Employer and the Engineer or their designated representatives shall be entitled to attend the aforesaid test and/or inspections.</p> <p><b>31.3</b> Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Engineer. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Employer and the Engineer or their designated representatives to attend the test and/or inspection.</p> <p><b>31.4</b> The Contractor shall provide the Engineer with a certified report of the results of any such test and/or inspection.</p> <p>If the Employer or Engineer or their designated representative fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Engineer with a certified report of the results thereof.</p> <p><b>31.5</b> The Engineer may require the Contractor to carry out any test and/or inspection not required by the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of</p>

Works and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected.

**31.6** If any Construction Works fail to pass any test and/or inspection, the Contractor shall either rectify or replace such Works or part thereof and shall repeat the test and/or inspection upon giving a notice under GCC Sub-Clause 31.3.

**31.7** If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Works or part thereof that cannot be settled between the parties within a reasonable period of time, it may be referred to a Dispute Board for determination in accordance with GCC Sub-Clause 53.3.

**31.8** The Contractor shall afford the Employer and the Engineer, at the Employer's expense, access at any reasonable time to any place where the Works are being installed, in order to inspect the progress and the manner of installation, provided that the Engineer shall give the Contractor a reasonable prior notice.

**31.9** The Contractor agrees that neither the execution of a test and/or inspection of Works or any part thereof, nor the attendance by the Employer or the Engineer, nor the issue of any test certificate pursuant to GCC Sub-Clause 31.4, shall release the Contractor from any other responsibilities under the Contract.

**31.10** No part of the Works shall be covered up on the Site without the Contractor carrying out any test and/or inspection required under the Contract. The Contractor shall give a reasonable notice to the Engineer whenever any such parts of the Works are ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.

**31.11** The Contractor shall uncover any part of the Works, or shall make openings in or through the same as the Engineer may from time to time require at the Site, and shall reinstate and make good such part or parts.

If any parts of the Works or foundations have been covered up at the Site after compliance with the requirement of GCC Sub-Clause 31.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Employer, and the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been delayed or impeded in the performance of any of its obligations under the Contract.

**31.12** Testing of Construction

- i) The contractor shall carryout mandatory tests of materials as specified in the Indian standard code/ PWD Specifications and maintains the record of the test accordingly.
- ii) Test shall be got done from any of the following laboratories as

directed by the Engineer.

- PWD Laboratory
- Government Laboratory
- Government Engineering College
- Any other laboratory as approved by Engineer in case the tests are not done in the first three laboratories.

iii) Testing of cubes to the extent of 10% of due tests for crushing strength, shall be carried out from a laboratory as above. For the balance 90% due tests the Contractor may however be allowed by the Engineer to have his own lab at site and cube testing may be carried out in this lab, subject to approval by Engineer.

iv) Samples of various materials required for testing shall be provided free of charge by the Contractor. Testing charges shall be borne by the Contractor along with expenditure required to be incurred for taking the samples, conveyance, packing etc.

Even if the site laboratory is setup, more than 10% of total mandatory tests required for various items shall have to be got tested from outside laboratory approved by the Engineer.  
Materials

#### 31.13 Samples and Testing of Materials

- a) All materials to be used on work, such as structural steel, nuts and bolts, paints, cement, lime, bricks, aggregates, steel, structural and high tensile steel, bearings, expansion joints, stones, asphalt, woods, tiles, etc. shall be got approved in advance from Engineer and shall pass the test and analysis required by him, which will be (a) as specified in the specifications of the items concerned and / or (b) as specified by the India Road Congress Standard Specifications and code of practice for Roads and Bridges or (c) I.S.I. specification (wherever and whenever applicable) or (d) such recognised specifications acceptable to the Engineer as equivalent thereto or in the absence of such authorised specification (e) such requirements / tests and / or analysis as may be specified by the Engineer-in- Charge in the order of precedence given above.
- b) The Contractor shall establish a well equipped field laboratory at his cost for testing of construction materials like sieve analysis moisture content flakiness index & compressive strength of concrete cubes, testing of cement, aggregates etc. for testing as specified in MoRT&H Specification for road & bridges.
- c) The Contractor shall at his risk and cost make all arrangement and/or shall provide for all such facilities as the Engineer may require for collecting, preparing, and forwarding required number of samples for tests or for analysis at such time and to such place or places as may be directed by the Engineer and bear all charges and cost of testing including transport.

Such samples shall also be deposited with the Engineer-in Charge till



these are sent for testing. Samples of material shall also be preserved during the construction period.

The Contractor shall, if and when required, submit at his cost the samples of materials to be tested or analysed and if so directed shall not make use or incorporate in the work any materials until required tests have been made & the test results of the materials are finally accepted by Engineer-in Charge.

The contractor shall arrange for necessary testing equipment and conduct the testing in consultation with Employer Engineers before commencement of work and after completion of wearing course. Tests for Bituminous work must be performed in Third Party Laboratory approved by Employer and the cost such tests shall be borne by contractor.

In case of non-conformance to the quality control checks in accordance to the quality assurance plan for Hot-mix & other works related works, 10% of the value of work shall be deducted from RA bill.

#### **31.14 Third Party Inspection**

Third Party inspection agencies as defined in PCC, approved by Employer is applicable for this work. Contractor has to bear all the cost required for testing, sampling & inspection as per procedures & rules of third party. Testing & inspection shall be done as per approved QAP of Employer.

#### **31.15 Defects Pointed Out by the Other Agencies**

The inspection of one agency / authority / team shall not absolve the contractor of his responsibility on to the defects pointed out by the other agencies and rectification thereto. Recoveries, if any, proposed by any of the inspection agency on account of short comings in respect of quality / quantity in the work shall be recovered from the contractors payment otherwise he shall be responsible to reimburse the amount of all such recoveries which will be final and binding.

32. Certificate of  
**Sectional  
Completion, Initial  
Take Over Date &  
Final Take Over  
Date**

**32.1 Certificate of Completion :** At the end of Phase when the Design & construction Works have been substantially completed for respective DMAs or Sub DMAs inclusive all required consumer connections and hydraulic test in accordance with Section 6, Employer's Requirements, the Contractor shall request the Engineer to issue a Certificate of Sectional Completion for Design & Construction Works, and the Engineer within twenty one (21) days from receipt thereof, either issue to the Contractor a Certificate of Sectional Completion or give instructions in writing to the Contractor specifying all the conditions to be complied with and all the work which are required to be done by the Contractor before the issuance of such Certificate. Upon deciding that the work is complete, the Engineer shall thereafter issue a Certificate of Sectional Completion to the Contractor.

	<p><b>32.2</b> Initial Take Over date : If Certificate of sectional completion is issued by Engineer to any construction works or part of it including DMA establishment works or Sub DMA establishment works as per clause 32.1 above, before the completion of Design &amp;Construction Period as specified in PCC. Contractor shall take over the O&amp;M of such DMAs or Construction works and eligible for payment as per O&amp;M period till completion of Construction period or Final take Over date, whichever is earlier.</p> <p><b>32.3</b> Final take Over date : Completion of Design &amp;Construction period or commencement of O&amp;M Phase whichever is later shall be paid according to O&amp;M payment from Final take Over date.</p> <p><b>32.4</b> Virtual Completion</p> <p>The Contractor shall not be eligible for receipt of the virtual completion certificate until all tests have been completed and accepted by the various statutory bodies and all other authorities apart from the Engineer till the project is commissioned as intended by the competent authority.</p>
<p>33. Taking Over Certificate</p>	<p><b>33.1</b> At the end of the O&amp;M Phase, the Contractor may give notice to that effect to the Engineer, accompanied by a written undertaking to finish with due expedition any outstanding work during the Defects Liability Period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Engineer to issue a Taking-Over Certificate in respect of the Works and Services. The Engineer shall, within twenty-one (21) days of the date of delivery of such notice, either issue to the Contractor a Taking-Over Certificate, stating the date on which the Works and Services were substantially completed or give instructions in writing to the Contractor specifying all the conditions to be complied with and all the work which are required to be done by the Contractor before the issuance of such Certificate. The Engineer shall also notify the Contractor of any defects in the Works and Services affecting completion that may appear after such instructions and before completion of the Taking- Over Certificate within twenty-one (21) days of completion, to the satisfaction of the Engineer, of the Works and Services so specified and remedying any defects so notified.</p> <p><b>33.2</b> Similarly, in accordance with the procedure set out in Sub-Clause 33.1, the Contractor may request the Engineer for the issuance of a Taking-Over Certificate for:</p> <ul style="list-style-type: none"> <li>(a) Any Works and Services in which a separate Time for Completion is provided in the PCC,</li> <li>(b) Any substantial part of the Works and Services outside the DMAs which has been completed to the satisfaction of the Engineer and, otherwise than as provided for in the Contract, occupied or used by the Employer, or</li> <li>(c) Any part of the Works and Services which the Employer has elected to occupy or use prior to completion where such prior occupation or use is not provided for in the Contract or has not been agreed by the Contractor as a temporary measure. Other</li> </ul>

than the Works and Services specified in GCC Clause 33.2, the Contractor will not be allowed to request the Engineer for a Taking-Over Certificate. For the avoidance of doubt, the Contractor will not request for a Taking-Over Certificate for all works and services in relation to DMA establishment and Water Loss Reduction and Management Services until the end of the O&M Phase.

### 33.3 Handback of Project Facilities

#### 33.3.1 Ownership

Without prejudice and subject to the rights granted under this Agreement, the ownership of the Project Facilities, including all improvements made therein by the Contractor, shall at all times remain that of EMPLOYER.

#### 33.3.2 Contractor's Obligations

##### a. Project Facilities

- i. The Contractor shall on the date of expiry of Agreement Period, hand back on as-is where-is basis, the Project Facilities to Employer free of cost and in good operable condition. For the purpose of clarity, the Contractor shall leave behind all assets in good and operable condition including tools, spares, inventory, machinery and all other movables required for continuous water supply.
- ii. At least 12 (twelve) months before the expiry of the Agreement Period a joint inspection of the Project Facilities shall be undertaken by Employer and the Contractor. Employer shall, within 45 days of such inspection prepare and furnish to the Contractor a list of works/ jobs ("Handback Requirements"), if any, to be carried out so as to conform to the Employer's Requirements. The Contractor shall promptly undertake and complete such works / jobs at least 3 (three) months prior to the expiry of Agreement Period and ensure that the Project Facilities continue to meet such requirements until the same are handed back to Employer. On Expiry Date, the parties shall undertake a joint inspection of the Project Facilities so as to ensure that Handback Requirements are met. The release of the final installment of the Contractor Payment and other outstanding payments, if any, shall be subject to the Handback Requirements being fully met to the satisfaction of Employer.
- iii. Employer shall, within 45 days of the joint inspection undertaken under preceding clause (ii) prepare and furnish to the Contractor a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed

	<p>back to Employer.</p> <p>iv. The Contractor, upon written request by the Employer no later than 180 days prior to the Transfer Date, shall provide assistance to the Employer during a transitional period of up to 60 days prior to the Transfer Date. ("Transition Assistance") The purpose is to ensure a smooth transition between Contractor and a subsequent manager of the Project Facilities. The scope of the assistance shall be determined by Employer provided that the assistance shall be related to only transition services.</p> <p>v. If the Employer makes a request for assistance, the Transition Assistance shall be provided by those staff identified by Employer and the identified staff shall be resident in India until the completion of the Transition Assistance.</p> <p>b. The Contractor hereby acknowledges Employer's rights specified in Clause 33.3 enforceable against it upon Termination and its corresponding obligations arising there from. The Contractor undertakes to comply with and discharge promptly all such obligations.</p>
<p><b>34. As Built Drawings and Manuals</b></p>	<p><b>34.1</b> If "as built" Drawings and/or manuals are required, the Contractor shall supply them by the dates stated in the PCC.</p> <p><b>34.2</b> If the Contractor does not supply the Drawings and/or manuals by the dates stated in the PCC, or they do not receive the Engineer's approval, the Engineer shall deduct an amount stated in the PCC from payments due to the Contractor as a penalty.</p>

## F. Guarantees and Liabilities

<b>35. Completion Time Guarantee</b>	<p><b>35.1</b> The Contractor guarantees that it shall attain completion of the Works and Services (or a part for which a separate time for completion is specified) within the Time for Completion specified in the PCC pursuant to GCC Sub-Clause 9.2, or within such extended time to which the Contractor shall be entitled under GCC Clause 48 hereof.</p> <p><b>35.2</b> If the Contractor fails to attain completion of the Works and Services or any part thereof within the Time for Completion or any extension thereof under GCC Clause 48, the Contractor shall pay to the Employer liquidated damages in the amount specified in the PCC as a percentage rate of the Contract Price or the relevant part thereof. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as “Maximum” in the PCC as a percentage rate of the Contract Price. Once the “Maximum” is reached, the Employer may consider termination of the Contract, pursuant to GCC Sub-Clause 50.2.2.</p> <p>Such payment shall completely satisfy the Contractor’s obligation to attain completion of the Works or the relevant part thereof within the Time for Completion or any extension thereof under GCC Clause 48. The Contractor shall have no further liability whatsoever to the Employer in respect thereof.</p> <p>However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Works or from any other obligations and liabilities of the Contractor under the Contract.</p> <p>Save for liquidated damages payable under this GCC Sub-Clause 35.2, the failure by the Contractor to attain any milestone or other act, matter or thing by any date specified in the PCC or other work program prepared pursuant to GCC Sub-Clause 26.2 shall not render the Contractor liable for any loss or damage thereby suffered by the Employer.</p>
<b>36. Performance Obligations and Liquidated Damages</b>	<p><b>36.1</b> The Contractor guarantees the attainment of the following:</p> <ul style="list-style-type: none"> <li>(a) Completion of all construction works within the Design &amp; construction period as specified in PCC</li> <li>(b) The performance standard to be maintained within a range as specified in Section 6, Employer’s Requirements and performance standard as per Schedule 7 of PCC.</li> </ul> <p><b>36.2</b> If, for reasons attributable to the Contractor, the minimum guarantees are not met, the Contractor shall choose to either:</p> <ul style="list-style-type: none"> <li>(a) Make such changes, modifications and/or additions to the Works</li> </ul>

	<p>and Services or any part thereof that are necessary to meet the requirements within 90 days from the end of the previous quarter at its own cost and expense, or;</p> <p>(b) Pay to the Employer liquidated damages in the amount specified in the PCC, prepare a revised schedule for DMA establishment and submit to the Engineer for approval.</p> <p><b>36.3</b> If, for reasons attributable to the Contractor, construction works is not completed within the design &amp; construction period, the Contractor shall choose to either:</p> <p>(a) Make such changes, modifications and/or additions to the Works and Services or any part thereof that are necessary to meet the requirements within 30 days after the target date at its own cost and expense, or;</p> <p>(b) Pay to the Employer liquidated damages in the amount specified in the PCC.</p> <p><b>36.4</b> If, for reasons attributable to the Contractor, During O&amp;M period performance levels in the DMAs deteriorated beyond the maximum deduction for any. Parameters as specified in Schedule 5 &amp; 7 of PCC. The parameters are water loss continuity of supply, water quality &amp; consumer complaint the Contractor shall choose to either:</p> <p>(a) Make such changes, modifications and/or additions to the Works and Services or any part thereof that are necessary to meet the requirements at its own cost and expense, or</p> <p>(b) Pay to the Employer liquidated damages in an amount specified in the PCC.</p> <p><b>36.5</b> The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.</p> <p><b>36.6</b> At the end of the Design &amp; Construction phase the payment of liquidated damages under GCC Sub-Clause 36.2 and 36.3 up to the limitation of liability specified in the PCC, shall completely satisfy the Contractor's guarantees under GCC Sub-Clause 36.1(a) and (b) and the Contractor shall have no further liability whatsoever to the Employer.</p> <p><b>36.7</b> At the end of each year of O&amp;M Phase the payment of liquidated damages under GCC Sub-Clause 36.4 (b) up to the limitation of liability specified in the PCC, shall completely satisfy the Contractor's guarantees under GCC Sub-Clause 36.1(c) for the respective year and the Contractor shall have no further liability to the Employer.</p>
<b>37. Defect Liability</b>	<p><b>37.1</b> The Contractor warrants that the Works and Services or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Works and Services supplied and executed.</p> <p><b>37.2</b> The Defect Liability Period shall be One hundred Eighty (180) days from the date of completion of the O&amp;M Phase as per GCC Clause 32 (or any part thereof) or one hundred and eighty (180) days from the</p>

date a Taking Over Certificate is issued pursuant to GCC Sub-Clause 33.2 for a particular part of the Works and Services, whichever comes first.

If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Works and Services executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Employer regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good as the Contractor shall determine at its discretion, such defect as well as any damage to the water distribution system caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the water distribution system arising out of or resulting from any of the following causes:

- (a) Improper operation or maintenance of the water distribution system maintained by the Employer;
- (b) Operation of the water distribution system outside the procedures provided in the Operations Manual submitted by the Contractor to the Engineer; or
- (c) Normal wear and tear of existing retained assets.

**37.3** The Contractor's obligations under this GCC Clause 37 shall not apply to:

- (a) Any materials that are normally consumed in operation, or have a normal life shorter than the Defect Liability Period stated herein;
- (b) Any designs, specifications or other data designed, supplied or specified by or on behalf of the Employer or any matters for which the Contractor has disclaimed responsibility herein; or
- (c) Any other materials supplied or any other work executed by or on behalf of the Employer, except for the work executed by the Employer under GCC Clause 37.6.
- (d) Leaks in new locations that occur after the last day of the O&M Period.

**37.4** The Employer shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Employer shall afford all reasonable opportunity for the Contractor to inspect any such defect.

**37.5** The Employer shall afford the Contractor all necessary access to the Works and the Site to enable the Contractor to perform its obligations under GCC Clause 36, 37.

**37.6** The Contractor may, with the consent of the Employer, remove from the Site any part of the Works that are defective if the nature of the defect, and/or any damage to the Works caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.

**37.7** If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Works caused by such defect

	<p>within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the Employer may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Employer in connection therewith shall be paid to the Employer by the Contractor or may be deducted by the Employer from any monies due the Contractor or claimed under the Performance Security.</p> <p><b>37.8</b> If the Works or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Works or such part, as the case may be, shall be extended by a period equal to the period during which the Works or such part cannot be used by the Employer because of any of the aforesaid reasons.</p> <p><b>37.9</b> Except as provided in GCC Clauses 37 and 41, the Contractor shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Works or any part thereof, design or engineering or work executed that appear after completion of the Works and Services at the end of the Water Loss Reduction Phase or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal or willful action of the Contractor.</p>
<b>38. Liability for Burst Mains and Water Interruptions</b>	<p><b>38.1</b> The Contractor cannot be held liable for damages of any kind arising out of water pipeline bursts unless the bursts have been caused directly by excavation works, criminal acts, willful misconduct or gross negligence of the Contractor.</p> <p><b>38.2</b> The Contractor will not be held liable for damages of any kind to any third party arising out of water supply interruptions, including any indirect or consequential loss or damage to property, loss of use, loss of production, or loss of profits or interest costs, illness or death unless the same has resulted from the Contractor's criminal acts, willful misconduct or gross negligence.</p>
<b>39. Limitation of Liability</b>	<p><b>39.1</b> Except in cases of criminal negligence or willful misconduct,</p> <p>(a) the Contractor shall not be liable to the Employer, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer and</p> <p>(b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed a multiple of the Contract Price specified in the PCC or, if a multiple is not so specified, the total Contract Price.</p>



### G. Risk Distribution

<b>40. Care of Works</b>	<p><b>40.1</b> The Contractor shall be responsible for the care and custody of the Works or any part thereof until the date of completion of the Works pursuant to GCC Clauses 32 and 33 or, where the Contract provides for completion of the Works in parts, until the date of completion of the relevant part, and shall make good at its own cost any loss or damage that may occur to the Works or the relevant part thereof from any cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Works caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to GCC Clause 37. Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Works or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clause 40.2 and 46.1.</p> <p><b>40.2</b> If any loss or damage occurs to the Works or any part thereof or to the Contractor's temporary facilities by reason of:</p> <ul style="list-style-type: none"> <li>(a) insofar as they relate to the country where the Site is located, nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks, taken out under GCC Clause 42 hereof; or</li> <li>(b) any use or occupation by the Employer or any third party other than a Subcontractor, authorized by the Employer of any part of the Works ; or</li> <li>(c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the Employer, or any such matter for which the Contractor has disclaimed responsibility herein, the Employer shall pay to the Contractor all sums payable in respect of the Works executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Contractor the replacement value of all temporary facilities and all parts thereof lost, destroyed or damaged. If the Employer requests the Contractor in writing to make good any loss or damage to the Works thereby occasioned, the Contractor shall make good the same at the</li> </ul>
--------------------------	--

	<p>cost of the Employer in accordance with GCC Clause 47. If the Employer does not request the Contractor in writing to make good any loss or damage to the Works thereby occasioned, the Employer shall either request a change in accordance with GCC Clause 47, excluding the performance of that part of the Works thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Works, the Employer shall terminate the Contract pursuant to GCC Sub-Clause 50.1 hereof.</p> <p><b>40.3</b> The Contractor shall be liable for any loss of or damage to any of its equipment, or any other property of the Contractor used or intended to be used for purposes of the Works, except (i) as mentioned in GCC Sub-Clause 40.2 with respect to the Contractor's temporary facilities, and (ii) where such loss or damage arises by reason of any of the matters specified in GCC Sub-Clauses 40.2 (b) and (c) and 46.1.</p> <p><b>40.4</b> With respect to any loss or damage caused to the Works or any part thereof or to the Contractor's equipment by reason of any of the matters specified in GCC Sub-Clause 46.1, the provisions of GCC Sub-Clause 46.3 shall apply.</p>
<p><b>41. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification</b></p>	<p><b>41.1</b> Subject to GCC Sub-Clause 41.3, the Contractor shall indemnify and hold harmless the Employer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property other than the Works whether accepted or not, arising in connection with the supply and installation of the Works and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Employer, its contractors, employees, officers or agents.</p> <p><b>41.2</b> If any proceedings are brought or any claim is made against the Employer that might subject the Contractor to liability under GCC Sub- Clause 41.1, the Employer shall promptly give the Contractor notice thereof and the Contractor may at its own expense and in the Employer's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. If the Contractor fails to notify the Employer within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Employer shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Employer within the twenty-eight (28) day period, the Employer shall make no admission that may be prejudicial to the defense of any such proceedings or claim.</p>

	<p>The Employer shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.</p> <p><b>41.3</b> The Employer shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Employer, other than the Works not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under GCC Clause 42, provided that such fire, explosion or other perils were not caused by any act or failure of the Contractor.</p> <p><b>41.4</b> The party entitled to the benefit of an indemnity under this GCC Clause 41 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.</p>
<p><b>42. Insurance</b></p>	<p><b>42.1</b> To the extent specified in the PCC, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said PCC. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval.</p> <ul style="list-style-type: none"> <li>(a) Third Party Liability Insurance Covering bodily injury or death suffered by third parties including the Employer's personnel, and loss of or damage to property occurring in connection with the supply and installation of the Facilities.</li> <li>(b) Automobile Liability Insurance Covering use of all vehicles used by the Contractor or its Subcontractors, whether or not owned by them, in connection with the execution of the Contract.</li> <li>(c) Workers' Compensation In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.</li> <li>(d) Employer's Liability In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.</li> <li>(e) Other Insurances Such other insurances as may be specifically agreed upon by the parties</li> </ul> <p><b>42.2</b> The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 42.1, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Sub-Clause 42.1 except for the</p>

	<p>Workers' Compensation and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.</p> <p><b>42.3</b> The Contractor shall deliver to the Employer certificates of insurance or copies of the insurance policies as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to the Employer by insurers prior to cancellation or material modification of a policy.</p> <p><b>42.4</b> The Contractor shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Contractor.</p> <p><b>42.5</b> Unless otherwise provided in the Contract, the Contractor shall prepare and conduct all and any claims made under the policies effected by it pursuant to this GCC Clause 42, and all monies payable by any insurers shall be paid to the Contractor. The Employer shall give to the Contractor all such reasonable assistance as may be required by the Contractor. With respect to insurance claims in which the Employer's interest is involved, the Contractor shall not give any release or make any compromise with the insurer without the prior written consent of the Employer. With respect to insurance claims in which the Contractor's interest is involved, the Employer shall not give any release or make any compromise with the insurer without the prior written consent of the Contractor.</p>
<p><b>43. Unforeseen Conditions</b></p>	<p><b>43.1</b> If, during the execution of the Contract, the Contractor shall encounter on the Site any physical conditions other than climatic conditions, or artificial obstructions that could not have been reasonably foreseen prior to the date of the Contract Agreement by an experienced Contractor on the basis of reasonable examination of the data relating to the Works provided by the Employer, and on the basis of information that it could have obtained from a visual inspection of the Site if access thereto was available, or other data readily available to it relating to the Works, and if the Contractor determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Contractor shall promptly, and before performing additional work or using additional equipment, notify the Engineer in writing of</p> <ul style="list-style-type: none"> <li>(a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen;</li> <li>(b) the additional work or equipment required, including the steps which the Contractor will or proposes to take to overcome such conditions or obstructions;</li> </ul>

	<p>(c) the extent of the anticipated delay; and</p> <p>(d) the additional cost and expense that the Contractor is likely to incur.</p> <p>On receiving any notice from the Contractor under this GCC Sub-Clause 43.1, the Engineer shall decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Engineer shall instruct the Contractor, with a copy to the Employer, of the actions to be taken.</p> <p><b>43.1.1</b> Incorrect information on the condition and location of the distribution network including the incorrectness of maps of the distribution network e.g. wrong location, diameter, material, age or other information of pipelines shown or pipelines additionally found and not shown on the map, or of the overall condition of the network, are expressly excluded from being considered as Unforeseen Conditions under GCC Sub-Clause 43.1 and as such GCC Clause 43 shall not apply.</p> <p><b>43.1.2</b> Actual water loss levels higher or lower than the average figure used as well as the technical difficulties with leak detection in low pressure systems and/or at locations with high groundwater levels or high background and traffic noise, are expressly excluded from being considered as Unforeseen Conditions under GCC Clause 43.1 and as such GCC Sub- Clause 43 shall not apply.</p> <p><b>43.2</b> Any reasonable additional cost and expense incurred by the Contractor in following the instructions from the Engineer to overcome such physical conditions or artificial obstructions referred to in GCC Sub-Clause 43.1 shall be paid by the Employer to the Contractor as an addition to the Contract Price.</p> <p><b>43.3</b> If the Contractor is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in GCC Sub-Clause 43.1, the Time for Completion shall be extended in accordance with GCC Clause 48.</p>
<b>44. Change in Laws and Regulations</b>	<p><b>44.1</b> If, after the date twenty-eight (28) days prior to the date of Bid submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed which shall be deemed to include any change in interpretation or application by the competent authorities, that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with the PCC, pursuant to GCC Sub-Clause 17.1.</p>
<b>45. Force Majeure</b>	<p><b>45.1</b> "Force Majeure" shall mean any event beyond the reasonable control</p>

	<p>of the Employer or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected, and shall include, without limitation, the following:</p> <p>war, hostilities or warlike operations whether a state of war be declared or not, invasion, act of foreign enemy and civil war</p> <p>rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts</p> <p>confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority</p> <p>strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague</p> <p>earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster</p> <p>shortage of labor, materials or utilities where caused by circumstances that are themselves Force Majeure.</p> <p><b>45.2</b> If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.</p> <p><b>45.3</b> The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with GCC Clause 48.</p> <p><b>45.4</b> The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under GCC Sub-Clauses 45.6 and 46.5.</p> <p><b>45.5</b> No delay or nonperformance by either party hereto caused by the occurrence of any event of Force Majeure shall</p> <p>(a) constitute a default or breach of the Contract, or</p> <p>(b) give rise to any claim for damages or additional cost or expense</p>
--	--

	<p>occasioned thereby, subject to GCC Sub-Clauses 40.2, 46.3 and 46.4.</p> <p>if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.</p> <p><b>45.6</b> If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other, but without prejudice to either party's right to terminate the Contract under GCC Sub-Clause 46.5.</p> <p><b>45.7</b> In the event of termination pursuant to GCC Sub-Clause 45.6, the rights and obligations of the Employer and the Contractor shall be as specified in GCC Sub-Clauses 50.1.2 and 50.1.3.</p> <p><b>45.8</b> Notwithstanding GCC Sub-Clause 45.5, Force Majeure shall not apply to any obligation of the Employer to make payments to the Contractor herein.</p>
<b>46. War Risks</b>	<p><b>46.1</b> "War Risks" shall mean any event specified in paragraphs (a) and (b) of GCC Sub-Clause 45.1 and any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war, occurring or existing in or near the country (or countries) where the Site is located.</p> <p><b>46.2</b> Notwithstanding anything contained in the Contract, the Contractor shall have no liability whatsoever for or with respect to</p> <ul style="list-style-type: none"> <li>(a) destruction of or damage to the Works, or any part thereof;</li> <li>(b) destruction of or damage to property of the Employer or any third party; or</li> <li>(c) injury or loss of life</li> </ul> <p>if such destruction, damage, injury or loss of life is caused by any War Risks, and the Employer shall indemnify and hold the Contractor harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.</p> <p><b>46.3</b> If the Works or Contractor's equipment or any other property of the Contractor used or intended to be used for the purposes of the Works shall sustain destruction or damage by reason of any War Risks, the Employer shall pay the Contractor for</p> <ul style="list-style-type: none"> <li>(a) any part of the Works destroyed or damaged to the extent not already paid for by the Employer and so far as may be required by the Employer, and as may be necessary for completion of the Works</li> <li>(b) replacing or making good any Contractor's equipment or other</li> </ul>

	<p>property of the Contractor so destroyed or damaged (c) replacing or making good any such destruction or damage to the Works or any part thereof.</p> <p>If the Employer does not require the Contractor to replace or make good any such destruction or damage to the Works, the Employer shall either request a change in accordance with GCC Clause 47, excluding the performance of that part of the Works thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Works, shall terminate the Contract, pursuant to GCC Sub-Clause 50.1.</p> <p>If the Employer requires the Contractor to replace or make good on any such destruction or damage to the Works, the Time for Completion shall be extended in accordance with GCC 48.</p> <p><b>46.4</b> Notwithstanding anything contained in the Contract, the Employer shall pay the Contractor for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any War Risks, provided that the Contractor shall as soon as practicable notify the Employer in writing of any such increased cost.</p> <p><b>46.5</b> If during the performance of the Contract any War Risks shall occur that financially or otherwise materially affect the execution of the Contract by the Contractor, the Contractor shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Works, provided, however, that if the execution of the work on the Works becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other.</p> <p><b>46.6</b> In the event of termination pursuant to GCC Sub-Clauses 46.3 or 46.5, the rights and obligations of the Employer and the Contractor shall be specified in GCC Sub-Clauses 50.1.2 and 50.1.3.</p>
--	--



## H Change in Contract Elements

<b>47. Change in the Works and Services</b>	<p><b>47.1</b> Introducing a Change</p> <p><b>47.1.1</b> Subject to GCC Sub-Clauses 47.2.5 and 47.2.7, the Employer shall have the right to propose, and subsequently require, that the Engineer order the Contractor from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Works and Services hereinafter called “Change”, provided that such Change falls within the general scope of the Works and Services and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Works and Services and the technical compatibility of the Change envisaged with the nature of the Works and Services as specified in the Contract.</p> <p><b>47.1.2</b> The Contractor may from time to time during its performance of the Contract propose to the Employer with a copy to the Engineer, any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Works and Services. The Employer may at its discretion approve or reject any Change proposed by the Contractor, provided that the Employer shall approve any Change proposed by the Contractor to ensure the safety of the Works and Services.</p> <p><b>47.1.3</b> Notwithstanding GCC Sub-Clauses 47.1.1 and 47.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.</p> <p><b>47.1.4</b> The procedure on how to proceed with and execute Changes is specified in GCC Sub-Clauses 47.2 and 47.3, and further details and forms are provided in Section 6, Employer’s Requirements.</p> <p><b>47.2</b> Changes Originating from Employer</p> <p><b>47.2.1</b> If the Employer proposes a Change pursuant to GCC Sub-Clause 47.1.1, it shall send to the Contractor a “Request for Change Proposal,” requiring the Contractor to prepare and furnish to the Engineer as soon as reasonably practicable a “Change Proposal,” which shall include the following:</p> <ul style="list-style-type: none"> <li>(a) brief description of the Change</li> <li>(b) effect on the Time for Completion</li> <li>(c) estimated cost of the Change</li> <li>(d) effect on the Works and Services</li> <li>(e) effect on any other provisions of the Contract.</li> </ul> <p><b>47.2.2</b> Prior to preparing and submitting the “Change Proposal,” the</p>
---	--

	<p>Contractor shall submit to the Engineer an "Estimate for Change Proposal," which shall be an estimate of the cost of preparing and submitting the Change Proposal.</p> <p>Upon receipt of the Contractor's Estimate for Change Proposal, the Employer shall do one of the following:</p> <ul style="list-style-type: none"> <li>(a) accept the Contractor's estimate with instructions to the Contractor to proceed with the preparation of the Change Proposal</li> <li>(b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate</li> <li>(c) advise the Contractor that the Employer does not intend to proceed with the Change.</li> </ul> <p><b>47.2.3</b> Upon receipt of the Employer's instruction to proceed under GCC Sub-Clause 47.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with GCC Sub-Clause 47.2.1.</p> <p><b>47.2.4</b> The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates as specified in PCC for the valuation of the Change.</p> <p><b>47.2.5</b> If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this GCC Clause 47 would be to increase or decrease the Contract Price by more than fifteen percent (15%), the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Employer accepts the Contractor's objection, the Employer shall withdraw the proposed Change and shall notify the Contractor in writing thereof.</p> <p>The Contractor's failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Contractor represents.</p> <p><b>47.2.6</b> Upon receipt of the Change Proposal, the Employer and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after such agreement, the Employer shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.</p>
--	--

	<p>If the Employer is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.</p> <p>If the Employer decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with GCC Sub-Clause 47.2.2.</p> <p><b>47.2.7</b> If the Employer and the Contractor cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Employer may nevertheless instruct the Contractor to proceed with the Change by issue of a "Pending Agreement Change Order."</p> <p>Upon receipt of a Pending Agreement Change Order, the Contractor shall immediately proceed with effecting the Changes covered by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.</p> <p>If the parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Dispute Board in accordance with the provisions of GCC Sub-Clause 53.3.</p> <p><b>47.2.8</b> Extension of Service Areas</p> <p>Employer shall reserve the right within contract period, to increase or decrease the geographical coverage of Service Area not exceeding 25% of the Service Area. The extension of service area may include addition of new areas outside or inside the present project area. Change in the geographical coverage of Service Area under this Clause shall not be reckoned as Change of Scope and the Contractor shall continue to perform obligation under this Agreement as per the terms of this Agreement. Further, In the event that the Employer extends the Service Area, so as to require the Contractor to construct, operate and maintain the Project Facilities in respect of such extended Service Area, the provision of the Services to such part of the Service Area as may be specified, shall continue to be subject to the rights and obligations given to Contractor under this Agreement. Employer shall ensure that the rights of the Contractor in relation to the Project shall continue undisturbed and Contractor shall continue to exercise complete and</p>
--	--

	<p>unimpeded control thereon and shall render Service in such extended Service Area as if it was a part to it originally.</p> <p><b>47.3</b> Changes Originating from Contractor</p> <p><b>47.3.1</b> If the Contractor proposes a Change pursuant to GCC Sub-Clause 47.1.2, the Contractor shall submit to the Engineer a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in GCC Sub-Clause 47.2.1.</p> <p>Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in GCC Sub-Clauses 47.2.6 and 47.2.7. However, should the Employer choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.</p>
<b>48. Extension of Time for Completion</b>	<p><b>48.1</b> The Time(s) for Completion specified in the PCC shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:</p> <ul style="list-style-type: none"> <li>(a) any Change in the Works and Services as provided in GCC Clause 47</li> <li>(b) any occurrence of Force Majeure as provided in GCC Clause 46 Unforeseen Conditions as provided in GCC Clause 43, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of GCC Sub-Clause 40.2</li> <li>(c) any suspension order given by the Employer under GCC Clause 49 hereof or reduction in the rate of progress pursuant to GCC Sub-Clause 49.2 or</li> <li>(d) any changes in laws and regulations as provided in GCC Clause 45 or</li> <li>(e) any default or breach of the Contract by the Employer, or any activity, act or omission of the Employer, or the Engineer, or any other contractors employed by the Employer or</li> <li>(f) any other matter specifically mentioned in the Contract</li> <li>(g) any delay on the part of a sub-contractor, provided such delay is due to a cause for which the Contractor himself would have been entitled to an extension of time under this sub-clause</li> </ul> <p>by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.</p> <p><b>48.2</b> Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Engineer a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Employer and the Contractor shall agree upon the period of such extension. In the event that the Contractor does not accept the Employer's estimate of a fair and reasonable time extension, the Contractor</p>

	<p>shall be entitled to refer the matter to a Dispute Board, pursuant to GCC Sub-Clause 53.3.</p> <p><b>48.3</b> The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.</p> <p>In all cases where the Contractor has given notice of a claim for an extension of time under GCC 48.2, the Contractor shall consult with the Engineer in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Contractor shall thereafter comply with all reasonable instructions which the Engineer shall give in order to minimize such delay. If compliance with such instructions shall cause the Contractor to incur extra costs and the Contractor is entitled to an extension of time under GCC 48.1, the amount of such extra costs shall be added to the Contract Price.</p>
<b>49. Suspension</b>	<p><b>49.1</b> The Employer may request the Engineer, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefore. The Contractor shall thereupon suspend performance of such obligation, except those obligations necessary for the care or preservation of the Works, until ordered in writing to resume such performance by the Engineer.</p> <p>If, by virtue of a suspension order given by the Engineer, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Engineer requiring that the Employer shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with GCC Clause 47, excluding the performance of the suspended obligations from the Contract.</p> <p>If the Employer fails to do so within such period, the Contractor may, by a further notice to the Engineer, elect to treat the suspension, where it affects a part only of the Works and Services, as a deletion of such part in accordance with GCC Clause 47 or, where it affects the whole of the Works and Services, as termination of the Contract under GCC Sub-Clause 50.1.</p> <p><b>49.2</b> If</p> <p>(a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of</p>

	<p>such sum, with interest thereon as stipulated in GCC Sub-Clause 13.7, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within sixty (60) days after receipt of the Contractor's notice or</p> <p>(b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas in accordance with GCC Sub-Clause 11.3, or failure to obtain any governmental permit necessary for the execution and/or completion of the Works and Services.,</p> <p>then the Contractor may by thirty (30) days' notice to the Employer suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.</p> <p><b>49.3</b> If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this GCC Clause 49, then the Time for Completion shall be extended in accordance with GCC Sub-Clause 48, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Employer to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.</p> <p><b>49.4</b> During the period of suspension, the Contractor shall not remove from the Site, any part of the Works or any Contractor's equipment, without the prior written consent of the Employer.</p>
<p><b>50. Termination</b></p>	<p><b>50.1</b> Termination for Employer's Convenience</p> <p><b>50.1.1</b> The Employer may at any time terminate the Contract for any reason by giving the Contractor a notice of termination that refers to this GCC Sub-Clause 50.1.</p> <p><b>50.1.2</b> Upon receipt of the notice of termination under GCC Sub-Clause 50.1.1, the Contractor shall either immediately or upon the date specified in the notice of termination</p> <p>(a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Works already executed, or any work required to leave the Site in a clean and safe condition</p> <p>(b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii) below</p> <p>(c) remove all Contractor's equipment from the Site, repatriate the Contractor's and its Subcontractors</p>

	<p>'personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition, and</p> <p>(d) subject to the payment specified in GCC Sub-Clause 50.1.3,</p> <p>(i) deliver to the Employer the parts of the Works executed by the Contractor up to the date of termination</p> <p>(ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Works as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors; and</p> <p>(iii) deliver to the Employer all non-proprietary drawings, specifications and other documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Works.</p> <p><b>50.1.3</b> In the event of termination of the Contract under GCC Sub-Clause 50.1.1, the Employer shall pay to the Contractor the following amounts:</p> <p>(a) the Contract Price, properly attributable to the parts of the Works and Services executed by the Contractor as of the date of termination</p> <p>(b) the costs reasonably incurred by the Contractor in the removal of the Contractor's equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel</p> <p>(c) costs incurred by the Contractor in protecting the Works and leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 50.1.2</p> <p>(d) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third parties in connection with the Contract and that are not covered by paragraphs (a) through (c) above.</p> <p><b>50.2 Termination for Contractor's Default</b></p> <p><b>50.2.1</b> The Employer, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons therefore to the Contractor, referring to this GCC Sub-Clause 50.2.</p> <p>(a) if the Contractor becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Contractor is a corporation, a resolution is passed or order is made for its winding up, other than a voluntary liquidation for the purposes of amalgamation or reconstruction, a receiver is appointed over any part of its undertaking or assets, or if the Contractor takes or suffers any other analogous</p>
--	---

	<p>action in consequence of debt</p> <p>(b) if the Contractor assigns or transfers the Contract or any right or interest therein in violation of the provision of GCC Clause 51.</p> <p>(c) if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices, as defined in GCC Clause 6, in competing for or in executing the Contract.</p> <p><b>50.2.2</b> If the Contractor</p> <p>(a) has abandoned or repudiated the Contract</p> <p>(b) has without valid reason failed to commence the Works and Services promptly or has suspended, other than pursuant to GCC Sub-Clause 49.2, the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Employer to proceed</p> <p>(c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause</p> <p>(d) refuses or is unable to provide sufficient materials, services or labor to execute and complete the Works and Services in the manner specified in the work program furnished under GCC Sub-Clause 26.2 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain completion of the Works and Services by the Time for Completion as extended,</p> <p>then the Employer may, without prejudice to any other rights it may possess under the Contract, give a notice to the Contractor stating the nature of the default and requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fourteen (28) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GCC Sub-Clause 50.2.</p> <p><b>50.2.3</b> Upon receipt of the notice of termination under GCC Sub-Clauses 50.2.1 or 50.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,</p> <p>(a) cease all further work, except for such work as the Employer may specify in the notice of termination for the sole purpose of protecting that part of the Works already executed, or any work required to leave the site in a clean and safe condition</p> <p>(b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) below</p> <p>(c) deliver to the Employer the parts of the Works executed by the Contractor up to the date of termination</p>
--	---



	<p>(d) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Works as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors</p> <p>(e) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Works.</p> <p><b>50.2.4</b> The Employer may enter upon the Site, expel the Contractor, and complete the Works and Services itself or by employing any third party. The Employer may, to the exclusion of any right of the Contractor over the same, takeover and use with the payment of a fair rental rate to the Contractor, with all the maintenance costs to the account of the Employer and with an indemnification by the Employer for all liability including damage or injury to persons arising out of the Employer's use of such equipment, any Contractor's equipment owned by the Contractor and on the Site in connection with the Works and Services for such reasonable period as the Employer considers expedient for the completion of the Works and Services.</p> <p>Upon completion of the Works and Services or at such earlier date as the Employer thinks appropriate, the Employer shall give notice to the Contractor that such Contractor's equipment will be returned to the Contractor at or near the Site and shall return such Contractor's equipment to the Contractor in accordance with such notice. The Contractor shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.</p> <p><b>50.2.5</b> Subject to GCC Sub-Clause 50.2.6, the Contractor shall be entitled to be paid the Contract Price attributable to the Works and Services executed as of the date of termination, and the costs, if any, incurred in protecting the Works and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of GCC Sub-Clause 50.2.3. Any sums due the Employer from the Contractor accruing prior to the date of termination shall be deducted from the amount to be paid to the Contractor under this Contract.</p> <p><b>50.2.6</b> If the Employer completes the Works and Services, the cost of completing the Works and Services by the Employer shall be determined.</p> <p>If the sum that the Contractor is entitled to be paid, pursuant to GCC Sub-Clause 50.2.5, plus the reasonable</p>
--	--

costs incurred by the Employer in completing the Works and Services, exceeds the Contract Price, the Contractor shall be liable for such excess.

If such excess is greater than the sums due the Contractor under GCC Sub-Clause 50.2.5, the Contractor shall pay the balance to the Employer, and if such excess is less than the sums due the Contractor under GCC Sub-Clause 50.2.5, the Employer shall pay the balance to the Contractor.

The Employer and the Contractor shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.

### **50.3 Termination by Contractor**

#### **50.3.1 If**

- (a) the Employer has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause, or commits a substantial breach of the Contract, the Contractor may give a notice to the Employer that requires payment of such sum, with interest thereon as stipulated in GCC Sub-Clause 13.7, requires approval of such invoice or supporting documents, or specifies the breach and requires the Employer to remedy the same, as the case may be. If the Employer fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within sixty (60) days after receipt of the Contractor's notice, or
- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Employer, including but not limited to the Employer's failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Works and Services,

then the Contractor may give notice to the Employer thereof, and if the Employer has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within sixty (60) days of such notice, or if the Contractor is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within sixty (60) days of the said notice, the Contractor may by a further notice to the Employer referring to this GCC Sub-Clause 50.3.1, forthwith terminate the Contract.

**50.3.2** The Contractor may terminate the Contract forthwith by

	<p>giving a notice to the Employer to that effect, referring to this GCC Sub-Clause 50.3.2, if the Employer becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Employer takes or suffers any other analogous action in consequence of debt.</p> <p><b>50.3.3</b> If the Contract is terminated under GCC Sub-Clauses 50.3.1 or 50.3.2, then the Contractor shall immediately</p> <ul style="list-style-type: none"> <li>(a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Works already executed, or any work required to leave the Site in a clean and safe condition</li> <li>(b) terminate all subcontracts, except those to be assigned to the Employer pursuant to paragraph (d) (ii)</li> <li>(c) remove all Contractor's Equipment from the Site and repatriate the Contractor's and its Subcontractors' personnel from the Site, and</li> <li>(d) subject to the payment specified in GCC Sub-Clause 50.3.4,             <ul style="list-style-type: none"> <li>(i) deliver to the Employer the parts of the Works executed by the Contractor up to the date of termination</li> <li>(ii) to the extent legally possible, assign to the Employer all right, title and benefit of the Contractor to the Works as of the date of termination, and, as may be required by the Employer, in any subcontracts concluded between the Contractor and its Subcontractors, and</li> <li>(iii) deliver to the Employer all drawings, specifications and other documents prepared by the Contractor or its Subcontractors as of the date of termination in connection with the Works and Services.</li> </ul> </li> </ul> <p><b>50.3.4</b> If the Contract is terminated under GCC Sub-Clauses 50.3.1 or 50.3.2, the Employer shall pay to the Contractor all payments specified in GCC Sub-Clause 50.1.3, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Contractor arising out of, in connection with or in consequence of such termination.</p> <p><b>50.3.5</b> Termination by the Contractor pursuant to this GCC Sub-Clause 50.3 is without prejudice to any other rights or remedies of the Contractor that may be exercised in lieu of</p>
--	---

	<p>or in addition to rights conferred by GCC Sub-Clause 50.3.</p> <p><b>50.4</b> In this GCC Clause 50, the expression “Works executed” shall include all Works executed and Services provided, or subject to a legally binding obligation to purchase, by the Contractor and used or intended to be used for the purpose of the Works, up to and including the date of termination.</p> <p><b>50.5</b> In this GCC Clause 50, in calculating any monies due from the Employer to the Contractor, account shall be taken of any sum previously paid by the Employer to the Contractor under the Contract, including any advance payment paid pursuant to the Contract Agreement.</p>
<b>51. Assignment</b>	<p><b>51.1</b> Neither the Employer nor the Contractor shall, without the express prior written consent of the other party which consent shall not be unreasonably withheld, assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.</p>

### T Claims, Disputes, Arbitration

<p><b>52. Contractor's Claims</b></p>	<p><b>52.1</b> If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall submit a notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.</p> <p>If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause 52.1 shall apply.</p> <p>The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.</p> <p>The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause 53.1, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.</p> <p>Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:</p> <ul style="list-style-type: none"> <li>(a) this fully detailed claim shall be considered as interim;</li> <li>(b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and</li> <li>(c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.</li> </ul> <p>Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed</p>
---------------------------------------	---

	<p>comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.</p> <p>Each payment certified by the Employer shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.</p> <p>The Engineer shall agree with the Contractor or estimate: (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with GCC Clause 48, and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.</p> <p>The requirements of this Sub-Clause 52.1 are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause 52.1.</p> <p>In the event that the Contractor and the Employer cannot agree on any matter relating to a claim, either party may refer the matter to the Dispute Board pursuant to GCC Sub Clause 53.3 hereof.</p> <p><b>52.2 Claim for compensation for delay in starting the work</b></p> <p>No compensation shall be allowed for any delay caused in the starting of the work on account of acquisition of land or in the case of clearance works on account of any delay in according to sanction of estimates.</p> <p><b>52.3 Claim for compensation for delay in execution of the work</b></p> <p>No compensation shall be allowed for any delay in the execution of the work on account of water standing in borrow pits or compartments the rates are inclusive for hard or cracked soil Excavation in mud, sub soil , water standing in borrow pits and no claim for an extra rate shall be entertained, unless otherwise expressly specified.</p>
<p>53. Disputes and Arbitration</p>	<p><b>53.1 Appointment of the Dispute Board</b></p> <p>Disputes shall be referred to a DB for decision in accordance with GCC Sub-Clause 53.3. The Parties shall appoint a DB by the date stated in the PCC.</p> <p>The DB shall comprise, as stated in the PCC, either one or three suitably qualified persons ("the members"), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of activities involved in the performance of the Contract and with the interpretation of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the DB shall comprise three persons, one of</p>

whom shall serve as chairman.

If the Parties have not jointly appointed the DB 21 days before the date stated in the PCC and the DB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.

However, if a list of potential members is included in the PCC, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DB.

The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Board Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment of the member or such expert (as the case may be). Each Party shall be responsible for paying one-half of this remuneration.

If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire when the Take-Over Certificate has been issued in accordance with GCC Clause 33.

### **53.2 Failure to Agree Dispute Board**

If any of the following conditions apply, namely:

- (a) the Parties fail to agree upon the appointment of the sole member of the DB by the date stated in the first paragraph of GCC Sub-Clause 53.1,
- (b) either Party fails to nominate a member (for approval by the other Party) of a DB of three persons by such date,
- (c) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DB by such date, or
- (d) the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,
- (e) then the appointing entity or official named in the PCC shall, upon

the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

### **53.3 Obtaining Dispute Board's Decision**

If a dispute (of any kind whatsoever) arises between the Parties in connection with the performance of the Contract, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause 53.3.

For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.

Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause 53.3. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the performance of the Works and Services in accordance with the Contract.

If either Party is dissatisfied with the DB's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the DB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.

In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause 53.3, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in GCC Sub-Clauses 53.6 and 53.7, neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

If the DB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DB's decision, then the decision shall



become final and binding upon both Parties.

#### **53.4 Amicable Settlement**

Where notice of dissatisfaction has been given under GCC Sub- Clause 53.3 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction and intention to commence arbitration was given, even if no attempt at amicable settlement has been made.

#### **53.5 Arbitration**

Unless settled amicably, any dispute in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Unless otherwise agreed by both Parties:

- (a) arbitration proceedings shall be conducted as stated in the Special Conditions,
- (b) if no arbitration proceedings is so stated, the dispute shall be finally settled by institutional arbitration under the Rules of Arbitration of the International Chamber of Commerce,
- (c) the dispute shall be settled by three arbitrators, and
- (d) the arbitration shall be conducted in the language for communications defined in GCC Sub-Clause 5.2.

The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DB, relevant to the dispute. Nothing shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DB to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

#### **53.6 Failure to Comply with Dispute Board's Decision**

In the event that a Party fails to comply with a DB decision which has become final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under GCC Sub-Clause 53.5. GCC Sub-Clauses 53.3 and 53.4 shall not apply to this reference.

#### **53.7 Expiry of Dispute Board's Appointment**

If a dispute arises between the Parties in connection with the performance of the Contract, and there is no DB in place, whether by

	<p>reason of the expiry of the DB's appointment or otherwise:</p> <p>(a) GCC Sub-Clauses 53.3 and 53.4 shall not apply, and</p> <p>(b) the dispute may be referred directly to arbitration under GCC Sub-Clause 53.5.</p>
--	---

## **APPENDIX A - General Conditions of Dispute Board Agreement**

### **1 Definitions**

Each "Dispute Board Agreement" is a tripartite agreement by and between:

- (a) the "Employer";
- (b) the "Contractor"; and
- (c) the "Member" who is defined in the Dispute Board Agreement as being:
  - (i) The sole member of the "DB" and, where this is the case, all references to the "Other Members" do not apply, or
  - (ii) One of the three persons who are jointly called the "DB" (or "dispute board") and, where this is the case, the other two persons are called the "Other Members".

The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Board Agreement, which incorporates this Appendix. In the Dispute Board Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

### **2 General Provisions**

Unless otherwise stated in the Dispute Board Agreement, it shall take effect on the latest of the following dates:

- (a) the Commencement Date defined in the Contract,
- (b) When the Employer, the Contractor and the Member have each signed the Dispute Board Agreement, or
- (c) When the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a dispute board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days' notice of resignation to the Employer and to the Contractor, and the Dispute Board Agreement shall terminate upon the expiry of this period.

### **3 Warranties**

The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor and the Engineer. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the Employer and the Contractor relied upon the Member's representations that he/she is:

- (a) experienced in the work which the Contractor is to carry out under the Contract,
- (b) experienced in the interpretation of contract documentation, and
- (c) fluent in the language for communications defined in the Contract.

### **4 General Obligations of the Member**

The Member shall:

- (a) have no interest financial or otherwise in the Employer, the Contractor or the Engineer, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;
- (b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;
- (c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Engineer, and any previous involvement in the overall project of which the Contract forms part;
- (d) not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);
- (e) comply with the annexed procedural rules and with GCC Sub-Clause 45.3;
- (f) not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
- (g) not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Engineer regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;
- (h) ensure his/her availability for all site visits and hearings as are necessary;
- (i) become conversant with the Contract and with the progress of the Facilities (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
- (j) treat the details of the Contract and all the DB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and
- (k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

## **5 General Obligations of the Employer and the Contractor**

The Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DB's activities under the Contract and the Dispute Board Agreement. The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member and the Other Members (if any):

- (a) be appointed as an arbitrator in any arbitration under the Contract;
- (b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or

- (c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

The Employer and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.

Whenever the Employer or the Contractor refers a dispute to the DB under GCC Sub-Clause 45.3, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

## **6 Payment**

The Member shall be paid as follows, in the currency named in the Dispute Board Agreement:

- (a) a retainer fee per calendar month, which shall be considered as payment in full for:
  - (i) being available on 28 days' notice for all site visits and hearings;
  - (ii) becoming and remaining conversant with all project developments and maintaining relevant files;
  - (iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and
  - (iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Dispute Board Agreement becomes effective; until the last day of the calendar month in which the Taking-Over Certificate is issued for the whole of the Works.

With effect from the first day of the calendar month following the month in which Taking-Over Certificate is issued for the whole of the Works, the retainer fee shall be reduced by one third. This reduced fee shall be paid until the first day of the calendar month in which the Member resigns or the Dispute Board Agreement is otherwise terminated.

- (b) a daily fee which shall be considered as payment in full for:
  - (i) each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Member's home and the site, or another location of a meeting with the Other Members (if any);
  - (ii) each working day on site visits, hearings or preparing decisions; and
  - (iii) each day spent reading submissions in preparation for a hearing.
- (c) all reasonable expenses including necessary travel expenses incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Clause;
- (d) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The retainer and daily fees shall be as specified in the Dispute Board Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months, and shall thereafter be adjusted by agreement between the Employer, the Contractor and the Member, at each anniversary of the date on which the Dispute Board Agreement became effective.

If the parties fail to agree on the retainer fee or the daily fee the appointing entity or official named in the SCC shall determine the amount of the fees to be used.

The Member shall submit invoices for payment of the monthly retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay each of the Member's invoices in full within 56 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in accordance with GCC Sub-Clause 12.3.

If the Member does not receive payment of the amount due within 70 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice under Clause 7.

## **7 Termination**

At any time: (i) the Employer and the Contractor may jointly terminate the Dispute Board Agreement by giving 42 days' notice to the Member; or (ii) the Member may resign as provided for in Clause 2.

If the Member fails to comply with the Dispute Board Agreement, the Employer and the Contractor may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

If the Employer or the Contractor fails to comply with the Dispute Board Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the Employer and the Contractor. The notice shall take effect when received by them both.

Any such notice, resignation and termination shall be final and binding on the Employer, the Contractor and the Member. However, a notice by the Employer or the Contractor, but not by both, shall be of no effect.

## **8 Default of the Member**

If the Member fails to comply with any of his obligations under Clause 4 concerning his impartiality or independence in relation to the Employer or the Contractor, he/she shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

## **9 Disputes**

Any dispute or claim arising out of or in connection with this Dispute Board Agreement, or the breach, termination or invalidity thereof, shall be finally settled by institutional arbitration. If no other arbitration institute is agreed, the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.

### **Annex - DISPUTE BOARD GUIDELINES**

1. Unless otherwise agreed by the Employer and the Contractor, the DB shall visit the site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DB, the period between consecutive visits shall not be less than 70days, except as required to convene a hearing as described below.
2. The timing of and agenda for each site visit shall be as agreed jointly by the DB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DB. The purpose of site visits is to enable the DB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to prevent potential problems or claims from becoming disputes.
3. Site visits shall be attended by the Employer, the Contractor and the Engineer and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the DB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.
4. The Employer and the Contractor shall furnish to the DB one copy of all documents which the DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.
5. If any dispute is referred to the DB in accordance with GCC Sub-Clause 45.3, the DB shall proceed in accordance with GCC Sub-Clause 45.3 and these Guidelines. Subject to the time allowed to give notice of a decision and other relevant factors, the DB shall:
  - (a) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case, and
  - (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.
6. The DB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.
7. Except as otherwise agreed in writing by the Employer and the Contractor, the DB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Engineer, and to proceed in the absence of any party who the DB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.
8. The Employer and the Contractor empower the DB, among other things, to:
  - (a) establish the procedure to be applied in deciding a dispute,
  - (b) decide upon the DB's own jurisdiction, and as to the scope of any dispute referred to it,
  - (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Guidelines,
  - (d) take the initiative in ascertaining the facts and matters required for a decision,
  - (e) make use of its own specialist knowledge, if any,

- (f) decide upon the payment of financing charges in accordance with the Contract,
  - (g) decide upon any provisional relief such as interim or conservatory measures,
  - (h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute, and
  - (i) appoint, should the DB so consider necessary and the Parties agree, a suitable expert at the cost of the Parties to give advice on a specific matter relevant to the dispute.
9. The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with GCC Sub-Clause 45.3, or as otherwise agreed by the Employer and the Contractor in writing. If the DB comprises three persons:
- (a) it shall convene in private after a hearing, in order to have discussions and prepare its decision;
  - (b) it shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
  - (c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:
    - (i) either the Employer or the Contractor does not agree that they do so, or
    - (ii) the absent Member is the chairman and he/she instructs the other Members to not make a decision.





## **Section 8**

# **Particular Conditions of Contract**



## Section 8 - Particular Conditions of Contract

The following Particular Conditions of Contract (PCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

### Part A – Contract Data

Ref of GCC	Data to be Given	Data
1.	Design & Construction Period	24 Months from the Date of Issue of LOA.
1	Contract commencement date	The Date of Agreement
1.	Dispute Board	<b>As specified by SMC</b>
1.	Employer	Surat Smart City Limited
1.	Engineer	Hydraulic Engineer, Surat Municipal Corporation.
1.	Contract completion date	144 Months from contract commencement date
	Start date	Date of Signing of Agreement or Notice to proceed or contract commencement date
1.	Site	Selected operational zones /DMAs given in Employers Requirement Section 6 Note:- Site and Project Area is synonymous to each other
1.	Works& Services	i) Design & Construction works ii) Operation and Maintenance works and all other works specified in scope of services of Section 6:Employers Requirements
3.1	Documents Forming the Contract	Is replaced herewith as follows; The documents forming the contract shall be interpreted in the following order of priority: a) Agreement b) Letter of Acceptance c) Price Bid d) Addendums and Prebid Clarifications e) Particular Conditions of Contract (PCC) f) General Conditions of Contract (GCC) g) Employer's Requirements h) Bill of Quantities



		i) Any other document listed in the PCC as forming part of the Contract
5.1	Law and Other Provisions	Union of India, State of Gujarat
5.2	language for communication	English
8.1(a)	Design & Construction Phase	24 months from the date of commencement
8.1 (a)	O&M for Sectional Completion Work	From Initial take Over date to Final take Over date
8.1 (a)	Initial Take Over date	Commencement date for O&M after sectional completion of Construction Works of a DMA or Sub DMA before Final takeover Date
8.1 (b)	O&M Phase	Maximum 120 months (From Final take over date till Contract completion date)
8.1 (b)	Final take Over date	Commencement date for O&M Phase for after completion of construction period of 24 months for Part-1 area as mentioned in Section-6 and after a period of 12 months for Part -2 area as mentioned in Section-6
8.1	Service Levels	Service Level as Per Employers requirement 1. Water Loss reduction 2. Continuous Pressurized Water supply 3. Resolving Customer complaint for SMC 4. Water Quality (Residual Chlorine)
9.1	Time for Commencement of works and services	Contract Commencement date
9.1	Time for Completion works and services	144 months from contract commencement date
11.3	Rights of access for Contractor	On or before commencement date
11.6	Minimum Supply of Bulk Water	Gross supply at 180 lpcd – Domestic + Non Domestic Demand.
13.1 (a) (i)	Terms of Payment for Construction Works	As Per Schedule 05
13.1 (b) (i)	Terms of Payment for O&M Service	As Per Schedule 05



13.3	Rate of Interest	0%
13.8	Currencies for Payments to Contractor	INR (Indian Rupees)
13.12	Method of Payment	Cheque or Electronic Transfer
16.1	Advance Payment to Contractor against BG	Nil
16.3	Advance Payment repaid date	Nil
17.1	Price Adjustment	As specified in Schedule 6 of section 8 PCC
18.1	% to be retained from Contractor for Design & Construction Works and O&M Services	The retention is fixed at 7%
21.3.1	Security amount for due performance of the contract	The performance security is 4% of the contract price



21.3.2	Format of security to be submitted by Contractor	<p>The successful tenderer shall have to pay as initial security deposit at 2% (two) percent of the tendered amount. Security Deposit (2%) shall be in cash or in the form of Demand Draft/ Bank Guarantee / Fixed deposit of nationalized bank or scheduled banks like -IDBI, HDFC, ICICI and AXIS banks issue in favour of Municipal Commissioner, SURAT MUNICIPAL CORPORATION, Surat payable at Surat. The duration of F.D.R shall be the Scheduled time required to complete the work plus twelve months of defect liability period.</p> <p>The remaining amount of the Security Deposit i.e. 2% of tendered amount shall be recovered from the running bills at the rate of 2% of the gross amount of each bill, so as to make the total Security Deposit of 4% of the tendered amount. The amount recovered from the running bills shall not be allowed to be transferred in the form of bank guarantee</p> <p>The remaining 50% (2% of Tendered Amount) of the amount so deducted from R.A.Bills will be allowed for conversion in the form of interest bearing fixed deposit receipt, issued in favour of " The Municipal Commissioner, SURAT MUNICIPAL CORPORATION, Surat" by a Nationalized Bank located at Surat only. The initial security deposit 2% submitted will be refunded after payment of final bill and remaining 2% of security deposit deducted from the running bill will be refunded only after the expiry of defect liability period and after payment of final bill, and after rectifying the defects found if any, within defect liability period as intimated by S.M.C</p> <p>If the security deposit is not paid within 15 days from the date of work order then the penalty at the rate of 0.065% per day of the amount of security deposit will be charged. If the security deposit is not paid within one month with interest, the contract already accepted shall be considered as cancelled and his Earnest money deposit shall be forfeited.</p>
--------	--	--



26.1	Penalty for Contractor for failing to provide key-personnel	Penalties shall be as mentioned in Section-6.
27.1	Subcontracting activities	The Contractor may Sub Contract : 1 Civil works 2 Pipe Laying works 3 Meter Installation 4 Leak repair 5 Road restoration
27.2	Works and services which are small in nature for sub-contracting	None
30.2.2	Penalty for not removing the Staff of Contractor within 15 days after receipt of employer's written request	as per GCC 26.1 as above
34.1	As Built drawings and manuals to be provided by Contractor on	The as-built drawings will be submitted 14 days after the completion of the respective works.



		Reduction Phase
34.2	Penalty for not providing the as As Built drawings and manuals by Contractor	5% of the value of the works for which the as-built drawing applies. (note this will be a penalty not a simple withholding)
36.1	Completion Time Guarantee by Contractor for works and services ( or a part for which a separate time for completion is specified)	Design & Contraction Period –24 Months O&M Period –120 months from the date of commencement of contract
35.2	Maximum amount of % Contract Price of Liquidated damages to be recovered from Contractor for not completing the Works and Services or any part thereof within the Time for Completion or any extension thereof.	Liquidated damages for delay of overall contract completion are 0.05% per day. The maximum amount of liquidated damages for such delay is 10% of the Contract Price
36.3 (b)	Liquidated damages amount to be paid by Contractor, if for reason attribute to the contractor, construction work is not completed within the design& construction period	For the construction works the liquidated damage are 10% of value of balance work is behind the schedule for every month of day.
36.4 (b)	Liquidated damages amount to be paid by Contractor, if performance levels in the DMAs deteriorated beyond the maximum deduction specified in Schedule 5 & 7 of PCC	Additional 10% as Liquidated Damages over and above fees deduction as per Schedule 5 & 7 for the period under consideration.
36.6	Limitation of liability for the liquidated damages payment under clause 36.2 & 36.3 to the Employer, at the end of the Design & Construction period	10% of Payment under item for O&M works & above all deducting as per Schedule 5 & 7.
36.7	Limitation of liability for the liquidated damages payment under clause 36.4 (b) to the Employer, at the end of the year	10% of Contract Price
39.1 (b)	Multiple of the contract price or Contract Price for Limitation of liability – (aggregate liability of the Contractor to the Employer )	The limit of aggregate liability of the contractor to employer shall not exceed the contract price.
53.1	Appointment of the Dispute Board by the date	The Parties shall appoint a Dispute Board within 60 days from effective date. The Dispute Board shall comprise 3 persons.
53.1	Dispute Board shall comprises of potential members / persons;	As specified by SMC.
53.2	Failure to agree Dispute Board , final appointing entity or official will be	The courts of Surat City.

**Additional Clauses& Paras**

9.1 Added Clause		<p>Entering upon or commencing any portion of work</p> <p>The contractor shall not enter upon or commence any portion of work except with the written authority and instructions of the Engineer or of his subordinate in charge of the work. Failing such authority the contractor shall have no claim to ask for measurements of or payment for work.</p>
10.3.1 Added Clause		<p>Permission from Relevant Authorities</p> <p>It is the responsibility of the contractor to persue for getting permission from land owing agencies like PWD, SMC, Railways, Forest Departments, etc The payment for permission charges ,shifting services and road restoration charges shall be made by the SMC after verification.</p>
11.15 Added Clause		<p>Posting of Assigned SMC Employees to the Contractor</p> <p>From the Initial Takeover Date the SMC shall, subject to applicable procedures, may assign the same employees of SMC to the Contractor for duties in Service Area. The SMC shall provide the</p>



		<p>Contractor with details i.e. name, age, qualifications, and terms of employment of each SMC Employee and shall specify the date on which the relevant SMC Employee shall report to the Contractor for duty. SMC shall assign the existing employees not exceeding in different hierarchy to Contractor within the project area. However Employer may reduce the number and may decide not to depute any employees to the Contractor. The number of employees deputed to Contractor is only for on job training purpose and not as obligations of SMC.</p> <p>Non deputation of employees does not alter any cost obligation of Contractor&amp; Employer.</p>
14.4 Added Clause		<p>Initial Measurement for Record</p> <p>For proper measurements of the work it is necessary to have an initial set of levels or other measurements taken and the same are recorded in the authorised field book or M.B. of the SMC by the Engineer or his authorised representative and will be signed by the Contractor who will be entitled to have a true copy of the same made at his cost. Any failure on the part of the Contractor to get such level etc. recorded before starting the work will render him liable to accept the decision of the Engineer as to the basis of taking measurements. Likewise the contractor will not cover any work which will render its subsequent measurement difficult or impossible without first getting the same jointly measured by himself and the authorised representative of</p>

		the Engineer. The record of such measurements will be signed by the Contractor as its acceptance and he will be entitled to have a true copy of the same at his cost.
15.3 Added Clause		Variations in the quantities of work in the bill of quantities shall not vitiate the contract. The quantities shown in the tender are approximate and no claim shall be entertained for quantities of work executed being less or more than those entered in the tender. The Contractor shall be bound to carry out the additional work up to 30% (thirty percent) of tender amount, in accordance to any instruction, which may be given to him in writing signed by the Engineer-in-charge, after obtaining prior approval/sanction from the competent authority of the SURAT MUNICIPAL CORPORATION at the sanctioned tender rate
22.2 Added Para		The rates for specific material and goods falling under Excise Exemption as per Central Excise Notification no. 12/2012-CE dated 17-03-2012 issued & updated by Government of India time to time shall be without any excise duty. Excise Exemption on the materials like pipes, valves, specials, flow meter, instrument, etc. shall be availed under this project. Contractor shall be responsible to get the Exemption and liaison with concerned department. However, SMC shall assist Contractor to obtain certification towards Exemption of Excise Duties. The responsibility for obtaining any such exemptions from the Competent Authority will remain with the Contractor and the Employer shall not in any way be responsible for admissibility of the claims or eligibility of the Contractor.
22.6 Added Clause		The tendered rates shall be inclusive of all taxes, rates and cesses including applicable labor cess as govt rules. The Bidders shall have to be noted that, labour cess shall be deducted from the running bill as per the Government rules and regulations. Accordingly, the intending bidder shall quote their competitive rates. More over it is also to be noted that, labour cess is already considered in the estimated rate of the tender.

<p>26.5.1 Added Clause</p>		<p>Programme to be furnished</p> <ul style="list-style-type: none"> <li>i. The Contractor shall submit a detailed programme unit wise for execution of various Works allotted to him so as to complete the same within the time schedule and adhere to the same. The Contractor shall submit at least 5 copies of PERT/BAR chart, for completion of the Work as per time schedule specified under this contract.</li> <li>ii. The order of sequence of execution of the Work and general conditions of works shall be subjected to the approval and direction of the Engineer-in-Charge whose approval or direction shall however in no way relieve the Contractor from responsibility for the proper and satisfactory execution of the Work according to the terms of Contract and within stipulated period.</li> </ul>
------------------------------------	--	--

		<p>iii. The Contractor shall prepare a time and progress chart with the approval of the Engineer-in-Charge prior to the commencement of the Work. The chart shall be prepared in direct relation to the time stated in the Contract for completion. It shall indicate the dates of commencement and completion of various activities or section of the Work and may be amended as necessary by agreement between the Engineer - in-Charge and the Contractor within the limitations of the time imposed in the Contract.</p> <p>iv. The Contractor shall regularly review his programme in the light of the progress actually achieved and shall submit for approval updated CPM/PERT network and bar charts at intervals to be agreed with the Engineer. If progress falls behind that needed to ensure timely completion of the various parts of the Works, the Contractor shall submit proposals for improving his methods and pace of working to the satisfaction of the Engineer and shall carry out such measures as are needed to ensure that the Works are completed on time.</p>
28.1.1 Added Para		<p>Action where no specifications</p> <p>In the case of any class of work for which there is no such specification as is mentioned in employers requirements such work shall be carried out in accordance with the standard specifications of Public Works Department, and in the event of there being no specification, then in case the work shall be carried out in all respects in accordance with all instructions and requirements of the Engineer - in - Charge.</p>
30.2.4 (e) Added Clause		<p>Contractor shall comply with the provisions of the Apprentice Act 1964 and the orders issued there under from time to time. If he fails to do so, it will be a breach of contract. Contractor shall also be liable for any particular liability arising on account of any violation of the provisions of the Act by him.</p>

<p>31.12 Added Para</p>	<p>Inspection / Checking of Works</p>	<p>This work is open to inspection and checking by a 3rd party agency fixed by SMC/vigilance wing of SMC or by any other statutory authority of the Govt. The work can be checked by the agencies as mentioned above simultaneously, subsequently, jointly or independently and the contractor is required to cooperate with the agencies and shall be responsible for removing of all defects / deficiencies pointed out at his own cost.</p> <p>The inspection of one agency / authority / team shall not absolve the contractor of his own responsibility on to the defects pointed out by the other agencies and rectification thereto. Recoveries, if any, proposed by any of the inspection agency on account of short comings in respect of quality / quantity, if it is within acceptable limit but not reducing soundness and strength of the work, shall be recovered from the contractor's payments.</p> <p>If the defects noticed are beyond the acceptable limit, the contractor shall have to demolish / dismantle and rectify the same as per instructions of Engineer-in-Charge. SMC officers will also make visit to the manufacturing unit for which the contractor will make arrangement free of cost for the visit of the officials including boarding, lodging, transportation etc.</p>
-----------------------------	---------------------------------------	--

		The Contractor shall inform the Engineer-in-charge in advance for the production of material and fabrication for the factory inspection. The Contractor shall arrange at his own cost inspection of works by Chief Electrical Inspector of Gujarat Government and seek clearance & submit report for energisation & commissioning.
34.3 Added Clause		As built drawing of pipeline The Contractor shall maintain a detailed as working drawing of pipeline work during construction work and after commissioning the pipeline the contractor need to submit the final as built drawing made based on triangulation method for pipeline and special (such as valve location , bend tee etc.) and submitted in soft copy (autocad /GIS files) and hard copy (printout) to the Engineer in charge for record.
42.6 Added Clause		Insurance Transit cum Storage Insurance for E&M and SCADA Equipments For E&M and SCADA equipments the Contractor shall include transit cum storage cum erection insurance right from the dispatch till handed over to SMC after satisfactory commissioning/working. All insurance which the Contractor is required to enter into, under the Contract shall be with Nationalized Insurance Cos. and in terms approved by the Engineer. The Contractor shall produce the policies of insurance and the receipts of payments. The SMC shall not be liable for, in respect of any damages, losses and compensation payable as per the law or in consequence of any accident or injury to any person in the employment of the Contractor. Insurance of complete plant excluding cost of civil works will be arranged by the contractor in the name of both the SMC& the contractor. However, the administrative assistance will be provided to the contractor for filling up the forms for replacement value of the station. All the charges for obtaining insurance policy for labour & E&M and SCADA equipments etc. are to be borne by the contractor at his own cost. Nothing extra shall be payable.

Section-8 : Particular Conditions of Contract

<p>47.2.9 Added Clause</p>		<p>Additional Item / Extra Item Extra item of work shall not vitiate the contract. The Contractor shall be bound to execute extra items of work as directed by the Engineer-in-charge. The rate for extra item shall be derived from the S.O.R. (R &amp; B Division, Surat) (latest available) or GWSSB SOR (latest available) and quoted premium of the tender. If the rate of the extra item is not available in S.O.R. than it will be derived on prevailing market rates. However, the decision of the Engineer-in-charge shall be final and binding to the Contractor</p>
<p>50.1 Added Para</p>		<p>If the project is shelved by the Corporation before commencement, the contractor will have no right to claim any losses or compensation due to the same and for whatsoever reasons.</p>

<p>53.4.1 Added Clause</p>	<p>Except or otherwise specifically provided in the contract, all disputes concerning question of fact arising under the contract shall be decided by the Engineer-in-charge, subjected to a written appeal by the Contractor to the Engineer and these decisions shall be final and binding on the parties hereto. Any disputes or difference including those considered as such by only one of the parties arising out of or in connection with this contract shall be to the extent possible settled amicably between the parties. If amicable settlement cannot be reached then all dispute issues shall be settled as provided in (a).</p> <p>a) DISPUTES OR DIFFERENCE TO BE REFERRED TO:</p> <p>If at any time, any question, disputes or differences of any kind whatsoever shall arises between the Engineer-in-charge and the Contractor upon or in relation to or in connection with this contract, either party may forthwith give to the other, notice in writing of the existence of such question, dispute of difference as to any decision, opinion, instruction, direction certificate or evaluation of the Engineer.</p> <p>The question or difference shall be settled by the Municipal Commissioner, who shall state his decision in writing and give notice of same to the Engineer and to the Contractor such decision shall be final and binding upon both parties to the contract and work on contract if not already breached or abandoned shall proceed normally unless and until the same shall be revised (or upheld) due to any judicial proceeding.</p> <p>Should the Municipal Commissioner fail to give a decision within three (3) calendar months after issuance of notice of a question, dispute or difference or if the Contractor is dissatisfied with any such decision of the Municipal Commissioner, then the matter may be referred to Standing Committee. Then also, if the said question of difference or dispute remains unsolved / unsettled and if the contractor is dissatisfied with any such decision of the Standing Committee, then the matter may be referred to the court of law subject to SURAT JURISDICTION.</p>
------------------------------------	--



**Schedules to Section 8 : Particular Conditions of Contract**

**Schedule 1: Service Area ..... 18**

**Schedule 2: Safety Codes ..... 19**

**Schedule 3: Water Quality..... 25**

**Schedule 4: Employer Personnel..... 26**

**Schedule 5: Contractor Payment Terms..... 27**

**Schedule 6: Price Variations ..... 37**

**Schedule 7: Performance Target and Measurement..... 41**

### Schedule 1: Service Area#

#

Map of Project area or Service area shown below is Schematic and tentatively marked in color

Fig:- Project Area

**Note:- Map of service area shown above is tentative and may differ in actual and subject to modification.**

## Schedule 2: Safety Codes#

#  
#

1. Suitable scaffolds should be provided for workmen for all works that cannot safely be done from the ground, or from solid construction except such short period work as can be done safely from ladders. When a ladder is used an extra mazdoor shall be engaged for holding the ladder and if the ladder is used for carrying materials as well suitable footholds and hand-hold shall be provided on the ladder and the ladder shall be given an inclination not steeper than  $\frac{1}{4}$  to 1 ( $\frac{1}{4}$  horizontal and 1 vertical.)
2. Scaffolding of staging more than 3.6 m (12ft.) above the ground or floor, swung or suspended from an overhead support or erected with stationary support shall have a guard rail properly attached or bolted, braced and otherwise secured at least 90 cm. (3ft.) high above the floor, or platform of such scaffolding or staging and extending along the entire length of the outside and ends there of with only such opening as may be necessary for the delivery of materials. Such scaffolding or staging shall be so fastened as to prevent it from swaying from the building or structure.
3. Working platforms, gangways and stairways should be so constructed that they should not sag unduly or unequally, and if the height of the platform or the gangway or the stairway is more than 3.6 m (12ft.) above ground level or floor level, they should be closely boarded; should have adequate width and should be suitably fastened as described in (2) above.
4. Every opening in the floor of a building or in a working platform shall be provided with suitable means to prevent the fall of person or materials by providing suitable fencing or railing whose minimum height shall be 90 cm. (3ft.)
5. Safe means of access shall be provided to all working platforms and other working places. Every ladder shall be securely fixed. No portable single ladder shall be over 9m. (30 ft.) in length while the width between side rails in rung ladder shall in no case be less than 29 cm. (1 11/2") for ladder up to and including 3 m. (10 ft.) in length. For longer ladders this width should be increased at least 1/4" for each additional 30 cm. (1 foot) of length. Uniform step spacing of not more than 30 cm shall be kept. Adequate precautions shall be taken to prevent danger from electrical equipment. No materials on any of the sites or work shall be so stacked or placed as to cause danger or inconvenience to any person or the public. The contractor shall provide all necessary fencing and lights to protect the public from accident and shall be bound to bear the expenses of defense of every suit, action or other proceedings at law that may be brought by any person for injury sustained owing to neglect of the above precautions and to pay any damages and cost which may be awarded in any such suit, action or proceedings to any such person or which may, with the consent of the contractor, be paid to compensate any claim by any such person.
6. Excavation and Trenching - All trenches 1.2 m. (4ft.) or more in depth, shall at all times be supplied with at least one ladder for each 30 m. (100 ft.) in length or fraction thereof Ladder shall extend from bottom of the trench to at least 90 cm. (3ft.) above the surface of the ground. The sides of the trenches which are 1.5 m. (5ft.) or more in depth shall be stepped back to give suitable slope or securely held by timber bracing, so as to avoid the

danger of sides collapsing. The excavated materials shall not be placed within 1.5 m. (5ft) of the edges of the trench or half of the depth of the trench whichever is more. Cutting shall be done from top to bottom. Under no circumstances undermining or undercutting shall be done.

7. Demolition - Before any demolition work is commenced and also during the progress of the work,
  - i) All roads and open areas adjacent to the work site shall either be closed or suitably protected
  - ii) No electric cable or apparatus which is liable to be a source of danger ore cable or apparatus used by the operator shall remain electrically charged.
  - iii) All practical steps shall be taken to prevent danger to persons employed from risk of fire or explosion or flooding. No floor, roof or other part of the building shall be so overloaded with debris or materials as to render it unsafe.
8. All necessary personal safety equipment as considered adequate by the Engineer-in-Charge should be kept available for the use of the person employed on the site and maintained in a condition suitable for immediate use, and the contractor should take adequate steps to ensure proper use of equipment by those concerned: - The following safety equipment shall invariably be provided.
  - i) Workers employed on mixing asphalt materials, cement and lime mortars shall be provided with protective footwear and protective goggles.
  - ii) Those engaged in white washing and mixing or stacking of cement bags or any material which is injurious to the eyes shall be provided with protective goggles.
  - iii) Those engaged in welding works shall be-provided with welder's protective eye. Shields.
  - iv) Stone breaker shall be provided with protective goggles and protective clothing and seated at sufficiently safe intervals.
  - v) When workers are employed in sewers and manholes, which are in active use, the contractors shall ensure that the manhole covers are opened and ventilated at least for an hour before the workers are allowed to get into the manholes, and the manholes so opened shall be cordoned off with suitable railing and provided with warning signals or boards to prevent accident to the public, in addition, the contractor shall ensure that the following safety measure are adhered to
    - a) Entry for workers into the line shall not be allowed except under supervision of the JE or any other higher officer.
    - b) At least 5 to 6 manholes upstream and downstream should be kept open for at least 2 to 3 hours before any man is allowed to enter into the manhole for working inside.

- c) Before entry presence of Toxic gases should be tested by inserting wet lead acetate paper which changes colour in the presence of such gases and gives indication of their presence.
- d) Presence of Oxygen should be verified by lowering a detector lamp into the manhole. In case, no Oxygen is found inside the sewer line, workers should be sent only with Oxygen kit.
- e) Safety belt with rope should be provided to the workers. While working inside the manholes such rope should be handled by two men standing outside to enable him to be pulled out during emergency.
- f) The area should be barricaded or cordoned off by suitable means to avoid mishaps of any kind. Proper warning signs should be displayed for the safety of the public whenever cleaning works are undertaken during night or day.
- g) No smoking or open flames shall be allowed near the blocked manhole being cleaned.
- h) The malba obtained on account of cleaning of blocked manholes and sewer lines should be immediately removed to avoid accidents on account of slippery nature of the malba.
- i) Workers should not be allowed to work inside the manhole continuously. he should be given rest intermittently. The Engineer-in-Charge may decide the time up to which a worker may be allowed to work continuously Inside the manhole.
- j) Gas masks with Oxygen Cylinder should be kept at site for use in emergency.
- k) Air-blowers should be used for flow of fresh air through the manholes. Whenever called for portable air blowers are recommended for ventilating the manholes. The Motors for these shall be vapour proof and of totally enclosed type. Non sparking gas engines also could be used but they should be placed at least 2 meters away from the opening and on the leeward side protected from wind so that they will not be a source of friction on any inflammable gas that might be present.
- l) The workers engaged for cleaning the manholes/sewers should be properly trained before allowing to work in the manhole
- m) The workers shall be provided with Gumboots or non sparking shoes bump helmets and gloves non sparking tools safety lights and gas masks and portable air blowers (when necessary). They must be supplied with barrier cream for anointing the limbs before working inside the sewer lines.
- n) Workmen descending a manhole shall try each ladder stop or rung careful before putting his full weight on it to guard against insecure fastening due to corrosion of the rung fixed to manhole well.
- o) If a man has received a physical injury, he should be brought out of the sewer immediately and adequate medical aid should be provided to him.

- p) The extents to which these precautions are to be taken depend on individual situation but the decision of the Engineer-in-Charge regarding the steps to be taken in this regard in an individual case will be final.
  - vi) The Contractor shall not employ men and women below the age of 18 years on the work of painting with products containing lead in any form. Wherever men above the age of 18 are employed on the work of lead painting, the following precaution should be taken:-
    - a) No paint containing lead or lead products shall be used except in the form of paste or readymade paint.
    - b) Suitable face masks should be supplied for use by the workers when paint is applied in the form of spray or a surface having lead paint is dry rubbed and scraped.
    - c) Overalls shall be supplied by the contractors to the workmen and adequate facilities shall be provided to enable the working painters to wash during and on the cessation of work.
9. Contractor shall not employ women and men below the age of 18 on the work of painting with product containing lead in any form. wherever men above the age of 18 are employed on the work of lead painting, the following: principles must be observed for such use:
- i) White lead, sulphate of lead or product containing these pigment, shall not be used in painting operation except in the form of pastes or paint ready for use.
  - ii) Measures shall be taken, wherever required in order to prevent danger arising from the application of paint in the form of spray.
  - iii) Measures shall be taken, wherever practicable, to prevent danger arising out of from dust caused by dry rubbing down and scraping
  - iv) Adequate facilities shall be provided to enable working painters to wash during and on cessation of work.
  - v) Overall shall be worn by working painters during the whole of working period.
  - vi) Suitable arrangement shall be made to prevent clothing put off during working hours being spoiled by painting materials.
  - vii) Cases of lead poisoning and suspected lead poisoning shall be notified and shall be subsequently verified by medical man appointed by competent authority of SMC
  - viii) SMC may require, when necessary medical examination of workers.
  - ix) Instructions with regard to special hygienic precautions to be taken in the painting.
10. When the work is done near any place where there is risk of drowning, all necessary equipments should be provided and kept ready for use and all necessary steps taken for prompt rescue of any person In danger and adequate provision, should be made for prompt first aid treatment of all injuries likely to be obtained during the course of the work.

11. Use of hoisting machines and tackle including their attachments, anchorage and supports shall conform to the following standards or conditions
  1. These shall be of good mechanical construction, sound materials and adequate strength and free from patent defects and shall be kept repaired and in good working order.
  2. Every rope used in hoisting or lowering materials or as a means of suspension shall be of durable quality and adequate strength, and free from patent defects.
  3. Every crane driver or hoisting appliance operator shall be properly qualified and no person under the age of 21 years should be in charge of any hoisting machine including any scaffolding winch or give signals to operator.
  4. In case of every hoisting machine and of every chain ring hook, shackle swivel and pulley block used in hoisting or as means of suspension the safe working load shall be ascertained by adequate means. Every hoisting machine and all parts referred to above shall be plainly marked with the safe working load. In case of a hoisting machine having a variable safe working load each safe working load and the condition under which it is applicable shall be clearly indicated. No part of any machine or any gear referred to above in this paragraph shall be loaded beyond the safe working load except for the purpose of testing.
  5. In case of departmental machines, the safe working load shall be notified by the Electrical Engineer-in-charge. As regards contractors machines the contractors shall notify the safe working load of the machine to the Engineer-in-charge whenever he brings any machinery to site of work and get it verified by the Electrical Engineer concerned.
12. Motors, gearing, transmission, electric wiring and other dangerous parts of hoisting appliances should be provided with efficient safeguards. Hoisting appliances should be provided with such means as will reduce to the minimum the risk of accidental descent of the load. Adequate precautions should be taken to reduce to the minimum the risk of any part of a suspended load becoming accidentally displaced. When workers are employed on electrical installations, which are already energized, Insulating mats, wearing apparel, such as. gloves, sleeves and boots as may be necessary should be provided. The worker should not wear any rings, watches and carry keys or other materials, which are good conductors of electricity.
13. All scaffolds, ladders and other safety devices mentioned or described herein shall be maintained in safe condition and no scaffold, ladder or equipment shall be altered or removed while it is in use. Adequate washing facilities should be provided at or near places of work.
14. These safety provisions should be brought to the notice of all concerned by display on a notice board at a prominent place at work spot. The person responsible for compliance of the safety code shall be named therein by the contractor.
15. To ensure effective enforcement of the rules and regulations relating to safety precautions the arrangements made by the contractor shall be open to inspection by the Labour Officer or Engineer-in-Charge of the department or their representatives.

Notwithstanding the above clauses from (1) to (15) there is nothing in these to exempt the contractor from the operations of any other Act or Rule in force In the Republic of India



**Schedule 3: Water Quality**

**Not Used**

#### **Schedule 4: Employer Personnel**

Not Used

### **Schedule 5: Contractor Payment Terms**

#  
#

The progress of work should be as follows :

- a)10% of the work in 25% of the time
- b)40% of the work in 50% of the time
- c)70% of the work in 75% of the time
- d)100% of the work in 100% of the time

- 1) Payment terms of all items of Schedule-B except Mechanical / Electrical / Instrumentation and SCADA are given in Itemwise Detailed Specifications.
- 2) Payment terms of Mechanical / Electrical / Instrumentation and SCADA system are as under :
  - (i) 85% to be paid as and when the complete plant/equipment (alongwith specified spares) is received at site.
  - (ii) 5% to be paid as the plant/equipment is installed.
  - (iii) 5% to be paid after three months satisfactory running of the plant.
  - (iv) 5% to be paid after 12 (Twelve) months satisfactory guarantee period.

## Schedule 6: Price Variations

### BASIC RATE:

**Cement and Reinforcement Steel (TMT)** shall be procured by the Contractor at his own cost. The basic / star-rate for the above material is as below:

CEMENT : Rs.225.00/- per bag of 50/Kg.(Rs.4,500/- per M.T.)

REINFORCEMENT STEEL (TMT): Rs.35,000/- Per M.T.

### **(A) PRICE VARIATION CLAUSE**

For (a) Labour,

(b) Materials,

(c) P.O.I.

The amount to be paid / recovered to/from the contractor for the work done shall be adjusted for increase or decrease in the rates for labour and materials excepting the cost of those materials supplied by corporation or the cost of those materials on which price escalation / star rate difference is being paid separately.

#### **(a) LABOUR**

Increase or decrease in the cost due to labour shall be calculated quarterly in accordance with the following formula.

$$V_i = 0.75 \times \frac{p_i}{100} \times R_p \times \frac{(I - I_0)}{I_0}$$

$V_i$  = increase or decrease in the cost of work done during the quarter under consideration due to change in rates for labour.

$$R_p = R - (R_c + R_s)$$

Value of net work done in rupees during the quarter under consideration after deducting the cost of material on which price escalation / variations or star rate difference is being paid separately (i.e. for CEMENT/REINFORCEMENT STEEL) and deducting the cost of extra items,

whose rates are derived by rate analysis based on market rates and the cost of those materials which are being supplied by SURAT MUNICIPAL CORPORATION.

R= Total amount of work done in the quarter under consideration.

Rc= Total cost of cement (i.e. cement used / consumed during selected quarter in bags x star-rate of cement Rs.225/- per bag).

Rs= Total cost of reinforcement steel (i.e. reinforcement steel consumed recorded for payment in M.T. during selected quarter x star-rate of reinforcement steel Rs.35,000/- per M.T.).

Io = The average consumer Price index (Whole sale prices) for industrial workers for the month in which price bid were opened as applicable to Surat as published by Govt. of India Ministry of labour bureau Chandigarh in bulletin published by the Reserve Bank of India.

I = The average consumer Price index (whole sale prices) for industrial workers for the quarter under consideration as above.

pl = Labour components of the item = 35 % of Rp

**(b) MATERIAL**

The increase or decrease in the cost of materials shall be calculated quarterly in accordance with the following formula.

$$Vm = 0.75 \times \frac{Pm}{100} \times \frac{Rp}{Io} (I - Io)$$

Vm= Increase or decrease in the cost of work during the quarter under consideration due to change in rates for material.

Rp = R- (Rc + Rs)

Value of net work done in rupees during the quarter under consideration after deducting the cost of material on which price escalation / variations or star rate difference is being paid separately (i.e. for CEMENT/REINFORCEMENT STEEL) and deducting the cost of extra items, whose rates are derived by rate analysis based on market rates and the cost of those materials which are being supplied by SURAT MUNICIPAL CORPORATION.

**R=** Total amount of work done in the quarter under consideration.

**Rc=** Total cost of cement (i.e. cement used / consumed during selected quarter in bags x star-rate of cement Rs.225 /- per bag).

**Rs=** Total cost of reinforcement steel (i.e. reinforcement steel consumed recorded for payment in M.T. during selected quarter x star-rate of reinforcement steel Rs.35,000 /- per M.T.).

**Io =** The average whole sale price index (all commodities) as published by RBI for the month in which the price bid were opened.

**I =** The average Whole sale price index (All commodities) as published by RBI for the quarter under consideration as above.

**Pm =** Material components = 60 % of  $R_p$

### (c) FUEL

$$V_d = 0.75 \times \frac{PD}{100} \times R_p \frac{(D - D_o)}{D_o}$$

**Vd =** Increase or decrease in the cost of work done during the quarter under consideration due to change in the rates of petrol, oil and Lubricants (P.O.L.).

**PD =** P.O.L. component = 5 % of  $R_p$

**Rp =**  $R - (R_c + R_s)$

Value of net work done in rupees during the quarter under consideration after deducting the cost of material on which price escalation / variations or star rate difference is being paid separately (i.e. for CEMENT/REINFORCEMENT STEEL) and deducting the cost of extra items, whose rates are derived by rate analysis based on market rates and the cost of those materials which are being supplied by SURAT MUNICIPAL CORPORATION.

**R=** Total amount of work done in the quarter under consideration.

**Rc=** Total cost of cement (i.e. cement used / consumed during selected quarter in bags x star-rate of cement Rs 225/- per bag).

Rs= Total cost of reinforcement steel (i.e. reinforcement steel consumed recorded for payment in M.T. during selected quarter x star-rate of reinforcement steel Rs.35,000/- per M.T.).

D = The average price of high speed diesel for Surat in the quarter.

Do = The average price of high speed diesel for Surat in the month in which the price bid were opened.

**Notes :**

- i) The Price escalation shall be paid after one year from the date of commencement of the work or amount of work required to be done in a year as per Schdule -5 whichever is later.
- ii) Price escalation clause shall be applicable for the work that is carried out within the stipulated time or approved extension thereof. No claim for price adjustment other than those provided herein shall be entertained.
- iii) The percentage of Material, Labour and Fuel for the entire work will be as under:(a) Material M: 60% (b) Labour L: 35% (c) POL: 5%
- iv) Ceiling limit in respect of percentage for escalation shall be upto 7.5% of the tender amount. In short no payment shall be made beyond the ceiling limits in any case.
- v) Quarter shall be considered as per the Calendar quarter i.e. from Jan. to March, from April to June and so on.

**(B) STAR RATE & DIFFERENCE FOR REINFORCEMENT STEEL & CEMENT:**

Hence, cement and Reinforcement steel shall be procured by the contractor at his/their own cost, then the additional cost of such material shall be paid/recovered to/from the contractor as per star rate of Rs.4,500/- per M.T.(Rs.225.00/- per bag of 50 Kg.) and Rs.35,000/- per M.T. of cement and reinforcement steel respectively plus or minus the amount of difference as worked out as per following para.

The fluctuation in rates of cement & steel shall be adjusted in the bills payable/recoverable to the contractor as per the formula as under :

$$\text{Cement} \quad V_c = B_c \times D_c \times \frac{(C_1 - C_0)}{C_0}$$

$$\text{Reinforcement Steel} \quad V_s = B_s \times D_s \times \frac{(S_1 - S_0)}{S_0}$$

- Vc/Vs = Difference of amount payable or recoverable during the quarter under consideration due to change in the rates for cement / reinforcement steel.
- Bc/Bs = Star rate of cement Rs.225.00/- per bag of 50 Kg. (Rs.4,500/- per MT) / reinforcement Steel (Rs.35,000/- per M.T.)
- Dc = Quantity of cement used / consumed during the quarter under consideration.
- Ds = Quantity of reinforcement steel consumed /recorded for the payment during the quarter under consideration.
- CI/SI = The average Whole sale price index for cement/reinforcement steel in all commodities as published by RBI for the quarter under consideration.
- Co/So = The average Whole sale price index for cement/steel in All commodities as published by RBI for the month in which price bid were opened.

**Notes:**

1. The difference will be payable / recoverable from the date of commencement of work as per quarterly basis as indicated in under Note No. (v) of Clause (A) mentioned above.
2. No ceiling limit for star rate difference either payable or recoverable for reinforcement steel and cement shall be applicable.
3. The quantity of cement consumed in the quarter shall be considered as per the consumption recorded in the site cement registered.
4. The quantity of reinforcement steel consumed in the quarter shall be considered as per the reinforcement steel recorded for payment in the running bills during the period/quarter.
5. For calculating star-rate difference for the cement for last quarter i.e. the actual cement consumed at site or cement bags to be consumed theoretically plus 5% whichever is less shall only be considered. No star-rate difference shall be paid beyond that. In short the ceiling limit for bags to be considered for payment of star-rate shall be theoretical consumption plus 5% of theoretical consumption of cement.
6. For calculating the star-rate difference for reinforcement steel, the actual reinforcement steel consumed / recorded for payment at site shall only be considered for making final payment.

**Note:-** The above clause is not applicable for the consumer connection item (i.e. Part 1D and Part 2D of Summary of Cost) and operation and maintenance item.



## Schedule 7: Performance Target and Measurement#

#  
#  
#

### A. Definitions

- i. **Water Loss:** Scope in Water Supply shall include, the operation, maintenance and repairs of all existing and new assets created for the water supply under this project and to be kept in operation to deliver but also to keep water losses in established DMA's with in contractual limits. Bulk water supply by employer shall be measured at Inlet supply point of Elevated Service Reservoir (ESR) as System Input Volume (SI) or Bulk water Export/ Import point measured as Certified Export Meter. Water supply quantum shall be measured as all consumption at consumer end and export point or at the end of transfer point as applicable. The water loss is defined as difference between System Input volume & Certified Export point. However the bulk water import or export (if any) shall be adjusted through respective flow meters.
- ii. **Continuous (24 x 7 ) Pressurized Water Supply** means achieving and maintaining a continuous supply of water in respective DMA based on quantity of availability of bulk water (to be provided by SMC at ESR Inlet point) at 8 m water column at consumer end, monitoring flow and pressure data including logging & data transfer with SCADA.
- iii. **Measurement Points** means the points on the project components at which the flow and or pressure measuring devices to measure and record one or multiple parameters with data logger would be installed which shall be mutually agreed by the Employer and the Contractor during the Design Construction period but should include all major and sub components and inlet and outlet points. The logger shall transfer the data to both Employers & Operators location through wireless communication without any human interface on 24/7 basis.
- iv. **Potable Water Quality** Operators obligations is limited to maintain the residual chlorine of 0.2 ppm at consumer end provided that SMC shall supply Bulk Water at ESR outlet with minimum 0.5 ppm chlorine.

### B. Performance Targets

The Operator must meet following Performance Targets on monthly basis:

- i.) Water Loss / NRW Level
- ii.) Collection Efficiency
- iii.) Continuous Pressured 24x7 Water Supply must be provided to the ESR's or Transfer Points
- iv.) Water Quality.
- v.) Consumer Complaints

### C. Methodology for Measurement of Performance:

The Contractor shall develop a robust methodology and framework for measurement and monitoring of Performance Standards stipulated under this clause and proposed as part of the Service Improvement Plan (SIP). The Employer shall review the same and upon agreement between the Parties, the agreed methodology shall form the

basis for monitoring the performance of the Contractor and apply the Performance Payment.

**D. Performance Measurement Protocol (NRW)**

During performance measurement period it is not possible to measure to have simultaneous measurement within a DMA or multiple DMA. Therefore, for normalizing the readings, following, protocols will be followed;

Performance measurement will always be taken 12 noon to 12 noon of start date to 12 Noon of end Date on a particular day of a month as decided by Engineer for a period under consideration.

Measurement time gap for consumption or supply flow meter with DMA performance period, if any, in terms of days/ hrs or any other period under consideration shall normalize as per following corrections;

- a. Performance measurement period (Tp) : is the duration in days / hrs. for which Contractor performance is assessed for performance measurement (Te-Ts)
- b. Initial Reading (R1): is the reading taken during start of time for performance period (Ts)
- c. Final reading (R2): is the reading taken during end of performance period (Te)
- d. Actual Performance period (Ta): is the duration / time of actual reading from Initial reading (R1)
- e. Normalizing Reading: is the correction of actual reading with respect to time gap if any, during performance period.
- f. Normalizing Formula 
$$:= (R2-R1) \times (Tp/Ta)$$
$$= (R2-R1) \times [(Te-Ts)/ Tm-Ts]$$

**Where,**

“Start time (Ts)” is the time of Initial Reading for Performance Measurement period (Tp) of DMA

“End Time (Te)” is the time of Final Reading at the end of Performance Measurement period of DMA

“Actual Measurement Time (Tm)” is the time of actual measurement for respective consumption meter / or supply meter

“Actual Performance period (Ta)” means Tm-Ts in hrs./ day

**E. Minimum Service Level Bench Mark,**

Sr. No.	Indicator	Bench Mark Level
1	Continuity of supply	24 hours
2	Coverage	100%
3	Quality	Potable drinking water as per CPHEEO Manual
4	Minimum residual pressure at consumer end	8 m
5	Metering	100%
6	NRW	Upto 11%
7	Efficiency in redressal of customer complaint	95%

**Section-9**  
**Contract Forms**

## Section 9 - Contract Forms

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.

### Table of Forms

Letter of Acceptance .....	2
Contract Agreement.....	3
Performance Security.....	4
Advance Payment Security.....	6
Draft Format for Memorandum of Understanding for JOINT VENTURE ....N.A. ....	8

**Letter of Acceptance**  
**[on letterhead paper of the Employer]**

..... **date** .....

To: ..... **name and address of the Contractor** .....

Subject: ..... **Notification of Award Contract No.** .....

This is to notify you that your Bid dated .... **date** .... consisting of the Technical Bid and the Price Bid for execution of the **Work for 24 x 7 Water Supply System under Smart City Mission in 07 (Seven) T.P. Schemes area of East and South East Zone of Surat Municipal Corporation including Refurbishment of existing network in part area of TP Scheme No. 53 (Magob Dumbhal), TP Scheme No. 64 (Magob-Dumbhal), TP Scheme No. 19 (Parvat-Magob) including all work of Mechanical, Electrical, SCADA, Household connections, consumer water meter fittings and work including Management of 24x7 Water Supply in SMART CITY for a period of 10 years, and identification number, as given in the Bid Data Sheet** ..... for the Accepted Contract Amount of the equivalent of ..... **amount in figures and words and name of currency** ..

....., as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section 9 (Contract Forms) of the Bidding Document.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: **Surat Municipal Corporation, Surat**

Attachment: Contract Agreement

### Contract Agreement

THIS AGREEMENT made the . . . . . day of . . . . ., . . . . ., between . **Surat Municipal Corporation, surat** - (hereinafter "the Employer"), of the one part, and . . . . . **name of the Contractor**. . . . .(hereinafter "the Contractor"), of the other part:

WHEREAS the *Employer* desires that the Works known as **Work for 24 x 7 Water Supply System under Smart City Mission in 07 (Seven) T.P. Schemes area of East and South East Zone of Surat Municipal Corporation including Refurbishment of existing network in part area of TP Scheme No. 53 (Magob Dumbhal), TP Scheme No. 64 (Magob-Dumbhal), TP Scheme No. 19 (Parvat-Magob) including all work of Mechanical, Electrical, SCADA, Household connections, consumer water meter fittings and work including Management of 24x7 Water Supply in SMART CITY for a period of 10 years** should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
  - (a) the Contract Agreement,
  - (b) the Letter of Acceptance
  - (c) the Letter of Technical Bid
  - (d) the Letter of Price Bid
  - (e) the Variation Nos . . . . . insert variation numbers if any. . . . .
  - (f) the Particular Conditions of Contract – Part A
  - (g) the General Conditions of Contract;
  - (h) the Employers Requirement
  - (i) the completed Schedules
3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of . . . . . **India**. . . . . on the day, month and year indicated above.

Signed by .....

Signed by.....

for and on behalf of the Employer  
in the presence of

for and on behalf the Contractor  
in the presence of

Witness, Name, Signature, Address, Date

Witness, Name, Signature, Address, Date

**Performance Security**  
**(Bank Guarantee)**

To

**The Commissioner,  
Surat Municipal Corporation,  
Muglisara,  
Surat – 395 003.**

In consideration of Surat Municipal Corporation (hereinafter referred as the “Client”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) having awarded to M/s ....., having its office at ..... (hereinafter referred as the “Contractor” which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), vide the Client’s Letter of Intent no. .... dated ..... and the agreement to be executed for Rs. .... (Rupees .....), (hereinafter referred to as the “Agreement”) for ..... (insert “Project Name”) and the Contractor having agreed to furnish a Bank Guarantee amounting to Rs. .... (Rupees ..... ) to the Client for performance of the said Agreement. We, ..... (hereinafter referred to as the “Bank”) at the request of the Contractor do hereby undertake to pay to the Client an amount not exceeding Rs. .... (Rupees ..... ) against any loss or damage caused to or suffered or would be caused to or suffered by the Client by reason of any breach by the said Contractor of any of the terms or conditions contained in the said Agreement. We, ..... (indicate the name of the Bank) do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on a demand from the Client stating that the amount/claimed is due by way of loss or damage caused to or would be caused to or suffered by the Client by reason of breach by the said Contractor of any of the terms or conditions contained in the said Agreement or by reason of the Contractor’s failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. .... (Rupees .....).

We, ..... (indicate the name of Bank) undertake to pay to the Client any money so demanded notwithstanding any dispute or disputes raised by the Contractor in any suit or proceeding pending before any court or tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this guarantee shall be a valid discharge of our liability for payment thereunder and the Contractor shall have no claim against us for making such payment.

We, ..... (indicate the name of Bank) further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the Client under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till the Client certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said Contractor and accordingly discharges this Guarantee.

We, ..... (indicate the name of Bank) further agree with the Client that the Client shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of

performance by the said Contractor from time to time or to postpone for any time or from time to time any of the powers exercisable by the Client against the said Contractor and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Contractor or for any forbearance, act or omission on the part of the Client or any indulgence by the Client to the said Contractor or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of so relieving us.

This Guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor (s). We, ..... (indicate the name of Bank) lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Client in writing.

For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. \*\*\* \* (Rupees \*\*\*\*\* ) only. The Bank shall be liable to pay the said amount or any part thereof only if the Client serves a written claim on the Bank in accordance with paragraph 2 hereof, on or before [\*\*\* (indicate date falling 90 days after the date of this Guarantee)].

For .....

Name of Bank:

Seal of the Bank:

Dated, the ..... day of ....., 2016



**Draft Format for Memorandum of Understanding for JOINT VENTURE**

**Not Applicable**

This Memorandum of Understanding (hereinafter referred to as "MOU") is made and entered into this ----- ("Effective Date").

**BETWEEN**

**M/s.** \_\_\_\_\_, a company incorporated, and having its registered office at \_\_\_\_\_. (Hereinafter referred to as the "**First Party**"/"**One Partner**");

**M/s.** \_\_\_\_\_) a company incorporated, and having Registered office at \_\_\_\_\_. (Hereinafter referred to as the "**Second Party**" / "**Each Partner**");

**M/s.** \_\_\_\_\_) a company incorporated, and having Registered office at \_\_\_\_\_. (Hereinafter referred to as the "**Third Party**" / "**Each Partner**");

Hereinafter jointly referred to as the "**Parties**" and individually as "**Each Party**" or "**a Party**" as the case may be.

**WHEREAS,**

- A) The **Surat Municipal Corporation, Surat** (hereinafter referred to as the **SMC** or "**Employer**") invited bid for **Selection of Contractor for Work for 24 x 7 Water Supply System under Smart City Mission in 07 (Seven) T.P. Schemes area of East and South East Zone of Surat Municipal Corporation including Refurbishment of existing network in part area of TP Scheme No. 53 (Magob Dumbhal), TP Scheme No. 64 (Magob-Dumbhal), TP Scheme No. 19 (Parvat-Magob) including all work of Mechanical, Electrical, SCADA, Household connections, consumer water meter fittings and work including Management of 24x7 Water Supply in SMART CITY for a period of 10 years**
- (B) The **Parties** hereto formed a Joint Venture or will form a joint venture (hereinafter referred to as the "**JV**") to jointly execute the above project in all respect

**NOW THEREFORE IT IS HEREBY AGREED** as follows

**ARTICLE 1: JOINT VENTURE:**

- 1.1. The Parties hereto agree to form the Joint Venture with \_\_\_\_\_ designated as the **One Partner and First Partner**.
- 1.2. \_\_\_\_\_ shall be the **Second Member – or Second Partner**

**ARTICLE 2: JOINT VENTURE NAME:**

2. The JV shall do business in the name of "**\_\_\_\_\_ Joint Venture**".

**ARTICLE 3: JOINT AND SEVERAL LIABILITY:**

- 3 The **Parties** hereto shall, for the above-referred **Projects**, be jointly and severally liable to

the **Employer** for the execution of the Projects in accordance with the **Contract** till the actual completion of Contract including defect liability period and operation & maintenance as per bid conditions.

**ARTICLE 4: PROPORTIONATE SHARE:**

- 4.1 Each member of the Joint Venture agrees to place at the disposal of the Joint Venture, the benefit of all its experience, technical knowledge and skill, and shall in all respects bear its share of responsibility and burden of completing the contract. The parties herein shall be responsible for physical and financial distribution of work as under.

**Lead Partner** : Financial responsibility : -----

Physical responsibility : -----

**Other Partners** : Financial responsibility : -----

Physical responsibility : -----

- 4.2 All rights, interests, liabilities, obligations, risks, costs, expenses and pecuniary obligations and all net profits or net losses arising out of the **Contract** shall be shared or borne by the **Parties** in the above **Proportions**.
- 4.3 The members in the proportion as mention in article 4.1, shall contribute sufficient Initial fixed capital for timely execution of the project including commissioning & operating period as per the contract.

**ARTICLE 5: JOINT EFFORT AND MANAGEMENT:**

- 5.1 The **Parties** shall participate as a **JV** in the submission of bids and further negotiations with the **Employer** and shall co-operate and contribute their respective expertise and resources to secure and execute the **Projects**.
- 5.2 On award of **Projects**, the **First Partner** in consultation with the other members of JV will decide on the final management structure for the successful execution of the **Projects** as per the terms of **Contract**.
- 5.3 All the **Parties** hereby agree to pool in their financial, administrative, managerial, technical and material resources for execution of the **Projects**, including commissioning & operation for the period as stipulated in the contract. The share of interest of the **JV** shall be as per the mutual understanding for the successful completion of the project.

**ARTICLE 6: EXCLUSIVITY:**

- 6.1 The co-operation between the **Parties** hereto shall be mutually exclusive i.e. none of them shall without the other **Party's** consent & prior approval of **SMC**, approach or cooperate with any other parties in respect of the Project.
- 6.2 In the course of working as associates, the parties to the JV will be sharing information with each other which may be proprietary /confidential information /knowledge acquired by each other. It is hereby agreed that the parties will maintain complete secrecy regarding such information / knowledge and will not divulge to any party for any other purpose except for the success of the joint execution of the contract. All parties will also indemnify each other against any claim that may arise out of using information, which are being claimed proprietary.

**ARTICLE 7: Memorandum of Understanding:**

- 7.1 This **Memorandum of Understanding** shall be terminated:-
- a. if the **Parties** mutually confirm that the **JV's** bid proposal has not been finally accepted by **Employer** and all rights and obligations of the **Parties** under or in connection with this **Memorandum of Understanding** have ceased, or
  - b. after successful completion of the project including commissioning & operation and defect liability period from the date of this **Memorandum of Understanding** unless extended for a further period on demand of **SMC** & mutual consent of the Parties, or
- 7.2 The **Memorandum of Understanding** can be modified by mutual consent of the Parties to suit the efficient and expeditious execution of Projects including commissioning & operation of Plant or to make this agreement more meaningful to suit the requirements of Employer **after the consent of the Employer.**

**ARTICLE 8: ARBITRATION:**

- 8.1 Any dispute resulting from this Agreement shall be settled amicably by mutual Consultation by the Municipal Commissioner, SMC \_\_\_\_\_&\_\_\_\_\_. In the event that an amicable settlement is not reached within 60 days in any particular case, the dispute shall be referred to arbitration and shall be resolved in accordance with and subject to the provisions of the \_\_\_\_\_ and any statutory modifications and enactment hereof for the time being in force. The decision of the arbitrators shall be final and binding upon both parties. The venue of arbitration will be \_\_\_\_\_.

**ARTICLE 9: GOVERNING LAWS:**

- 9.1 This Agreement shall in all respects be governed by and interpreted in accordance with the \_\_\_\_\_ Laws.

**ARTICLE 10: CONFIDENTIALITY:**

- 10.1 No Party hereto shall disclose to any other party any information of a confidential nature including but not limited to trade secrets, know-how acquired from any Party in connection with the subject matter of this Agreement.

**ARTICLE 11: ADDRESS OF CONSORTIUM:**

- Any and all correspondence from the Employer to the **JV** shall be addressed to **(name of JV)** at the address stated herein below—(any one of the partners). The address of the Consortium office of the partner companies will be deemed to be the address for the purpose of communication.
- The notice, if any required to be served on the party by the other party, will be deemed to be served, if the said notice / communication is delivered by Registered Post at the respective address

**(name of JV)**

\_\_\_\_\_

**ARTICLE 12: Authorized Representative:**

- the JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.
- Authorized Representative of JV : \_\_\_\_\_

**ARTICLE 13: ASSIGN ABILITY:**

- 13.1 The interests and rights of a Party in the Contract and as a Party of the Joint Venture shall not be transferable or assignable without the written consent of the Employer & other party.

**ARTICLE14: INTERPRETATION OF HEADINGS:**

14. The headings of each of the Articles herein contained are inserted merely for convenience of reference and shall be ignored in the interpretation and construction of any of the provisions herein contained.

**ARTICLE 15: OTHERS**

- 15.1 Any other matters not contained in this Agreement shall be discussed and amicably agreed upon by the Parties in the spirit of mutual trust and cooperation for timely completion of project including commissioning & operation of project. Notwithstanding anything above all the Parties are severally and jointly responsible to the Employer for execution of the Contract:

**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be executed by each of the duly authorized representatives as appearing below:-

Signed by _____ ) For and on behalf of _____ )	_____
in the presence of: _____ ) Name: _____ Designation: _____	<b>Name :</b> <b>Designation:</b>
Signed by _____ ) For and on behalf of _____ )	_____
in the presence of: _____ ) <b>Name:</b> _____ <b>Designation:</b> _____	<b>Name :</b> <b>Designation:</b>